

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

RUDY MEJIA, *Decedent*

vs.

WHITEWAVE FOODS COMPANY; XI SPECIALTY INSURANCE CO., *Defendants*

**Adjudication Numbers: ADJ11018126; ADJ15112559
(Marina Del Rey District Office)**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Joint Findings of Fact & Order of March 6, 2024, wherein it was found that "applicant sustained his burden of proving by a preponderance of the evidence that [decedent] sustained injury AOE/COE in the forms of Parkinson's disease, orthostatic hypotension, and dysarthria on a CT basis from June 5, 2006 to May 29, 2017 (ADJ11018126)" and "It is found that Rudy Mejia's death on September 16, 2020 (ADJ15112559) was industrial and compensable."

Defendant contends that the WCJ erred in finding industrial injury and that led to the decedent's death. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated in the portions of the Report quoted below, we will deny the Petition. We omit a portion at the beginning of the Report's "Discussion" section (Report at p. 4) which can be construed as standing for the proposition that defendant waived the argument that Dr. Sedgh's report did not constitute substantial medical evidence. The injured worker or his dependents in a death claim generally have the burden of proof in workers' compensation cases, and the defendant may generally argue on reconsideration that the applicant submitted insufficient evidence to carry their burden of proof. Defendant did not waive this argument.

**II.
SUMMARY OF FACTS**

Rudy Mejia worked in the capacity of pasteurizer/blender for the employer from June 5, 2006 to May 29, 2017, a span of almost 11 years. He was diagnosed with

Parkinson's disease sometime in mid 2017. He passed away on September 16, 2020.

On September 14, 2017, via counsel, Rudy Mejia filed an Application for Adjudication Claim, alleging injuries to lower back and bilateral hips on a CT basis from June 5, 2006 to May 29, 2017 (ADJ11018126). Via Answer, dated January 8, 2018, defendants denied injury AOE/COE. Mr. Mejia treated with Behnam Sam Tibibian, M.D. as his Primary Treating Physician and was evaluated by orthopedic Panel QME, Denise Williamson, M.D., on April 19, 2018. Dr. Williamson found injury AOE/COE to Mr. Mejia's cervical, thoracic, and lumbar spine and bilateral hips. She also found applicant to be temporarily totally disabled. On May 30, 2018, Rudy Mejia amended the Application to include cervical spine, thoracic spine and bilateral knees.

On August 30, 2018, Dr. Tabibian declared applicant permanent and stationary from an orthopedic standpoint and found injury AOE/COE to cervical, thoracic, and lumbar spine, bilateral hips and bilateral knees, and gave permanent disability (PD) to cervical, thoracic and lumbar spine, as well as bilateral knees. At the November 13, 2018 Mandatory Settlement Conference (MSC), defendants agreed to pick up temporary disability (TD) benefits from April 19, 2018 pursuant to the opinions of Dr. Williamson and requested to defer the issue of retroactive TD. This WCJ is unable to decipher from the Minutes of Hearing what body part(s) was/were accepted at that time. On May 10, 2019, Dr. Williamson also declared applicant permanent and stationary from an orthopedic standpoint. She found injury AOE/COE to cervical, thoracic and lumbar spine, and bilateral hips and gave PD to these body parts with apportionment.

On August 26, 2019, Rudy Mejia amended the Application to include deep vein thrombosis. On March 19, 2020, Mr. Mejia was evaluated by the Panel QME in the field of internal medicine, John Sedgh, M.D., and Dr. Sedgh found injury AOE/COE on a CT basis in the forms of Parkinson's disease with gait imbalance, orthostatic hypotension secondary to Parkinson's, dysarthric disorder secondary to Parkinson's, constipation and resulting overflow incontinence secondary to Parkinson's, deep vein thrombosis secondary to being wheelchair bound as a result of Parkinson's, erectile dysfunction, with apportionment. On May 21, 2020, Rudy Mejia amended the Application to include Parkinson's disease, orthostatic hypotension, dysarthric disorder, lower GI (constipation) and erectile dysfunction.

Dr. Sedgh was deposed on August 28, 2020. On September 30, 2020, the Application was amended again to include urologic and neurologic complaints.

It appeared that defendants scheduled Rudy Mejia to be evaluated by Andrew Schreiber, M.D., a Panel QME in the field of neurology, to occur on January 27, 2021, which applicant failed most likely because he passed away on September 16, 2020. Based on defendants'

Petition to compel applicant's attendance at a medical-legal evaluation with Dr. Schreiber, dated May 21, 2021, the appointment was rescheduled to occur on June 16, 2021. WCJ Klipfel denied said Petition due to lack of good cause. There is nothing in EAMS to suggest that the parties pursued an opinion from Dr. Schreiber based on review of records.

On September 1, 2021, Gustavo Mejia, Rudy Mejia's son, filed an Application for Adjudication of Claim (Death Case) (ADJ15112559). Date of death was September 16, 2020. Defendants denied said death claim on September 13, 2021.

Dr. Sedgh issued two more supplemental Panel QME reports, dated March 21, 2022 and December 21, 2022, after review of records, including the Material Safety Data Sheets (MSDS) from the employer.

After review of some records, Ricardo Tan, M.D., a Panel QME in internal medicine on the death claim, issued one report on March 31, 2023, finding Mr. Mejia's Parkinson's disease and subsequent death were non-industrial.

On June 23, 2023, applicant's attorney filed Declaration of Readiness to Proceed (DOR) on both cases for a MSC to address AOE/COE, including death, attorney's fees and penalties. There was no objection to said DOR. At the October 4, 2023 MSC, defendants did not appear but agreed to a joint continuance to Trial. Signed joint Pre-trial Conference Statements were efiled. Trial was rescheduled multiple times. On January 29, 2024, the cases proceeded to Trial. Since defendants filed a Trial Brief, dated January 17, 2024, applicant's attorney was afforded an opportunity to submit a Trial Brief as well. Both cases were submitted on the record on February 20, 2024.

Joint Findings of Fact & Order, Opinions on Decision were issued and served on March 6, 2024.

On April 2, 2024, defendants filed a Petition for Reconsideration, which was timely given that March 31, 2024 fell on a Sunday and April 1, 2024 was a holiday.

III. DISCUSSION

At Trial and pursuant to defendants' Trial Brief, dated January 17, 2024, defendants argued that the opinions of Dr. Sedgh were not substantial medical evidence because applicant was not exposed to Trichloroethylene at work based on the MSDS and that Dr. Sedgh relied on literature from approximately 30 years ago to stretch to a conclusion of causation.

[Discussion of waiver omitted.]

Besides the fact that defendants raised an issue of appropriate specialty for the first time on reconsideration, when there was an opportunity to request a Panel of QMEs to address the death case per Navarro, defendants requested a Panel in internal medicine (Petition for Reconsideration, Page 6, Line 8) and Dr. Tan is the Panel QME. Defendants appeared to be content with Dr. Tan's March 31, 2023 Panel QME report (Exhibit A) finding death was not AOE/COE and were ready to proceed to Trial relying on same.

Furthermore, based on the record under ADJ11018126, in 2021, there was an opportunity to procure a report from neurologic Panel QME, Dr. Schreiber, but no such report was pursued. In fact, if defendants believe that neurology is the appropriate specialty all along, defendants or the parties could have pursued an opinion from Dr. Schreiber under the CT claim or jointly requested an additional Panel of QME's in the field of neurology to address the death claim but there was no evidence of such effort.

Indeed, the burden of proving injury AOE/COE is on applicant but if defendants believe that internal medicine is not the appropriate specialty all along, the actions of refraining from pursuing an opinion from Dr. Schreiber in neurology, requesting a Panel in internal medicine to address Mr. Mejia's death from Parkinson's disease, taking the matters to Trial relying on a report from Dr. Tan who specialized in internal medicine, and then turning around and arguing that the specialty of internal medicine is not appropriate for the first time on reconsideration after an adverse Joint Findings of Fact & Order are, quite honestly, troublesome, and borderline bad faith.

In addition, at no time during Dr. Sedgh's deposition on August 28, 2020 (Joint Exhibit Z) did Dr. Sedgh state on the record that he was not qualified to address causation of Parkinson's disease, orthostatic hypotension and arthralgia. Dr. Sedgh admitted that he has seen a lot of Parkinson's patients exposed to Agent Orange in Vietnam. On average, he treats three to five Parkinson's patients per week so he has a lot of experience in Parkinson's disease (Joint Z, Page 9, Lines 14-25). When asked if Dr. Sedgh would first refer a patient with Parkinson's-like symptoms to neurology, Dr. Sedgh responded it depends on the case (Joint Z, Page 10, Lines 11-17). In defendants' Petition for Reconsideration, defendants misrepresented Dr. Sedgh's opinions on Page 26, Lines 14-15. Dr. Sedgh never said he "defers Applicant's treatment to a Neurologist, rather than an Internist" (Petition for Reconsideration, Page 3, Line 16). When discussing Mr. Mejia's treatment with a neurologist, Dr. Sedgh simply stated as follows:

"I mean, I think he would benefit more from the expertise of a neurologist. As far as the right medical management of his medications, if there's any other new medication or other stuff that they can provide to him, I think he would benefit better than just a regular physician. But the other stuff like dysarthric disorder,

problems with incontinence and all this stuff, you know, maybe subspecialties can help, like speech therapist or gastroenterology, you know.” [Emphasis added] (Joint Exhibit Z, Page 26, Lines 11-23.)

Actually, during the deposition, when asked if Mr. Mejia should be sent to a neurologic Panel QME, Dr. Sedgh welcomed a “second opinion” (Joint Z, Page 27, Line 25 – Page 28, Line 12). Dr. Sedgh did not defer causation to a neurologist.

This is the same with the Panel QME report from Dr. Tan, dated March 31, 2023 (Exhibit A). Dr. Tan reviewed Mr. Mejia’s death certificate and opined that among the conditions listed in the death certificate, multiple system atrophy from Parkinson’s disease is likely the cause of death. He then went on to find no industrial causation of the development of Parkinson’s disease based on speculation of Mr. Mejia’s exposure at work without having the opportunity to review all of the medical and non-medical records, including the MSDS. But more importantly, at no time did Dr. Tan state that it is beyond his area of expertise to address causation of Parkinson’s disease and/or death therefrom.

As to the argument that Dr. Sedgh’s opinions are not substantial medical evidence, this WCJ explained in specific details why Dr. Sedgh’s opinions are substantial medical evidence and why Mr. Mejia sustained his burden of proving injury AOE/COE in the forms of Parkinson’s disease, orthostatic hypotension, arthralgia, and eventually death, by a preponderance of the evidence in both cases. In order not to be redundant, please see Opinions on Decision, dated March 6, 2024, Page 2, Paragraphs 2, 3, 4 and 5 to Page 3, Paragraph 1; Page 4, Paragraph 5; Page 5, Paragraphs 3 and 4.

Defendants accused this WCJ acted in excess of powers by reversing the burden of proof. This WCJ believes those are merely stylistic errors. The first error this WCJ made that led to this misunderstanding is not placing Paragraph 2 on Page 3 of the Opinions on Decision, which states “[b]ased on Dr. Sedgh’s opinions, it is found that applicant sustained his burden of proving by a preponderance of the evidence that he sustained injury AOE/COE in the forms of Parkinson’s disease, orthostatic hypotension, and dysarthria” before this WCJ’s analysis of why defendants did not rebut injury AOE/COE to the aforementioned body parts under the CT claim. The second error was that this WCJ placed the analysis of Dr. Tan’s reporting before explaining why Dr. Sedgh’s opinions are substantial medical evidence and that applicant sustained his burden of proving Mr. Mejia’s death was industrial and compensable. However, the appropriate chronology of findings of fact based on respective burden of proof is clearly stated in the Joint Findings of Fact & Order, dated March 6, 2024.

All in all, both parties requested and relied upon opinions from Panel QMEs in the field of internal medicine to address causation of Parkinson’s disease and compensable consequential conditions therefrom. Neither Panel QME declared

that addressing causation of these body systems/parts, including death, is beyond their area of expertise. In fact, Dr. Sedgh testified to substantial experience with Parkinson's cases and provided explanation in his reports, with medical literature, as to how and why Mr. Mejia's development of Parkinson's disease was partially industrial on a CT basis, which eventually caused his death. Dr. Sedgh had the opportunity to examine applicant and to review all of the medical and non-medical records, including the MSDS from the employer. The parties had an opportunity to cross-examine him. Dr. Sedgh's opinions are premised upon the correct standard of reasonable medical probability.

To be substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and must set forth reasoning to support the expert conclusions reached. (Yeager v. Workers' Comp. Appeals Bd (Gatten) (2006) 145 Cal.App.4th 922, 928 [71 Cal. Comp. Cases 1687]; Escobedo v. Marshalls (2005) 70 Cal. Comp. Cases 604 (Appeals Board en banc).)

This WCJ found Dr. Sedgh's opinions on causation on both cases substantial medical evidence and thus, this WCJ found that Mr. Mejia sustained his burden of proving injury AOE/COE in the forms of Parkinson's disease, orthostatic hypotension, and dysarthria, and eventually death therefrom. Dr. Sedgh's opinions under ADJ11018126 were un rebutted. Dr. Tan's March 31, 2023 report was not found to be substantial medical evidence and thus, defendants did not rebut industrial causation of death under ADJ15112559.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Joint Findings of Fact & Order of March 6, 2024 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 3, 2024

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**GORDON EDELSTEIN
HANNA, BROPHY, MacLEAN, McALEER & JENSEN**

DW/oo

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. o.o