

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

TEOFILO APARICIO, *Applicant*

vs.

**KING FISH, INC.; AMERICAN CASUALTY COMPANY OF READING
PENNSYLVANIA; PEERLESS INDEMNITY INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ8471459; ADJ10571336
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

In order to further study the factual and legal issues in this case, we granted applicant's Petition for Reconsideration of two concurrently issued Findings of Fact and Orders issued by a workers' compensation administrative law judge (WCJ) on May 18, 2022. In a Findings of Fact and Orders issued in case ADJ8471459, it was found that while employed on November 19, 2011 as a kitchen helper, applicant did not sustain industrial injury in the form of a stroke. In a Findings of Fact and Orders issued in case ADJ10571336, it was found that while employed during a cumulative period ending November 19, 2011, applicant did not sustain industrial injury in the form of a stroke. An order that applicant take nothing by way of his workers' compensation claim was issued in each case.

Applicant contends that the WCJ erred in finding that she did not sustain industrial injury in the form of stroke. We have received answers from defendants American Casualty Company and Peerless Indemnity Insurance Company and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated by the WCJ in the Report, which we adopt, incorporate, and quote below, we will deny the applicant's Petition. As noted in the Report, applicant did not attempt to introduce evidence to overcome the testimony of the defense witnesses, which the WCJ found sufficiently credible. A WCJ's credibility determinations are "entitled to great weight because of the [WCJ's] 'opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand....' [Citation.]" (*Garza v. Workmen's Comp. App. Bd.*

(1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Any inferences to be drawn from the evidentiary record are generally in the discretion of the trier of fact. (*Sachs v. Sachs* (2020) 44 Cal.App.5th 59, 66.) “The applicant for workers’ compensation benefits has the burden of establishing the ‘reasonable probability of industrial causation.’” (*LaTourette v. Workers’ Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] citing *McAllister v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) Here, the reporting doctors opined that if the trier of fact did not accept that the employer unreasonably delayed the provision of medical treatment or if applicant did not experience mental or physical work stress before the stroke, then the stroke was non-industrial. (December 13, 2018 deposition of qualified medical evaluator internist Paul J. Grodan, M.D. at pp. 18-19; April 1, 2021 report of qualified medical evaluator neurologist Israel Gorinstein, M.D. at pp. 3-4.) We find no error in the WCJ’s findings and thus deny reconsideration for the reasons stated in the WCJ’s Report which adopt, incorporate, and quote below:

**REPORT AND RECOMMENDATION ON PETITION FOR
RECONSIDERATION**

**I.
INTRODUCTION**

In **ADJ8471459**, Applicant Teofilo Aparicio age 72, while employed as a Kitchen Helper by King Fish Inc. claimed to have sustained on November 19, 2011, injury arising out of and in the course of employment in the form of a stroke. In **ADJ10571336**, Applicant Teofilo Aparicio, while employed as a Kitchen Helper by King Fish Inc. claimed to have sustained during the period April 11, 2009 through November 19, 2011, injury arising out of and in the course of employment in the form of a stroke.

At the time of trial on July 23, 2019, the parties submitted for decision for both case numbers the issues of injury aoe/coe, temporary disability, permanent and stationary date, permanent disability, apportionment, need for medical treatment, liability for self-procured medical treatment and attorneys’ fees. The cases was then continued for witness statements to be provided to applicant’s counsel. Thereafter the cases were continued to the pandemic and on Sept 1, 2020 after hearing additional testimony the cases were submitted for decision. The submission was vacated and the parties were then ordered to develop the record and provide the PQME in Neurology the internal PQME reporting of Dr. Grodan. The parties then returned to Trial and the case was again submitted on February 17, 2022. This Judge issued her Findings of Fact and Orders for each case number and the Joint Opinion on Decision dated May 18, 2022. The

Applicant as Petitioner has filed a timely verified Petition for Reconsideration dated June 13, 2022. Defendants have both filed an Answer to the Petition for Reconsideration.

The Petition contends that this Judge erred by not finding that AOE/COE had been established in this matter.

II.
FACTS

In ADJ8471459, Applicant Teofilo Aparicio, while employed as a Kitchen Helper by King Fish Inc. claims to have sustained on November 19, 2011, injury arising out of and in the course of employment in the form of a stroke. In ADJ10571336, Applicant Teofilo Aparicio, while employed as a Kitchen Helper by King Fish Inc., claims to have sustained during the period April 11, 2009 through November 19, 2011, injury arising out of and in the course of employment in the form of a stroke. The parties proceeded to trial on numerous issues in this matter and there is no doubt that the applicant did suffer from a stroke on November 19, 2011 which has left him debilitated. However, whether the stroke was industrial was unclear.

The trial witnesses to testify were defense witnesses John Kagawa and Ramon Acosta. Applicant did not testify, however the parties jointly submitted the deposition testimony of Applicant’s spouse/Guardian Ad Litem, Maria Vasquez. The parties submitted the medical record which included the PQME reporting and deposition testimony of Paul Grodan, M.D., in internal medicine and Israel Gorenstein, M.D., in neurology. This Judge issued her Findings of Fact and Orders for each case number and the Joint Opinion on Decision dated May 18, 2022. The Applicant’s timely verified Petition for Reconsideration followed. Defendants have both filed an Answer to the Petition for Reconsideration.

III.
DISCUSSION

Applicant has alleged that there was an approximate 2 hour delay between the time he fell and the time that 911 was called by John Kagawa, the owner of defendant employer King Fish, Inc. Based on the documentary record, the parties utilized PQME Paul Grodan, M.D., in internal medicine and PQME Israel Gorenstein, M.D., in neurology. Both PQME’s issued reports as well as having their depositions taken in this matter. Additionally Defense witnesses, John Kagawa & Ramon Acosta, testified. Applicant’s spouse, Maria Vasquez, did not testify, however the parties jointly submitted her deposition from October 15, 2012 (EAMS DOC ID# 70809519). To say there was conflicting witness testimony by Ms. Vasquez, Mr. John Kagawa & Mr. Ramon Acosta would be an understatement.

The testimony of Ms. Vasquez in her deposition of October 15, 2012 (Joint Exhibit 12, EAMS DOC ID# 70809519) is somewhat unreliable since it is primarily based on hearsay. She did however testify in her deposition that she had been married to applicant since 2006 but had been together for 20 years. On November 19, 2011, her deposition testimony reflects that he had a stroke at work. According to Ms. Vasquez's deposition testimony, her husband/applicant was age 74 when he fell and she did see applicant that morning before he went to work, noting that applicant had to be at work at 7:00 am. Ms. Vasquez drove applicant to work on November 19, 2011 and testified that he was fine and everything was normal. She further testified that he did not complain of a headache that day or within the week leading up to his accident. According to Ms. Vasquez, applicant did not suffer from headaches on a regular basis, was not taking any prescription medication, but he never got sick. Ms. Vasquez further testified that applicant would go to the county clinic if he was sick and never got high blood pressure medication from the clinic. Her testimony also revealed that applicant had been diagnosed with high blood pressure about three years before and they found "a little bit".

As far as what occurred on November 19, 2011 while the applicant was at work when he fell, Ms. Vasquez noted in her deposition that a co-employee of the applicant named Pita, called her to tell her that her husband had "some kind of slight fainting, and the ambulance had come and had taken him." According to Ms. Vasquez, Pita asked her to come to the restaurant to pick up applicant's cell phone and keys which she did. Ms. Vasquez further testified in her deposition that she did not speak to anyone at the restaurant when she was there and Pita told her what hospital to go to after she had been at the restaurant for maybe five minutes. None of the doctor's at the hospital told her what caused the applicant's stroke. Ms. Vasquez testified that during the five minutes she was at the restaurant to pick up applicant's belongings, Pita told her that applicant told her (Pita) that he had a headache, that Pita and applicant had worked next to each other, applicant said he had a headache, and when she saw that he had fainted, she (Pita) had run over to sit him up. According to Ms. Vasquez's deposition testimony, Pita told her that Pita was the one that said they had better call an ambulance because it had been two hours since applicant fell down. Furthermore, Pita told her that she (Pita) had told Ramon to call the ambulance because the gentlemen (applicant) was not reacting. Apparently according to Pita as noted by Ms. Vasquez, Ramon called the ambulance.

At no time did either applicant or defense call as a witness the person referred to by Ms. Vasquez as Pita. Mr. Kagawa, the owner of King Fish, Inc., in November 2011 testified at trial that applicant worked part time and did not complain about stress on the job, did not advise him that he had headaches on November 19, 2011 or advise him of any physical problems or work related problems that day (Minutes of Hearing & Summary of Evidence dated July 23, 2019, page 6, lines 11-15). Mr. Kagawa further testified that on November 19,

2011, he was five to ten feet away from the applicant at the time of the incident and he did see the applicant on the ground but did not see applicant fall (Minutes of Hearing & Summary of Evidence dated July 23, 2019, page 6, lines 17-18 & 20-21). His testimony also reflects that prior to the fall, the applicant had not complained of any medical problems or medical conditions, and that no other employees advised him that the applicant was unwell (Minutes of Hearing & Summary of Evidence dated July 23, 2019, page 6, lines 21-23). Mr. Kagawa thinks that the applicant was picked up by Ramon Acosta, and that applicant was on the floor for about a minute before being picked up and put into a chair by Ramon Acosta and another employee (Minutes of Hearing & Summary of Evidence dated July 23, 2019, page 6, lines 12-15 & page 7, lines 1-2). His testimony further reflects that he spoke to the applicant briefly while he was in the chair and when he spoke to the applicant, applicant was able to communicate with him. Mr. Kagawa then called 911 about five to seven minutes later after the applicant had been put into the chair according to his trial testimony. His testimony also reflects that it took the ambulance about 5 minutes to get there and once the paramedic got there, they took about five minutes to help the applicant and the fire fighters were speaking with the applicant and then they took applicant away. (Minutes of Hearing & Summary of Evidence dated July 23, 2019, page 7, lines 4-10). The testimony of Mr. Kagawa goes on to confirm that the applicant arrived at work at 7:00 am and the incident when applicant was found on the floor occurred about 2 and a half hours later (Minutes of Hearing & Summary of Evidence dated July 23, 2019, page 7, lines 20-21). He also noted that the store opened at 9:00 am (Minutes of Hearing & Summary of Evidence dated July 23, 2019, page 7, line 24). Then the testimony becomes somewhat unclear because there were apparently witness statements taken of Mr. Kagawa which were not offered into evidence by either party, and seem to be somewhat different on the timing of events which Mr. Kagawa notes that there may have been a mistake on the times due to the time between the statements and the trial. Additionally, Mr. Kagawa does note that a person named Vita is an employee of King Fish, Inc., but he does not know if Vita spoke to applicant's wife on the day of the incident and does not know if Vita informed applicant's wife applicant was taken to the hospital by ambulance (Minutes of Hearing & Summary of Evidence dated July 23, 2019, page 8, lines 2-5). He does think that another employee Gladys Lopez was the one that brought a chair to the applicant (Minutes of Hearing & Summary of Evidence dated July 23, 2019, page 8, lines 11-12).

However, what does appear to be clear is that based on the records of the Glendale Fire Department (Joint Exhibit 13, **EAMS DOC ID# 70809520**), a 911 call was received by them on November 19, 2011 at 9:55 am and they arrived that day at 9:50 am. The records of Glendale Fire Department also notes that applicant was found at work complaints of positive right arm weakness, "while evaluating, patient became aphasic with complete paralysis. Negative trauma, negative continence. Patient started vomiting en route" and it appears that the arrival at the hospital was 10:13 am. There is also the time card of the applicant

from that week (Applicant's Exhibit 1) which note that the applicant clocked into work on November 19, 2011 at 6:48 am and it appears that the time out that day was handwritten in as 14.00. Nevertheless the time card does reflect that the applicant clocked into work that day at 6:48 am to start his work day.

Turning to the trial testimony of the defense witness Ramon Acosta. Mr. Acosta testified to being a long time (39 years) employee of King Fish, Inc., was working on the day of the applicant's injury and was the assistant manager (Minutes of Hearing & Summary of Evidence dated September 1, 2020, page 3, line 25, page 4, lines 1-3). He notes that he was the applicant's immediate supervisor at the time (Minutes of Hearing & Summary of Evidence dated September 1, 2020, page 4, line 4). According to Mr. Acosta, the applicant did not complain of stress on the job, did not complain of headache on the job and applicant did not advise him of any illness on the date of injury as well as applicant not saying that there was anything wrong with his health (Minutes of Hearing & Summary of Evidence dated September 1, 2020, page 4, lines 5-8). He notes that he spent two and a half to three hours with the applicant working side by side with applicant in the back room area/fish department (Minutes of Hearing & Summary of Evidence dated September 1, 2020, page 4, lines 8-10). He further testified that he was about 2 meters from the applicant and could see when the applicant fell down. Mr. Acosta testified that before the applicant fell down, applicant did not say anything about pain or a headache (Minutes of Hearing & Summary of Evidence dated September 1, 2020, page 4, lines 13). He went to assist the applicant and had the applicant sit on the floor. Then someone got a chair for the applicant and he asked applicant if he was okay. Mr. Acosta testified that Gladys Lopez brought the chair and applicant was on the floor for about five minutes and then in the chair (Minutes of Hearing & Summary of Evidence dated September 1, 2020, page 4, lines 13-17). Mr. Acosta confirms in his testimony that Mr. Kagawa was in the room at the time applicant fell. He spoke to the applicant and the applicant was able to speak at that time (Minutes of Hearing & Summary of Evidence dated September 1, 2020, page 4, lines 17-18). Mr. Acosta testified that the applicant fell at about 9:30 to 10:00 am and that applicant had been at work for about three hours before the fall. Mr. Acosta also confirmed that the applicant normally started work at 7:00 am (Minutes of Hearing & Summary of Evidence dated September 1, 2020, page 4, lines 18-20). He recalled that the applicant told him to call his wife with his cell phone and then Gladys Lopez called the applicant's wife (Minutes of Hearing & Summary of Evidence dated September 1, 2020, page 4, lines 21-22). According to Mr. Acosta, he recalls Mr. Kagawa spoke to the applicant and that Mr. Kagawa called 911 when the applicant was in the chair about 5 minutes after the fall (Minutes of Hearing & Summary of Evidence dated September 1, 2020, page 4, lines 22-24). The rest of Mr. Acosta's testimony then becomes unclear when he is questioned about the timing of the events in his statement when compared to his trial testimony.

After reviewing the testimony of applicant's wife, Ms. Vasquez, it did appear to

be based largely on hearsay, which is admissible, but does not appear to be corroborated by any other evidence presented. In light of the documentary evidence, namely the records of the Glendale Fire Department, it does appear that they arrived at King Fish, applicant was able to communicate with the paramedics and unfortunately then suffered paralysis prior to being taken to the hospital by ambulance. It does however appear that Glendale Fire Department received the 911 dispatch call at 9:55 am and arrived at King Fish within 3 minutes at 9:59 am, they then transported applicant to the hospital at 10:10 am arriving at the hospital at 10:13 am (Joint Exhibit 13, **EAMS DOC ID# 70809520**). According to the medical record, including the reports and deposition testimony of the PQME's (Joint Exhibits 8-11 and Defendant's Exhibits D, E & F), applicant suffered an acute hemorrhagic stroke in a setting of major stroke risk factors and untreated hypertension. Based on the testimonial evidence as well as the medical evidence, it does not appear that there was any delay between the applicant's fall and the rendering of medical care. While both PQMEs have noted that time is of the essence when a person has a stroke, Dr. Grodan did note that if the applicant was engaging in strenuous activity the applicant's acute hemorrhage stroke may be industrial. However the applicant also had untreated hypertension according the records reviewed by both PQMEs. Here applicant argues that reasonable inferences can be made because the defendant usually received deliveries of fish on Saturday mornings and neither defense witness could recall almost a decade later if the applicant unloaded a fish delivery truck on the day of applicant's fall and ultimate stroke. According to the testimony of Mr. Kagawa, "the applicant would assist in unloading the boxes of fish from the delivery people but the applicant would not do this on his own. He [applicant] was only there to assist and they did not lift anything over 50 pounds." (Minutes of Hearing & Summary of Evidence, September 1, 2020, page 3 lines 18-20). Mr. Acosta testified that "if there had been a delivery, two people would have unloaded the truck and use a dolly or a rolling cart. He did not remember the applicant unloading a delivery truck the day of the incident" (Minutes of Hearing & Summary of Evidence, September 1, 2020, page 5 lines 19-11). The testimony presented hardly rose to the level warranting any type of a reasonable inference of what occurred. According to the PQME reports and depositions of Dr. Gorinstein and Dr. Grodan, applicant's stroke was found to be non-industrial, the evidence that a 2 hours delay in the applicant receiving treatment is based on hearsay evidence and not supported by the evidence presented. Additionally there did not appear to be any substantial medical evidence of a continuous trauma injury.

In the Petition for Reconsideration, petitioner now argues that the applicant by virtue of falling onto the floor automatically had a physical injury, thus there had to be a compensable injury. However there is nothing in the record to suggest that applicant hit his head or injured any other part of his body other than he ultimately had a stroke. Applicant also argues that the statements of the defense witnesses somehow should be taken in to consideration, when the statements were not offered into evidence by the applicant. Applicant's counsel made one

reference to the statement of Ramon Acosta in cross examination, yet failed to offer the statement of any part thereof into evidence. (Minutes of Hearing & Summary of Evidence, September 1, 2020, page 7, lines 5-17). Applicant also did not offer any statements of Mr. Kagawa. Needless to say, the testimony of all witnesses had their flaws and the deposition of Ms. Vasquez was based on unsubstantiated hearsay. Applicant/Petitioner is raising various arguments which were not made at the time of trial by way of the Petition for Reconsideration. However, the fact remains that applicant did not meet the burden of proof in this matter regarding the issue of AOE/COE on both alleged dates of injury.

IV.
RECOMMENDATION

It is therefore respectfully recommended that Applicant's Petition for Reconsideration be denied in its entirety.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration that the Findings of Fact and Orders of May 18, 2022 in case ADJ8471459 and the Findings of Fact and Orders of May 18, 2022 in case ADJ10571336 are **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 10, 2024

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

**TEOFILO APARICIO
SOLOV & TEITELL
ERIC ANDERSON
KIRK & MYERS**

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*