WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CHARLENE ADAMS, *Applicant*

vs.

ST. FRANCIS MEMORIAL HOSPITAL, permissibly self-insured, adjusted by SEDGWICK CMS, *Defendants*

Adjudication Number: ADJ13108823
Oakland District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on November 26, 2024, wherein the WCJ found that applicant did not sustain injury arising out of and in the course of employment (AOE/COE) to the head, neck, right shoulder, right knee, or psychiatric injury, and that the reporting by Agreed Medical Evaluator (AME) Peter J. Mandell, M.D., is not substantial medical evidence. The WCJ ordered that applicant take nothing by way of her workers' compensation claim.

Applicant contends that the medical records upon which the AME relies provide sufficient medical evidence to establish an industrial injury and that Dr. Mandell's opinions are substantial medical evidence.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto.

Based on our review of the record, and as discussed below, we will grant applicant's Petition, rescind the Finding and Order issued on November 26, 2024, and return the matter to the WCJ for further proceedings consistent with this decision.

BACKGROUND

Applicant claimed injury to various body parts, including the head, neck, right shoulder, right knee, and psyche

while employed by defendant as a security guard on January 13, 2020.

The parties agreed to utilize Agreed Medical Evaluator (AME) Peter Mandell, M.D., who issued three reports: May 27, 2022 (Exhibit 10), October 29, 2022 (Exhibit 1), and January 15, 2024 (Exhibit 11). Both exhibits 10 and 11 were marked for ID only.

The matter proceeded to trial on January 8, 2024 and March 26, 2024, on the following issues:

> 1. Injury arising out of and in the course of employment.
>
> 2. Temporary disability, with the employee claiming temporary disability from 1/16/2020 to present.
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> 3. Need for medical treatment.
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> 4. Liability for self-procured medical treatment. [This issue is deferred.]
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> 5. Attorney fees.
>
> 6. Defendant raises all applicable defenses, including, but not limited to, post-termination defense.
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> 7. Initial physical aggressor defense.
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> 8. Defendant objects to any issue being tried besides AOE/COE.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), January 8, 2024 trial, pp. 2-3.)

The parties stipulated that the following facts are admitted:

> 1. Charlene Adams, born [], while employed on 1/13/2020 as a security guard at San Francisco, California by St. Francis Memorial Hospital, claims to have sustained injury arising out of and in the course of employment to the head, neck, right shoulder, right knee, and psych.
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> 2. At the time of injury, the employer was permissibly self-insured, adjusted by Sedgwick CMS.
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> 3. At the time of injury, the employee's earnings were $1,380 per week, warranting indemnity rates of $920 for temporary disability, and $290 for permanent disability.

4. The employer has furnished no medical treatment.
5. No attorney fees have been paid, and no attorney fee arrangements have been made, except for Labor Code 5710 fees.

(January 8, 2024, MOH/SOE, p. 2.)

On January 8, 2024, applicant testified at trial and defense witness Dwayne Wright testified at trial on March 26, 2024, but no other witnesses provided trial testimony.

Relevant here, applicant testified as follows:

> Applicant first started working for the employer on November 4, 2019, as a security officer.
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> ***
> Dwayne Wright was her main supervisor.
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> ***
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> Prior to starting, she had training from several officers, whoever was assigned to train her. She was supposed to do an "evade" class, but they could not schedule it for six weeks. She believes guards were supposed to get that class at the very beginning.
>
> She is familiar with coworker Jordan Pang who was also a security officer. Mr. Pang was a lead officer, but he was not her supervisor. Some days he was not there, but she estimates that she worked with Mr. Pang 65% and 75% of the time, they were scheduled to work together. At first, she was on the evening shift and worked with Mr. Pang on this shift. The relationship was described as "employees working together." Mr. Pang told the applicant what to do. When Mr. Pang told her something wrong and applicant confirmed it with her boss, they moved her shift. Mr. Pang told applicant to "go in there and get something with scabies" without a suit and only gloves. This is incorrect because scabies "can go home with you, so you must be suited from head to feet," but Mr. Pang said she only needed to wear gloves. This was the first of the applicant's problems with Mr. Pang. The relationship deteriorated from then on. She believes this happened about five weeks into her job.

(January 8, 2024 MOH/SOE, p. 6.)

> Applicant felt kind of felt harassed and a lot of different things. They did not have women guards. There were 12 guards who were all men, and she was the 13th guard. It was Zedow and Dwayne who changed applicant to morning shift, and they asked Mr. Pang to not come to work when she was there; they split them apart. Applicant felt Mr. Pang sabotaged her. Applicant knows that she is still under oath. The first time she sought medical treatment was January 16, 2020, after the meeting where she was terminated. Her date of injury is January

13, 2020. Applicant was terminated on January 16, 2020. The first time she sought treatment was after the meeting on January 16 when her employment was terminated.

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Applicant complained to her supervisor about Mr. Pang's behavior. Dwayne Wright said he was writing up Mr. Pang. Applicant's complaints were verbal, but she thought they were following up, so she did not put anything in writing. She was always busy on the job.

(January 8, 2024 MOH/SOE, p. 7.)

On January 13, 2020, applicant came into work approximately 6:45 a.m. and worked all day. About 2:40 or 2:45 in the afternoon, she was watching the cameras and waiting to clock out. Mr. Pang was not supposed to be in the building before 3:00 p.m., but this day he came 20 or 30 minutes early. Mr. Pang came into the office when she was there. She does not believe he was on the clock. He was walking around. Mr. Pang came to the desk she was at. He opened a drawer and slammed it into her right knee. She said to him, "Why did you do that? It is rude. You could have asked me to move." She tried to call the supervisor. She moved. Then, he slammed his shoulder into her right shoulder very hard, like a football player.

(January 8, 2024 MOH/SOE, pp. 7-8.)

She sustained an injury to the right knee. She needs surgery, but she wants natural remedies as her sister had surgery and had a difficult time. The natural remedies are working for applicant, but slowly.

She sustained an injury to the shoulder. She had prior problems with the shoulder, but they were fixed until Mr. Pang did this to her.

She reported her injuries to Mr. Wright on the same day. She told Mr. Wright everything that transpired. Mr. Wright said to "Write it up," but Mr. Wright said applicant was in pain, so he would write it up. Mr. Wright started the write-up but stopped and said she was in pain. He said she could do it next time she came in to work.

Applicant said she did not feel safe walking out, so Mr. Wright walked her out, across the street, to her vehicle. He said after her two days off, she could write her report.

She was in pain for the two days that she was off. She rested, hoping it would feel better, but she actually got worse.

She testified that Mr. Wright was supposed to prepare the report.

Applicant next reported to work on January 16 at 6:45 or 6:50 a.m. As she was going to clock in, Roneal was there and answered the phone. Applicant was told that Zedow and Dwayne wanted her to come upstairs.

Applicant went upstairs and met with Zedow and Dwayne Wright. At first, no one else was there, but after a few minutes, the manager of HR came in; applicant believes Edmundson is the manager's name. This meeting took place in the HR department.

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(January 8, 2024 MOH/SOE, p. 8.)

Applicant was terminated the morning of January 16. She believes she was getting ready to clock in but did not.

Edmunson the manager came into the room right after they started to terminate her. They were not listening to her, and so he came in. Applicant told them about the January 13 incident when Mr. Pang was assaulting her on the job and said that the report had to be finished. Zedow was doing most of the talking, and he said they did not have to finish any report and she was being terminated. They refused to complete the report. After the meeting, she started to look up attorneys and contacted her attorney Mr. Pulley.

She first got treatment at Eden, on that day or the following day after the incident. The records say she got treatment on January 16, and she agrees this is correct. At Eden, they checked her out, and she was sore. They said she had to go to her regular doctor. She agrees that Dr. Jorgensen is at Concentra in downtown Oakland, and she went there for treatment. Currently, Dr. Reema Meenez at Bay Area Community Health is providing treatment as applicant's regular doctor.

(January 8, 2024 MOH/SOE, p. 9.)

Applicant recalls being evaluated by Dr. Mandell. Because of the problems she had, he could not evaluate her at the appointment. Dr. Mandell said he could not diagnose her until she was completely healed. She recalls meeting with Dr. Mandell between 30 and 40 minutes.

(January 8, 2024 MOH/SOE, pp. 9-10.)

Applicant knows that she is still under oath. The first time she sought medical treatment was January 16, 2020, after the meeting where she was terminated. Her date of injury is January 13, 2020. Applicant was terminated on January 16,

2020. The first time she sought treatment was after the meeting on January 16 when her employment was terminated.

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Applicant reported the injury again at the January 16 meeting because she said they needed to finish writing it up. She had symptoms from the time of the injury on January 13, and she told Dwayne she had symptoms on January 13. At the meeting on January 16, Dwayne Wright was there with Zedow and another person. At this meeting, applicant told them she sustained injury on January 13.

On January 13, applicant told Dwayne Wright she had an injury. He said he reported it to Zedow. The injury happened at the end of applicant's shift. Applicant told Dwayne Wright who said he would report it to Zedow. Applicant did not report the injury to Zedow. Applicant was supposed to report it to her direct supervisor who was Dwayne Wright.

The termination meeting on January 16 took place in the morning. This was the first time she reported the injury to Zedow. On January 13, Dwayne Wright was supposed to report it to Zedow.

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(January 8, 2024 MOH/SOE, p. 10.)

In 2018, applicant had right arthroscopic surgery for her shoulder. On January 16 when she went to Eden Hospital, she relayed that she had this shoulder surgery.

In 2018, she did not treat for the right knee. She does not recall an MRI in 2018 or 2017.

On May 27, 2022, applicant was evaluated by Dr. Mandell in Burlingame. She does not recall if she told Dr. Mandell that she had prior knee problems or if she told him about the right knee MRI's. Her memory is not good as she lost a grandchild to murder and son to murder. Regarding the right shoulder surgery, applicant does not recall if Dr. Mandell asked or if she told him about the right shoulder surgery or her medical history for the right shoulder. She was asked if she told Dr. Mandell about filing a police report, and she could have but does not specifically recall. Dr. Mandell "narrowed it down to she is still in pain," and said they would have to reschedule her. Applicant does not recall if she told Dr. Mandell that she was not scheduled to work the two days after the injury. She does not recall anything and is sick of repeating this.

She does not recall saying that she filed a police report about events between the date of injury and two days later.

(January 8, 2024 MOH/SOE, p. 11.)

Dr. Mandell did not perform a physical exam of applicant's knee. He may have performed an exam, but he did not do much. The doctor sent applicant on her way because she was still in pain and going through recovery. The doctor did not examine applicant's neck or right shoulder. She does not recall if the doctor made any physical contact. He said, "You're still in pain; I can't see you."

(January 8, 2024 MOH/SOE, pp. 11-12.)

Applicant had an injury working for Caltrans in early 2000's. She does not think she told Dr. Mandell about this injury.

Applicant had a knee injury working for Valley Transit Authority when she bumped her knee into a money machine. It was around 2008. Applicant does not know if she told Dr. Mandell about this injury. It was a "light injury," not like this current injury.

She was asked if she had a motor vehicle accident in 2016, but she does not recall. She has been in a lot of car accidents. The major knee accident was in 2006. An accident in 2016 may have hurt her shoulder. She does not recall if she told Dr. Mandell about the car accidents.

Dennis James is identified as a physician's assistant at Concentra who produced a medical record in March of 2020. Applicant thought she saw a physician at Concentra. There is a Dr. David Jorgenson, but applicant does not recall names of the providers at Concentra. Applicant cannot recall if she informed Concentra about her employment status. She did not tell them about her employment at St. Francis, but she may have told them she was laid off.

Applicant does not recall if she told Dr. Mandell about her employment at St. Francis and does not remember if Dr. Mandell asked about her prior jobs. Dr. Mandell did not ask much, but instead, said he did not want to continue with the appointment because applicant was still getting treatment. She was seeing a doctor at Bay Area Health.

Applicant does not recall if she brought documents to show to Dr. Mandell.

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(January 8, 2024 MOH/SOE, p. 12.)

Regarding the January 13, 2020, events, she has no doubts about her memory of incidents with Jordan Pang. He and applicant were going opposite ways. She was standing still, and Mr. Pang was passing her. She was getting ready to walk through the office, and when she saw him, she got out of his way. Mr. Pang moved towards her, and his right shoulder hit her right shoulder. He did not get knocked down. She moved back, as in to react, "What is wrong with this man." Mr. Pang kept moving. Mr. Pang deliberately moved into applicant's right shoulder, and he knew she had had right shoulder surgery. She has no doubt about her memory of the incidents because it was traumatic to her. Her recollection is good for this. Immediately, she went to Dwayne Wright and told him about the interaction and her symptoms. Mr. Wright offered to walk her to her car because she felt she was unsafe.

(January 8, 2024 MOH/SOE, pp. 13-14.)

Defense witness Dwayne Wright testified as follows:

He was the security supervisor for St. Francis Hospital. In January of 2020, the witness was Charlene Adams' supervisor.

The witness was asked if the applicant sustained an injury involving Jordan Pang. Applicant did not report this injury to the witness. The Applicant reported that she and Mr. Pang "brushed shoulders." She demonstrated this by walking up to the witness and brushed her shoulder against his shoulder to indicate what happened.

From the demonstration, there was not enough to do physical harm. The Applicant did not hurt the witness in her demonstration. She did not appear to be in pain or injured. The Applicant did not indicate that Mr. Pang had hurt her on any other part of her body.

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(March 26, 2024, MOH/SOE, p. 2.)

He did not know she was injured. He would not have known she was injured unless he signed an injury report.

The witness testified that Mr. Pang was not injured in the brush and Mr. Pang did not report an injury and said it did not happen.

Exhibit 6 is reviewed by the witness and read to the witness. It references a left shoulder injury by Jordan Pang and indicates the witness was provided with a report. The witness has no recollection of this at all.

> He knows Gilbert Santos, who was a lead officer. As a lead officer, he would run the shift when he was on duty. Exhibit 7 is an email by Gil Santos and was reviewed by witness who testified that he has never seen this before. It says the witness was copied on the email. He does not know that Gilbert wrote this and did not know that Mr. Pang or Ms. Adams were hurt. What Applicant demonstrated to the witness was "a brush."
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> Normally, he would get the injury report.
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> Before Applicant demonstrated the brush, the witness was outside with Jordan Pang who was saying he was having problems with Charlene Adams. As he went inside, he met the Applicant who said she was having problems with Jordan Pang and demonstrated the brush. She said, "Jordan better watch his step," and this is a direct quote. He did not recall saying anything to the Applicant after that except that he would talk to Jordan. It was a non-issue at the time.

(March 26, 2024, MOH/SOE, p. 3.)

Exhibit 7 is an email by lead officer Gilbert Santos, dated January 14, 2020, wherein Santos states in part that:

> I wanted to bring this issue to your attention because I feel it needs to be addressed before it escalates further.
>
> During the shift, I noticed [Pang] was experiencing pain with his left shoulder. When I asked him about it, He said it was nothing and continued to work as normal. I continued to watch him and saw him rubbing his shoulder after we dealt with a combative Pt in the ED. I again asked him what was wrong and he stated it was due to an incident he had involving Charlene Adams.
>
> I advised [Pang] that he should get it seen in the ED but he refused multiple times.
>
> After we dealt with another code gray in the ED and seeing him in pain again, I along with Nathan the Charge Nurse, advised him to get seen in the ED. [Pang] finally agreed and checked in for treatment at 2100 hours.
>
> I wanted to make sure this incident was documented accordingly, especially when it can escalate to a more serious matter if left unaddressed.

(Exhibit 7, email from Gilbert Santos to Zewdu Shibabaw, cc'ing Dwayne Wright, dated January 14, 2020.)

On May 14, 2024, the WCJ issued her initial Findings and an Order in which she found applicant failed to prove industrial injury AOE/COE and dismissed her case.

On June 10, 2024, applicant filed a Petition for Reconsideration of the May 14, 2024, Findings and Order.

On June 21, 2024, the WCJ issued an Order vacating the May 14, 2024, Findings and Order.

On June 21, 2024, the WCJ also issued an Order directing the parties to further develop the record. Specifically ordering that AME Dr. Mandell consider the evidence from the trial, as well as perform a reevaluation and physical examination of applicant. (June 21, 2024, Order and Amended Opinion on Decision, p. 1.)

On July 16, 2024, defendant filed a Petition for Reconsideration and/or Removal of the June 21, 2024 Order, contending that no grounds exist to develop the record further on the issue of AOE/COE.

On July 23, 2024, the WCJ issued an Order vacating the June 21, 2024 Order.

On August 16, 2024, applicant filed a Petition for Reconsideration and/or Removal of the July 23, 2024 Order vacating the June 21, 2024 Order, requesting that all of the Orders be rescinded and that the Appeals Board find that applicant met her burden.

On August 21, 2024, applicant withdrew the Petition for Reconsideration and/or Removal filed on August 16, 2024.

On September 18, 2024, the matter came on for hearing. The minutes state:

> WCJ did not transmit anything to Appeals Board as all decisions were vacated after trial. Applicant's deadline to submit a reply brief is 10-18-2024; defense may respond by 11-1-2024 which is the date case shall be resubmitted for a decision.

(September 18, 2024, minutes, p. 1.)

On November 26, 2024, the WCJ issued the Findings and Order that are the subject of the current Petition.

Applicant filed a Petition for Reconsideration of the November 26, 2024, Findings and Order on December 23, 2024.

DISCUSSION

I.

Former Labor Code section[1] 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on January 7, 2025, and 60 days from the date of transmission is Saturday, March 8, 2025. The next business day that is 60 days from the date of transmission is Monday, March 10, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, March 10, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to

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[1] All statutory references are to the Labor Code unless otherwise stated.

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on January 7, 2025, and the case was transmitted to the Appeals Board on January 7, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on January 7, 2025.

II.

To be compensable, an injury must arise out of and occur in the course of employment. (Lab. Code, § 3600.) The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd*. (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5, 5705.) Medical evidence that industrial causation was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Worker's Comp. Appeals Bd*. (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].)

Where there is a dispute over the compensability of any injury, the existence or extent of permanent impairment, and limitations, if any, resulting from an injury require a medical evaluation. (Lab. Code, §§ 4060, et seq.)

When deciding a medical issue, the WCJ must utilize expert medical opinion. (See *Insurance Company of North America v. Workers' Comp. Appeals Bd*. (*Kemp*) (1981) 122 Cal.App.3d 905 [46 Cal.Comp.Cases 913].) The number and nature of the injuries sustained are questions of fact for the WCJ. (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd*. (*Austin*) (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323].)

As with any decision by a WCJ, a decision on the number and nature of injuries must be supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); see *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

The issue of industrial causation "may run a gamut from the blatantly obvious to the scientifically obscure." (*Peter Kiewit Sons v. Ind. Acc. Comm. (McLaughlin)* (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188].) "[T]he medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters." (*Id*.; see *City & County of San Francisco v. Industrial Acc. Com*. (*Murdock*) (1953) 117 Cal.App.2d 455, 459 [18 Cal.Comp.Cases 103].) Generally medical causation cannot be established without corroborating expert medical opinion. (*McLaughlin, supra*, at 838-839.)

It has long been recognized that evidence from a lay witness on an issue requiring expert opinion is not substantial evidence, and medical proof is required when issues of diagnosis, prognosis, and treatment are beyond the bounds of ordinary knowledge. (*Murdock, supra*, at 459; *Bstandig v. Workers' Comp. Appeals Bd.* (1977) 68 Cal.App.3d 988 [42 Cal.Comp.Cases 114].)

The WCJ's reliance on supervisor Wright's testimony regarding whether applicant sustained injury is misplaced. (Report, p. 6 ["The demonstration of the contact according to Mr. Wright of a "brush" and "brushing shoulders" amounted to bodily contact that was offensive to applicant, but not injurious."].) As discussed above, the existence and extent of an injury requires a medical opinion. The statements that applicant did not seek medical treatment until a few days after the incident, when she was off from work, and that the record contains contrary evidence regarding the severity of the injury are not germane to whether applicant sustained an industrial injury. (Report, pp. 8, 9.)

Whether an employee knew or should have known that the disability is industrially related is generally a question of fact. (*City of Fresno v. Workers' Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53]; *Nielsen v. Workers' Comp. Appeals Bd*. (1985) 164 Cal.App.3d 918 [50 Cal.Comp.Cases 104]; *Chambers v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal.2d 556 [33 Cal.Comp.Cases 722]; *Alford v. Industrial Accident Com*. (1946) 28 Cal.2d 198 [11 Cal.Comp.Cases 127].) The employer has the burden of proving that the employee knew or should have known his disability was industrially caused. (*Johnson, supra*, at 471, citing *Chambers, supra*, at 559.) That burden is not sustained merely by a showing that the employee knew he had some symptoms. (*Johnson*, *supra*, at 471; *Chambers, supra*, at 559.) In general, an employee is not charged with knowledge that his or her disability is job-related without medical

advice to that effect. (*Johnson*, *supra*, at 473; *Newton v. Workers' Comp. Appeals Bd*. (1993) 17 Cal.App.4th 147, 156, fn. 16 [58 Cal.Comp.Cases 395].)

Turning to whether there is substantial medical evidence of industrial causation, a medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction 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, 621 (Appeals Bd. en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd*. (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

As an AME, Dr. Mandell was presumably chosen by the parties because of his expertise and neutrality. Therefore, his opinion should ordinarily be followed unless there is a good reason to find that opinion unpersuasive. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) However, Dr. Mandell's opinions must still constitute substantial medical evidence.

Dr. Mandell obtained a history, reviewed extensive medical records (Exhibit 1, Dr. Mandell's October 29, 2022 report, pp. 3-11 of PDF), and issued a medical opinion as to causation.. However, Dr. Mandell's reasoning in support of the conclusions reached is admittedly brief. The WCJ found that Dr. Mandell failed to explain why these conditions are industrial or how the alleged mechanism of injury resulted in the found diagnoses and we are inclined to agree.

Under the circumstances of this matter, it appears that it would be appropriate for the parties to request that Dr. Mandell submit a supplemental report. Thereafter, if Dr. Mandell is unable to "cure the need for development of the medical record," it would be in the parties' interest for the WCJ to appoint a regular physician. (Lab. Code, § 5701.)

With respect to defendant's post-termination defense, the burden of proof rests upon the party holding the affirmative of the issue. (Lab. Code, § 5705.) As for whether applicant reported the injury prior to her termination, the record shows that she did. Wright's testimony confirms that she reported an incident where she and her co-worker's shoulders touched. (March 26, 2024,

MOH/SOE, pp. 2-3.) Based on the summary of evidence, it appears that this conversation occurred shortly after the incidents, .i.e., on January 13, 2020. The fact that applicant described it as "slamming" shoulders and Wright described it as "brushing" shoulders is a matter of extent. The testimony is consistent with respect to establishing that applicant reported the event prior to her termination.

Exhibit 7 is an email by lead officer Gilbert Santos, dated January 14, 2020, wherein Santos states in part that:

> I wanted to bring this issue to your attention because I feel it needs to be addressed before it escalates further.
>
> During the shift, I noticed [Pang] was experiencing pain with his left shoulder. When I asked him about it, He said it was nothing and continued to work as normal. I continued to watch him and saw him rubbing his shoulder after we dealt with a combative Pt in the ED. I again asked him what was wrong and he stated it was due to an incident he had involving Charlene Adams.
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> I advised [Pang] that he should get it seen in the ED but he refused multiple times.
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> I wanted to make sure this incident was documented accordingly, especially when it can escalate to a more serious matter if left unaddressed.

(Exhibit 7, email from Gilbert Santos to Zewdu Shibabaw, cc'ing Dwayne Wright, dated January 14, 2020.)

The WCJ's conclusion that applicant would have added a note to the Corrective Action Form (Exhibit G), or she not have signed the form at all, if she had sustained an injury on January 13, 2020, is misguided. The form is a pre-printed form, with no space for comments. Moreover, defendant did not call any witnesses with direct knowledge of the meeting on January 16, 2020. In terms of evaluating whether defendant met their burden, the absence of evidence is the incorrect standard. (Report, p. 7 "It stands to reason that if an injury was reported at that meeting, there would be additional documentation such as an incident report or applicant would add a note this to the form or she not have signed the form at all.")

It is well established that a WCJ's opinions regarding witness credibility are entitled to great weight. (*Garza, supra*, at 319.) However, credibility aside, Wright provided testimony that conflicted with the documentary evidence. Wright testified "that Mr. Pang was not injured in the brush and Mr. Pang did not report an injury and said it did not happen." (March 26, 2024, MOH/SOE, p. 3.) Setting aside whether Wright is qualified to make the determination about whether Pang sustained an injury, Exhibit 6 is a Report of Occupational Injury or Illness, prepared on behalf of Jordan Pang, wherein he reported that he injured his left shoulder on January 13, 2020, as a result of the same incident that gave rise to applicant's injuries. Moreover, Wright was cc'ed on an email on January 14, 2020, describing Pang's apparent shoulder pain as a result of the incident involving applicant. (Exhibit 7.)

With respect to the WCJ's statement that discovery closed at a priority conference on February 15, 2023, and no party has requested further development of the record (Report, p. 15), we note that the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on a threshold issue. (Lab. Code, §§ 5701, 5906; *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141 (Appeals Bd. en banc); *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924].) The Appeals Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd*. (2000) 79 Cal.App.4th 396, 404 [65 Cal.Comp.Cases 264].) We further note that both exhibits 10 and 11, marked for identification only at the trial hearings, have still not be ruled upon by the WCJ as to admissibility, although the WCJ initially admitted exhibit 10 prior to rescinding her initial decision of May 14, 2024. Exhibit 11, referred to by the WCJ in her Report, confirms that there was not physical examination of applicant. (Report, p. 12.)

The Appeals Board also has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall, supra*, at 403-404.) The "Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd*. (*McKernan*) (1999) 74 Cal.App.4th 928, 937-938 [64 Cal.Comp.Cases 986].)

Pursuant to the California Constitution and sections 5313 and 5815 of the Labor Code, a WCJ is charged with the duty to make determinations on all issues in controversy, to provide a statement of the reasons or grounds upon which those determinations were made, and to do so in a manner that is "expeditiously, inexpensively, and without encumbrance of any character." (Cal. Const., art. XIV, § 4; Lab. Code, §§ 5313, 5815.)

A WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; Cal. Code Regs., tit. 8, §§ 10759, 10761, 10787; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), citing *Evans v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Accordingly, we grant applicant's Petition, rescind the Findings and Order issued by the WCJ on November 26, 2024, and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return to the trial level, we recommend that the WCJ consider what further development of the record is appropriate.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued by the WCJ on November 26, 2024, is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 10, 2025

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

CHARLENE ADAMS
BOXER GERSON
TOBIN LUCK

JB/*pm*

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