

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

JUANA SANCHEZ, *Applicant*

vs.

**ZURICH NORTH AMERICA INSURANCE COMPANY,
insurer for TAYLOR FRESH FOODS, *Defendants***

**Adjudication Number: ADJ12079940
Salinas District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the October 14, 2024 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a Heavy Lifting General Laborer on October 27, 2017, did not sustain injury to her psyche as a result of her industrial injury.

Applicant contends that the reporting of the Agreed Medical Evaluator (AME) supports a finding of psychiatric injury.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant the petition, order the reports of AME Dr. Allen dated January 24, 2024, February 14, 2024, and March 20, 2024 admitted into evidence, rescind the F&O, and return this matter to the trial level for development of the record.

FACTS

Applicant claimed injury to her back, right ankle, right lower extremity, and psyche while employed by defendant Taylor Fresh Foods on October 27, 2017.

The parties have selected AME Melinda Brown, M.D., in physical and rehabilitation medicine, and AME Ann Allen, M.D., in psychiatry.

On October 17, 2022, the parties proceeded to trial and framed issues including parts of body injured and whether applicant's injury was catastrophic or caused by a violent act. (Minutes of Hearing, dated October 17, 2022, at p. 2:18.)

On April 4, 2023, the WCJ issued her Findings, Award and Order, determining in relevant part that applicant sustained industrial injury to her back and right lower extremity. The WCJ determined that with respect to the issue of claimed psychiatric injury, the evidentiary record required development. (Findings, Award & Order, dated April 24, 2023, Finding of Fact No. 1.)

On August 5, 2024, the parties attended a Mandatory Settlement Conference, which the WCJ ordered taken off calendar pending the filing of additional AME reports, at which time the matter would be submitted for decision. (Minutes of Hearing, date August 5, 2024, at p. 1.)

On August 6, 2024, the parties submitted three supplemental reports from Dr. Allen, dated January 24, 2024, February 14, 2024, and March 20, 2024.

On October 14, 2024, the WCJ issued her F&O, determining in relevant part that applicant did not sustain injury AOE/COE to her psyche. (Finding of Fact No. 1.) The accompanying Opinion on Decision stated that the AME reports of Dr. Allen were substantial evidence, upon which the WCJ based her finding that applicant did not sustain psychiatric injury.

Applicant's Petition contends the January 24, 2024 reporting of Dr. Allen found that applicant's psychiatric injury arose as a compensable consequence of her "physical injury at her job on October 27, 2017," and that the AME's comments regarding the fact that applicant did not need future psychiatric medical care in no way invalidated the expressed opinions regarding industrial causation. (Petition, at p. 2:12.)

The WCJ's Report admits "procedural error in not ordering the admission of Dr. Allen's three new reports," into evidence, and recommends we issue an order admitting the reports. As to the merits of applicant's Petition, the WCJ notes that the AME found applicant's omissions from her reported medical history to be sufficiently grave as to justify a new medical opinion that applicant's psychiatric injury was no longer predominantly caused by her industrial ankle injury.

(Report, at p. 4.) The WCJ also notes that she did not find applicant’s trial testimony to be credible. (*Id.* at p. 5.)

DISCUSSION

I.

Former Labor Code¹ section 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 November 8, 2024, and 60 days from the date of transmission is January 7, 2025. This decision is issued by or on January 7, 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

¹ All further references are to the Labor Code unless otherwise noted.

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

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on November 8, 2024, and the case was transmitted to the Appeals Board on November 8, 2024. 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 November 8, 2024.

II.

We initially observe that the parties have selected Dr. Allen as the psychiatric AME and that the WCJ has ordered the June 11, 2020 report of Dr. Allen admitted in evidence without objection. (Minutes of Hearing, dated October 17, 2022, at p. 3:22.) Following the WCJ's April 24, 2023 order for development of the record, the parties obtained three additional reports from Dr. Allen, dated January 24, 2024, February 14, 2024, and March 20, 2024. The parties submitted a letter dated August 6, 2024 to the court jointly offering these three reports into evidence. The three reports were marked for identification as Exhibits J-14, J-13, and J-12, respectively, but were never admitted into the evidentiary record. The WCJ's Report concedes procedural error in not ordering the reports admitted into evidence. (Report, at p. 2.) We also observe that applicant's Petition advances arguments based substantively on the January 24, 2024 and February 14, 2024 reports of Dr. Allen. (Petition, at p. 3:3.) Based on the parties' joint submission of these documents into evidence, the substantive arguments advanced in response to the reports, the WCJ's reliance on the reports in the F&O, and the WCJ's acknowledgement of inadvertence in not moving the reports into the evidentiary record, we discern no due process concerns in moving the reports into evidence. Accordingly, we will grant reconsideration and order the three reports admitted into evidence.

Applicant's Petition contends the January 24, 2024 report of Dr. Allen finds psychiatric injury arising as a compensable consequence of applicant's October 27, 2017 ankle injury. (Petition, at p. 3:5.) Although the AME also indicated that "a future medical award is not necessary

at this time,” applicant contends this assertion does not diminish the AME’s finding of psychiatric injury predominantly caused by industrial factors. (*Id.* at p. 3:16.)

The WCJ’s Report responds that applicant’s Petition fails to consider the March 20, 2024 report of the AME in which the AME found applicant to have provided an “unreliable” medical history. (Report, at p. 3; Ex. J-12, Report of Ann Allen, M.D., dated March 20, 2024, at p. 12.) The WCJ notes that the AME’s prior findings of industrial predominance were based on applicant’s described medical and personal history, and that upon becoming aware of material omissions from this history, the AME revised her opinions regarding causation to find that causation of applicant’s psychiatric injury was no longer predominantly due to her ankle injury of October 27, 2017. (*Id.* at p. 4.) The AME further notes that she found applicant’s trial testimony to be not credible, in part because of applicant’s frequent assertion that she could not remember events in the past. (*Id.* at pp. 4-5.)

Following our review of the record, however, we are not persuaded that the reporting of the AME adequately explains the physician’s reasoning. The initial report of Dr. Allen noted that applicant had undergone a prior gastric bypass surgery in 2015 and had lost considerable weight thereafter. (Ex. A1, Report of Ann Allen, M.D., dated June 11, 2020, at p. 30.) Following her 2017 ankle injury, applicant was disappointed in her weight gain following the injury. (*Ibid.*) This was among the factors the AME considered in reaching her conclusion that “based on substantial evidence, given that Ms. Sanchez sustained a right ankle injury October 27, 2017 while working at her job that resulted in chronic pain and physical limitations.” (*Id.* at p. 34.) Based on these factors, the AME concluded that applicant’s “work injury, October 27, 2017, predominated in causation of psychiatric injury in this case.” (*Ibid.*)

The January 24, 2024 report of Dr. Allen reviewed significant additional medical records, and observed:

For the reevaluation, Ms. Sanchez gave minimal specifics and details about her reported emotional problems. She often answered questions with monosyllabic answers and did not offer associated relevant material. This was consistent with the results of the MMPI-2 testing, as interpreted by James Butcher, Ph.D., which indicated a reluctance to disclose personal information. There was no acknowledgment of her prior inconsistencies in evaluations. As such, her credibility regarding her descriptions needs to be carefully compared with objective measures.

(Ex. J-14, Report of Ann Allen, M.D., dated January 24, 2024, at p. 35.)

Following the AME's review of the applicant's clinical presentation, diagnostic testing, and documented and reported medical history, the AME concluded that "[i]t is reasonable, probable, and based on substantial evidence, given the right ankle injury that resulted in chronic pain and physical limitations, and lacking evidence of prior depression or anxiety disorders, and all facts of the case, the work injury, October 27, 2017, predominated in causation of a compensable consequence psychiatric injury." (*Id.* at p. 39.) Dr. Allen also issued a brief supplemental report of February 14, 2024 explaining that applicant's "residual psychiatric disability is not to the extent that she requires psychotropic medication and intervention." (Ex. J-13, Report of Ann Allen, M.D., dated February 14, 2024, at p. 2.)

Dr. Allen's report of March 20, 2024 reviewed additional records, and specifically noted that applicant had undergone a laparoscopic gastric bypass procedure for obesity in 2014. The AME identified the records as revealing "another inconsistency in Ms. Sanchez's history, as she omitted this procedure when giving her past surgical history for her psychiatric evaluations." (Ex. J-12, Report of Ann Allen, M.D., dated March 20, 2024, at p. 11.) Dr. Allen also noted that applicant gave birth to a child in December, 2020, and that she was therefore three months pregnant at the time of her June 11, 2020 initial evaluation. Finally, Dr. Allen notes that the applicant failed to recall or disclose a June 25, 2022 cholecystectomy surgery. Based on these factors, the AME concluded that "[c]ausation of psychiatric injury was based on her history, and there was insufficient objective information to support an association." (*Id.* at p. 11.) Accordingly, the AME concluded that "[g]iven her multiple omissions and inconsistencies in her history, it is medically, reasonably probable, and based on substantial evidence that the causation of her depressive disorder was not predominantly due to her ankle injury on October 27, 2017." (*Ibid.*)

However, it is not clear from the reporting whether the laparoscopic surgery which the applicant reported and the AME acknowledged and discussed in the initial report of June 11, 2020 was the same or a different procedure from that which the AME identified as not previously disclosed in the supplemental reporting of March 20, 2024. It is also unclear whether applicant was aware of her pregnancy in June, 2020, and what the import of applicant's pregnancy was in relation to the physician's diagnoses and causation analysis either in the June 11, 2020 report, or the most recent March 20, 2024 formulation. Additionally, given the AME's prior acknowledgement that applicant had a limited ability to recall her medical history, and the fact that this was consistent with psychiatric diagnostic testing (see, e.g., Ex. J-14, Report of Ann Allen,

M.D., dated January 24, 2024, at p. 35), it is unclear why this was among the factors that caused the AME to substantively alter her opinion as to causation as set forth in her final report. (Ex. J-12, Report of Ann Allen, M.D., dated March 20, 2024, at p. 11.)

Decisions of the Workers' Compensation Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence "...a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc), emphasis added.)

Here, following our independent review of the record, we believe that the medical-legal reporting does not adequately discuss why the AME has fundamentally changed her causation opinion, and how the changes in the AME's opinion are supported by specific references to applicant's medical history and/or the evidentiary record.

The WCJ and the Appeals Board have a duty to further develop the record when there is insufficient evidence to adjudicate an issue. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261].) The WCAB has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [94 Cal. Rptr. 2d 130, 65 Cal.Comp.Cases 264].) Accordingly, the WCJ or the Board may not leave undeveloped matters within its acquired specialized knowledge (*Id.* at 404).

Because we are unable to reconcile several of the factors discussed in Dr. Allens' March 20, 2024 report with the evidentiary record, and because the existing reporting does not adequately explain why the AME's opinions regarding causation have fundamentally altered, we conclude that the psychiatric AME reporting does not currently constitute substantial medical evidence. Because the WCJ has relied upon the psychiatric AME reporting in determining that applicant has not met her burden of establishing industrial psychiatric injury, we will rescind the F&O and return this matter to the trial level for development of the record. We recommend that

the parties obtain additional reporting or testimony from the AME to further explicate her reasoning with respect to industrial causation, and the specific evidentiary basis identified in support thereof.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of October 14, 2024 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the reports of Ann Allen, M.D., dated March 20, 2024, February 14, 2024, and January 24, 2024, are **ADMITTED** into evidence as Exhibits J-12, J-13, and J-14, respectively.

IT IS FURTHER ORDERED that the October 14, 2024 Findings and Order is **RESCINDED** and that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 7, 2025

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

**JUANA SANCHEZ
REDULA & REDULA
BAVA & ASSOCIATES**

SAR/abs

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