

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

SANDRA RODARTE, *Applicant*

vs.

LERETA, LLC; CHUBB GROUP OF INSURANCE COMPANY, *Defendants*

**Adjudication Numbers: ADJ10729444, ADJ10729802
Marina del Rey District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in this matter to further study the factual and legal issues.¹ This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Joint Findings of Fact & Award & Order (F&O) issued on July 26, 2021, wherein the workers' compensation administrative law judge (WCJ) found as relevant that (1) under ADJ10729444, applicant sustained her burden of proving industrial injury to her bilateral shoulders and psyche and did not sustain her burden as to her IBS/lower GI, sleep, and dental injuries; (2) under ADJ10729802, applicant sustained her burden of proving industrial injury to her head and cervical spine and did not sustain her burden as to dental injury; (3) under ADJ10729444, applicant requires further medical treatment to her bilateral shoulders and psyche; (4) under ADJ10729802, applicant requires further medical treatment for her head and cervical spine; and (5) the issues of permanent disability, apportionment, and attorney's fees are deferred pending further development of the record.

The WCJ awarded applicant further medical treatment in accordance with these findings.

The WCJ issued numerous orders for the parties to obtain supplemental medical reporting by either the evaluating or treating physicians limited to the various body parts found to have been industrially injured.

¹Commissioner Lowe is no longer a member of the Workers' Compensation Appeals Board. Commissioner Capurro has been substituted in her place.

Applicant contends that the WCJ erroneously found that applicant did not meet her burden of proving that she sustained dental injury in ADJ10729444 and ADJ10729802.

We received an Answer.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that the Petition be denied.

We have reviewed the contents of the Petition, the Answer and the Report. Based upon our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will affirm the F&O, except that we will amend it to defer the issues of whether applicant sustained dental injury in ADJ10729444 and ADJ10729802; and we will return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

With respect to applicant's claim that the WCJ erroneously found that applicant did not meet her burden of proving that she sustained dental injury, the matter came to trial in ADJ10729444 on the issue of "Parts of body injured: Bilateral shoulders, psyche, IBS/lower GI, sleep, and dental." (Minutes of Hearing and Summary of Evidence, June 9, 2021, p. 2:25.) And in ADJ10729802, the matter proceeded to trial on the issue of "Parts of body injured: Head, cervical spine, and dental." (*Id.*, p. 3:24.)

The WCJ admitted an exhibit entitled Report of PQME Dr. Jeffrey Miller, D.D.S. dated September 25, 2020, into evidence. (*Id.*, Jt. Ex. Q, p. 4:11.) Dr. Miller's report states, in pertinent part:

I did not receive any recent dental records or chart notes, including records from Dr. Schames and Noble Dental Care.

...

CAUSATION

In my opinion, according to the applicant's interview and medical records, it is with reasonable medical probability that the injury was AOE/COE, and should be treated on an industrial basis. This is because there was primary orthopedic trauma and stress while at work performing her work duties, and secondary trauma of bruxism due to pain, stress and medication resulting from the primary industrial injury. However, from a dental perspective, the industrial causation only applies towards bruxism, TMJ disorder, jaw pain, and xerostomia. There is no industrial causation for the pre-existing, unrelated and non-industrial missing teeth or partial edentulism.

NOTE: It is beyond my capabilities to determine if the applicant's work environment was truly unduly and excessively stressful. It is also beyond my capabilities to determine if both specific injuries on 09/23/2016 and 12/21/2016 were both industrially related, since she was leaving work at the time of one of them. These issues should be decided by the Trier-of-Fact.

Based on the applicant's statements, I am currently assuming that she suffered industrial stress and that both specific injuries were industrially related. If there was no industrial stress and no industrial psyche claim, then causation and apportionment would certainly be affected and altered.

(Jt. Ex. Q, Report of PQME Dr. Jeffrey Miller, DDS, September 25, 2020, pp. 8, 14.)

In the Joint Opinion on Decision, the WCJ states:

Jeffrey Miller, D.D.S. is the dental PQME herein. He found industrial causation in the form of TMJ disorder, bruxism, xerostomia and jaw pain due to orthopedic trauma, including pain, stress and medications from the industrial injuries, and stress while performing her work duties (Joint Exhibit P). He appropriately deferred the finding of industrial work stress and injury AOE/COE regarding the industrial injuries to the Trier-of-Fact (Joint Exhibit P).

(Joint Opinion on Decision, p. 5.)

In the Report, the WCJ states:

On January 20, 2017, via counsel, applicant filed two Applications for Adjudication of Claim, alleging injuries arising from a September 23, 2016 date of injury (ADJ10729444 – MF) and December 21, 2016 date of injury (ADJ10729802). Under ADJ10729444 (MF), defendants admit injury to lumbar spine, cervical spine, right arm, and upper GI, while the body parts of bilateral shoulders, psyche, IBS/lower GI, sleep and dental are disputed. Under ADJ10729802, defendants timely denied injury AOE/COE via letter, dated March 6, 2017 (Exhibit G). Applicant alleged injury AOE/COE to head, cervical spine and dental arising from this latter claim.

...

Applicant argued that she has in fact sustained her burden of establishing injury to a reasonable degree of medical probability based upon the opinions of Dr. Miller and Dr. Schames (Petition for Reconsideration, dated August 12, 2021, Page 4, Line 28½ - Page 5, Line 2½).

First of all, neither party submitted any medical report from applicant's secondary treater in dentistry, Dr. Schames. Thus, applicant's reference to Dr. Schames' report, dated August 26, 2020, is merely argument and not evidence (Petition for Reconsideration, dated August 12, 2021, Page 4, Lines 20½-27½).

...

[Dr. Miller] did not review any medical reports from Dr. Schames, applicant's secondary treater in dentistry, as well as the records from Noble Care, allegedly a MPN consulting facility (Petition for Reconsideration, dated August 12, 2021, Page 3, Lines 7-8).

...

It is indisputable that applicant had a prior admitted psych claim (CT ending in 1998), which resulted in a settlement via Compromise and Release agreement in 2002. It is indisputable that applicant had a prior motor vehicle accident with injury to her cervical spine in approximately 2010, which applicant claimed is fully resolved. It is also indisputable that applicant had pre-existing TMJ/jaw popping, cheek biting, and jaw pain in October 2012 per Dr. Rouhana's records.

...

Dr. Miller did not review pertinent reports/records from Dr. Schames and Noble Care. This WCJ found that Dr. Miller's opinions are not substantial medical evidence.

(Report, pp. 2-6.)

DISCUSSION

WCAB Rule 10945(a) states:

Every petition for reconsideration . . . shall fairly state all of the material evidence relative to the point or points at issue . . . A failure to fairly state all of the material evidence may be a basis for denying the petition.

(Cal. Code Regs., tit. 8, § 10945(c).)

Here, applicant argues that the WCJ should have found dental injury based upon the reporting of Dr. Schames, reporting which was not admitted into the evidentiary record. (Report, p. 3.) Accordingly, we admonish applicant's attorney to refrain from referring to materials not admitted in evidence and that failure to do so in future may result in a denial of a petition for reconsideration.

Any decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d);² *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [30 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."

² Unless otherwise stated, all further statutory references are to the Labor Code.

(*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical opinion . . . 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, 97].)

It has long been recognized that medical proof is required when issues of diagnosis, prognosis, and treatment are beyond the bounds of ordinary knowledge. (*City & County of San Francisco v. Industrial Acc. Com. (Murdock)* (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103]; *Bstandig v. Workers' Comp. Appeals Bd.* (1977) 68 Cal.App.3d 988 [42 Cal.Comp.Cases 114].)

The number and nature of the injuries suffered are questions of fact for the WCJ or the Appeals Board and those facts are to be determined by considering the events leading to the injury, the medical history of the claimant, and the medical reporting received. (*Aetna Cas. & Surety Co. v. Workmen's Comp. Appeals Bd. (Coltharp)* (1973) 35 Cal.App.3d 329 341 [38 Cal.Comp.Cases 720]; *Western Growers Ins. Co. v. Workers' Comp Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234–235 [58 Cal.Comp.Cases 323].)

In this case, PQME Dr. Miller reported that applicant sustained dental injury in the form of bruxism, TMJ disorder, jaw pain, and xerostomia where she had experienced “primary orthopedic trauma and stress while at work . . . and secondary trauma of bruxism due to pain, stress and medication resulting from the primary industrial injury.” (Ex. Q, Report of PQME Dr. Jeffrey Miller, DDS, September 25, 2020, p. 14.) But Dr. Miller further stated that he could not “determine if both specific injuries on 09/23/2016 and 12/21/2016 were . . . industrially related, since [applicant] was leaving work at the time of one of them . . . [and such] issues should be decided by the Trier-of-Fact.” (*Id.*)

In other words, Dr. Miller was unable to explain whether and to what extent applicant’s bruxism, TMJ disorder, jaw pain, and xerostomia resulted from her claimed industrial injuries to head, cervical spine and psyche until the WCJ determined the cause and existence, if any, of such injuries.

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to fully adjudicate the issues. (§§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases

261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that "[s]ections 5701 and 5906 authorize the WCJ and the [Appeals] Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record ... the WCJ or the [Appeals] Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*McDuffie, supra*, at p. 141.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*Id.*)

Since the WCJ determined that applicant sustained industrial injury to her head, cervical spine and psyche, and since Dr. Miller reported that applicant sustained dental injury if she in fact experienced primary orthopedic trauma and stress at work, we are persuaded that the record requires further development regarding how the injuries found by the WCJ caused applicant's bruxism, TMJ disorder, jaw pain, and xerostomia. (Ex. Q, Report of PQME Dr. Jeffrey Miller, DDS, September 25, 2020, p. 14.)

We further note that supplementation of the record in this regard should be from Dr. Miller per *McDuffie*, and that his supplementation should be informed by review of all pertinent medical records, including those of Dr. Schames and Noble Dental Care.

Accordingly, as our Decision After Reconsideration, we will affirm the F&O, except that we will amend it to defer the issues of whether applicant sustained dental injury in ADJ10729444 and ADJ10729802; and we will return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Joint Findings of Fact & Award & Order issued on July 26, 2021 is **AFFIRMED** except it is **AMENDED** as follows:

FINDINGS OF FACT:

3. Under ADJ10729444 (MF), it is found that applicant sustained her burden of proving industrial injury to her bilateral shoulders and psyche. It is found that applicant did not sustain her burden of proving industrial injury to her IBS/lower GI, and sleep. The issue of whether applicant sustained dental injury is deferred.

4. Under ADJ10729802, it is found that applicant sustained injury AOE/COE to her head and cervical spine. The issue of whether applicant sustained dental injury is deferred.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 25, 2025

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

**SANDRA RODARTE
WACHTEL LAW CORPORATION
TOBIN LUCKS**

SRO/kl

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