

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

ANGELA MOORE, *Applicant*

vs.

**CINTAS; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA;
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ13613836
Salinas District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the September 13, 2022 Findings and Order (F&O) issued by a workers compensation administrative law judge (WCJ), wherein the WCJ found that applicant “did not sustain compensable cumulative injury arising out of and the course of her employment (AOE/COE) by CINTAS to her cervical spine, lumbar spine, bilateral shoulders and bilateral wrists,” and thus ordered that applicant take nothing from the claim.

Applicant contends that the WCJ erred by failing to find that the opinions of chiropractic panel Qualified Medical Evaluator (PQME), Rex Lockwood, D.C., were substantial medical evidence on the issue of injury AOE/COE. Applicant further asserts that the WCJ applied the “incorrect standard” in addressing the threshold issue of injury AOE/COE and “failed to consider the entirety of the evidence reviewed by Dr. Lockwood” in making his decision. (Petition for Reconsideration (Petition), p. 9.)

We received an Answer from defendant.

We did not receive a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ due to his retirement, nor was one submitted by the Presiding WCJ. (See Cal. Code Regs., tit. 8 § 10962 [when assigned WCJ is unavailable, PWCJ shall prepare Report].)

We have considered the contents of the Petition and the Answer, and we have reviewed the record in this matter. Based upon our review of the record, and for the reasons discussed below,

we will rescind the F&O and substitute a new F&O which finds that applicant sustained injury AOE/COE while employed by defendant during the period ending on April 3, 2020 to the cervical spine, lumbar spine, bilateral shoulders, and bilateral wrists; and that applicant's claim is not barred by Labor Code¹ section 3600(a)(10), and orders that all other issues are deferred.

FACTS

On September 17, 2020, applicant filed an Application for Adjudication of Claim (Application) alleging that while employed by defendant as a catalogue administrator during the period ending on April 3, 2020, she sustained a cumulative injury AOE/COE to the neck, back, bilateral shoulders, bilateral arms, bilateral wrists, and bilateral hands.

Previously, on April 27, 2020, defendant issued a notice of denial of claim, based upon the affirmative defense of the filing a claim post-termination or layoff as set forth in section 3600(a)(10).

The parties proceeded with discovery and retained Dr. Lockwood as the chiropractic PQME. Dr. Lockwood initially evaluated applicant on July 2, 2020, and issued medical reports dated August 1, 2020, October 26, 2020, January 27, 2021, May 12, 2021, August 16, 2021, and March 19, 2022. Dr. Lockwood was also deposed on December 6, 2021. (Exhibits A1-A7.)

In his August 1, 2020 report, Dr. Lockwood noted by way of history that applicant had a January 28, 2010 specific injury and a prior cumulative injury with applicant's previous employer, Earthbound Farms. (Exhibit A6, p. 2.) Under review of records, he stated that he received 820 pages of records but noted that he received a supplemental report from "Dr. Nader Achackzad," but no other reporting from him, and that he did not have the reporting from the QME Dr. Van Dolson who evaluated applicant for her two previous injuries. (*Ibid.*) Due to Covid restrictions, Dr. Lockwood evaluated applicant virtually. He diagnosed her with cervical spine, lumbar spine, bilateral shoulder, and bilateral wrist sprains and opined that she sustained a new cumulative work injury but had not yet reached maximum medical improvement/permanent and stationary (MMI/P&S) status. (*Id.* at pp. 5, 7.)

In his January 27, 2021 report, Dr. Lockwood indicated he "had no reason to believe [applicant's] injuries [were] related to other factors." (Exhibit A4, p. 15.) He received and reviewed an additional 1,733 pages of records. He noted he would consider apportionment to prior injuries

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

and confirmed review of records pertaining to the prior injuries including reports of Dr. Achackzad who served as the PQME. (*Id.* at p. 14.)

On February 18, 2021, applicant was deposed by defendant. According to the limited excerpts made available, applicant testified that she reported her injury to general manager-in-training, Blaine, in March 2020, but was not provided a claim form. (Exhibit D1, pp. 53:8-54:22.) She expressed to him that she was experiencing symptoms but did not specify that they were work related. (*Ibid.*)

In his May 12, 2021 report, Dr. Lockwood found “no indication that [his] opinions should be modified or altered in any way by the information” contained in records provided by Kaiser, Giles Chiropractic, and applicant’s February 18, 2021 deposition transcript. (Exhibit A3, p. 2.)

In his August 16, 2021 report, Dr. Lockwood recommended work restrictions of no repetitive twisting or bending at the waist or neck, and no repetitive forward reaching or lifting, pushing, pulling, at or above shoulder level. (Exhibit A2, p. 2.)

On December 6, 2021, Dr. Lockwood was deposed by the parties and testified, in relevant part, that if he was in fact misinformed about applicant’s job duties, he would consider altering his opinions on injury AOE/COE. (Exhibit A7, p. 19:1-9.) He further indicated that applicant’s lifting and carrying was limited to ten pounds. (*Id.* at pp. 23:9-24:23.) He testified also that he felt it reasonable to retroactively extend applicant’s work restrictions to the period from April 4, 2020 – December 29, 2020. (*Ibid.*) When questioned as to whether this was speculative given that applicant had not been evaluated in person, he admitted that although there is less objectivity in virtual examinations, he believed he had adequately “contemplate[d] the case” and had based his opinions upon “the entire medical record ... past history and all.” (*Id.* at p. 26:3-23.)

In his March 19, 2022 report, Dr. Lockwood noted review of additional records from Giles Family Chiropractic, Monterey Hand and Orthopedics, Monterey Spine and Joint, and Pain-Free California, as well as applicant’s job description. (Exhibit A1, p. 2.) He completed an in-person reevaluation of applicant and opined that applicant had not yet reached MMI/P&S status. (*Id.* at p. 19.) He recommended further modified duties of data entry no more than thirty minutes at a time with fifteen-minute breaks in between and a two-hour cap per day. (*Id.* at p. 17.) He clarified that applicant’s cumulative injury to the neck, back, shoulder/upper arms resulted from repetitive lifting/carrying and prolonged data entry duties. (*Id.* at p. 19.)

On April 1, 2022, applicant filed a Declaration of Readiness to Proceed to a Mandatory Settlement Conference on the issues of injury AOE/COE and ongoing medical treatment. The matter proceeded to hearing and was ultimately set for trial on August 4, 2022.

On August 4, 2022, the parties proceed to trial. At trial, the following issues were set for determination: injury AOE/COE to the cervical spine, lumbar spine, bilateral shoulders, and bilateral wrists; temporary disability; need for further medical treatment; a lien held by the Employment Development Department (EDD); attorney fees; the section 5412 date of injury; whether applicant's attorney was entitled to a lien against benefits reimbursed to EDD for unemployment compensation benefits; and applicability of the post termination defense under section 3600(a)(10). Exhibits were submitted.

Applicant testified in relevant part as to her job duties. She lifted and carried boxes of paper and loaded paper into the machine. She also lifted boxes of gloves and other products and picked up deliveries from the mailroom, which included boxes of shirts and other merchandise, boots, and empty water bottles. (Minutes of Hearing/Summary of Evidence (MOH/SOE), August 4, 2022, pp. 5-6.) With respect to her claimed injury, she testified in pertinent part that:

The injury built up over time during the course of her employment and became worse.

...

When she began to have symptoms to her back, neck, shoulders, and upper extremities while working at Cintas, she also believes this was due to her work-related activities.

...

[S]he reported her injury at Cintas to Blaine, who was the general manager in training. She reported to Blaine that her shoulders and arms were aching in March. She did not tell him that these symptoms were due to her work, only that she was having pain.

...

[I]t is true she ran into Ashley Barone several days after she stopped working at Cintas. She saw her at Walmart. Ms. Barone also worked at Cintas as the HR manager. The witness does not recall today the conversation she had with Ms. Barone, but she does remember that she told Ms. Barone that a check was missing. During the conversation with Ms. Barone, she did not raise the issue of an injury on the job at Cintas.

...

She agrees that the treatment she got during her employment at Cintas from February 2020 through April 2020 was treatment related to the injury she had at Earthbound Farms.

...

She was hired at Cintas in January 2020. She believes the work at Cintas did aggravate the symptoms that she had from the Earthbound Farms injury, but she believes that she had newer injuries to her hands and wrists at Cintas, as well as new injuries to her shoulders and upper arms. The symptoms in her hands and wrists during the Cintas employment were different. They were more intense, more frequent, and, to some extent, involved different areas, which now include the elbows and the upper parts of the fingers, as well as difficulty closing her hands. The symptoms that she had in her wrists, hands, and upper extremities got worse with continued work at Cintas; however, she did not realize that the worsening was due to cumulative trauma[.]

(MOH, pp. 7-8.)

On September 13, 2022, the WCJ issued the F&O. The WCJ also issued a brief Opinion on Decision (OOD), consisting of four paragraphs, with no citations to exhibits or testimony, stating that he did not find applicant's testimony credible because she was employed for a period of two months, and, while she obtained treatment to her cervical spine during her employment, she did notify her chiropractor it was related to work. The WCJ further noted that although applicant reported symptoms to her supervisor, she did not notify her supervisor they were caused by work. Further, the WCJ appeared to believe it significant that applicant did not discuss her injury during her Walmart run-in with an HR representative after her layoff and did not stop working for defendant due to her injuries prior to layoff. (Defendant did not bring HR representative, Ms. Blaine, to testify at trial.) The WCJ also noted that Lockwood's opinions were not substantial evidence as they were based upon applicant's reporting. However, he did not refer to or discuss the over 2,500 pages reviewed by Dr. Lockwood or Dr. Lockwood's clinical findings following applicant's examination. In a similarly cursory fashion, and without identifying a date of injury under section 5412, he concluded that applicant failed to meet her burden as to that date, thereby barring her claim under section 3600(a)(10).

As stated previously, the WCJ retired and did not issue a Report. Thus, he was unable to cure any deficiencies by way of a Report.

DISCUSSION

I.

Turning now to the merits of the Petition, applicant contends that the WCJ erred when he failed to find the opinions of Dr. Lockwood substantial medical evidence on the issue of injury

AOE/COE. It is well established that when an employee claims injury AOE/COE, it is the employee who carries the burden of proof in establishing industrial causation and they must show that employment was a contributing cause. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297- 298, 302; §§ 5705; 3600.) Pursuant to section 3202.5, the evidentiary burden of proof is to be met by a preponderance of the evidence. However, "[t]hat 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].)

Substantial medical evidence is used to establish industrial causation. "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) Pursuant to *E.L. Yeager v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687], "[a] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (citations.) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citation.)" "A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation.)" (*Kyle v. Workers' Comp. Appeals Bd (City and County of San Francisco)* (1987) 195 Cal.App.3d 614, 621.)

Here, the WCJ concluded that "Dr. Lockwood's opinion on injury AOE/COE is not substantial evidence and is not persuasive" because it is based upon applicant's inaccurate recounting of "her job duties and how they affected her." (OOD, p. 2.) The WCJ indicated that applicant was not credible as she was "well aware of the concept of cumulative injury, prior to her termination, but made no mention of her alleged injury prior to her termination." (*Id.* at p. 3.) He noted also that applicant reported symptoms to her manager-in-training, Blaine, but "did not tell Blaine the aches were caused by her work" and did not tell her treater, Dr. Giles, that "the problems the doctor was treating were caused in whole or even in part by her work duties at CINTAS." (*Id.* at p. 2.)

We find it important to note that an employee is not charged with knowledge that their disability is job-related without medical advice to that effect, unless given “the nature of the disability and the applicant’s training, intelligence and qualifications,” they should have recognized the relationship. (*City of Fresno v. Workers’ Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 473 [50 Cal.Comp.Cases 53]; *Newton v. Workers’ Comp. Appeals Bd.* (1993) 17 Cal.App.4th 147, 156, fn. 16 [58 Cal.Comp.Cases 395].) “The 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.” (*Peter Kiewit Sons v. I.A.C. (McLaughlin)* (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188].) “Thus, the determination of knowledge is an inherently fact-based inquiry, requiring an individualized analysis in each case.” (*Raya v. County of Riverside* (2024) 89 Cal.Comp.Cases 993, 1006.)

Here, applicant did not undergo any specialized training or possess any intelligence or qualifications which would have enabled her to identify her cumulative injury or otherwise discern the industrial nature of her disability. Prior case law has demonstrated that knowledge of the concept of workers’ compensation injury and/or knowledge of symptoms are not evidence that an applicant is able to discern the industrial nature of a disability. (*Chavira v. Workers’ Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 474 [56 Cal.Comp.Cases 631]; *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998 [69 Cal.Comp.Cases 579].)

Moreover, based on our review of the evidentiary record, including the PQME reports of Dr. Lockwood, we observe that Dr. Lockwood’s opinions are grounded not only in the reported history of the injury, but also comprehensive physical examinations of applicant, and thorough review of extensive medical records, numbering more than 2,500 pages. Ultimately, even after review of records pertaining to applicant’s prior injuries with Earthbound Farms, Dr. Lockwood continued to find injury AOE/COE. Defendant contends that Dr. Lockwood relied primarily upon applicant’s inaccurate depiction of her job duties, but in his March 19, 2022 report, Dr. Lockwood noted review of applicant’s actual job description. (Exhibit A1, p. 2.) Thus, despite being given the opportunity to reverse his opinions, he continually opted to find injury.

Ultimately, in reviewing Dr. Lockwood’s reports, we find his opinions to be well-reasoned and not based upon surmise, speculation, conjecture, or guess. We thus conclude that Dr. Lockwood’s opinions constitute substantial medical evidence on the issue of injury AOE/COE to the cervical spine, lumbar spine, bilateral shoulders, and bilateral wrists. We also find, for the

reasons stated below, that applicant's claim is not barred by the post-termination defense as set forth in section 3600(a)(10).

In light of the WCJ's finding of non-industrial causation of injury, he did not consider the other issues raised at trial, which we will defer.

II.

Defendant asserts that the post termination defense under section 3600(a)(10) is applicable herein given applicant's failure to file her claim prior to her April 3, 2020 layoff. (Answer, p. 3.) Section 3600(a)(10) states that:

(10) Except for psychiatric injuries governed by subdivision (e) of Section 3208.3, where the claim for compensation is filed after notice of termination or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff, no compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that one or more of the following conditions apply:

- (A) The employer has notice of the injury, as provided under Chapter 2 (commencing with Section 5400), prior to the notice of termination or layoff.
- (B) The employee's medical records, existing prior to the notice of termination or layoff, contain evidence of the injury.
- (C) The date of injury, as specified in Section 5411, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.
- (D) The date of injury, as specified in Section 5412, is subsequent to the date of the notice of termination or layoff.

Applicant contends that the section 5412 injury date is subsequent to her April 3, 2020 layoff, thus creating an exception to defendant's post-termination defense. Section 5412 states, in relevant part, that the date of injury for cumulative injury and occupational disease cases is the "date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment." Thus, to determine the date of applicant's cumulative injury, there must exist a concurrence of disability and knowledge that it was caused by employment. Disability means either compensable temporary disability or permanent disability. (*Rodarte, supra*, 119

Cal.App.4th 998 [69 Cal.Comp.Cases 579].) Pursuant to *Johnson, supra*, 163 Cal.App.3d at p. 471, “[w]hether an employee knew or should have known his disability was industrially caused is a question of fact.” The employer has the burden of proving that the employee knew or should have known their disability was industrially caused. (*Johnson, supra*, at p. 471, citing *Chambers v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 556, 559 [33 Cal.Comp.Cases 722].) That burden is not met merely by showing the employee knew they had some symptoms. (*Ibid.*)

Defendant claims that applicant should have known her injury was work related prior to her April 3, 2020 layoff due to her “litigation history” and a “preexisting similar cumulative trauma case against her prior employer.” (Answer, pp. 3-4.) As noted above, however, knowledge of the concept of cumulative injury and knowledge of symptoms are not evidence that applicant was able to discern the industrial nature of her disability. Further, applicant has no specialized training, intelligence or qualifications which would render her capable of discerning said disability.

We note also that Dr. Lockwood did not evaluate applicant virtually until July 2, 2020, and in person until December 29, 2020, and did not address the issue of temporary disability status and work restrictions until his August 16, 2021 and March 19, 2022 reports. During his December 6, 2021 deposition, Dr. Lockwood provided further clarifications on work restrictions and retroactively extended applicant’s work restrictions, and thus temporary disability, to the period from April 4, 2020 – December 29, 2020. (Exhibit A7, pp. 23:9-24:23.) When questioned as to whether this was speculative, as he previously indicated, given that applicant had not yet been evaluated in person, he admitted that although there was less objectivity in virtual examinations, he believed he had adequately “contemplate[d] the case” and based his opinions upon “the entire medical record ... past history and all.” (*Id.* at p. 26:3-23.)

At trial, applicant testified that while she filed her claim for this injury after her last day of work, QME Dr. Lockwood was the first physician to apprise her that she had a new cumulative injury due to her employment at Cintas, and he was the first doctor to give her work restrictions due to this injury. (MOH, p. 4: 19-21.)

In light of the foregoing, we conclude that applicant did not have knowledge of her disability, for the purposes of section 5412, until after her April 3, 2020 layoff, nor prior to the date of her examination with Dr. Lockwood on July 2, 2020. Moreover, as noted by the WCJ in his OOD, applicant did not stop working due to her claimed injury, but because of the layoff. While Dr. Lockwood opined that applicant was temporarily disabled at the time that she stopped working,

applicant did not have a physician's opinion until at least July 2, 2020. According to the EDD records produced by applicant at trial, applicant did not start receiving EDD benefits until December 2021. (Exhibit A-9.) Consequently, there is no evidence that applicant suffered compensable disability prior to her layoff. Thus, because applicant's section 5412 date of injury is after her termination, applicant's claim is not barred by the post termination defense under section 3600(a)(10)(d).

We also observe, but need not decide, that since it is undisputed that applicant was receiving treatment from her chiropractor, Dr. Giles, while she was employed and medical treatment is not apportionable, it is likely that applicant also satisfies the condition of compensation in section 3600(a)(10)(b).

Accordingly, we rescind the September 13, 2022 F&O and substitute a new F&O which, finds that applicant sustained injury AOE/COE while employed by defendant during the period ending April 3, 2020 to the cervical spine, lumbar spine, bilateral shoulders, and bilateral wrists and that applicant's claim is not barred by section 3600(a)(10) and orders all other issues deferred.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the September 13, 2022 Findings and Order issued by the workers' compensation administrative law judge is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant, Angela Moore, born [], while employed during the period ending April 3, 2020, as a catalog administrator for defendant Cintas, insured by Travelers Property Casualty Company of America, sustained injury arising out of and in the course of employment to her cervical spine, lumbar spine, bilateral shoulders, and bilateral wrists.
2. Applicant's claim is not barred by section 3600(a)(10).

ORDER

All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 18, 2026

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

**ANGELA MOORE
DILLES LAW GROUP, PC
LUNA, LEVERING & HOLMES**

RL/cs

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