WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CECILIA DOLORES GARCIA, ***Applicant***

vs.

POMONA UNIFIED SCHOOL DISTRICT, permissibly self-insured and administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, ***Defendants***

Adjudication Numbers: ADJ10988642; ADJ11111236
Pomona District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petitions for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Both applicant and defendant petitioned for reconsideration of the Findings and Order (Amended) ("F&O") issued by the workers' compensation administrative law judge (WCJ) on January 30, 2025, wherein the WCJ found applicant did not sustain a work-related cumulative trauma psyche injury, found that applicant's left knee injury was industrial in nature, and ordered further development of the record with regard to all other claimed body parts. Applicant asserted that the WCJ erred in finding no cumulative psyche injury based an adverse finding in a prior specific psyche injury claim. Defendant, by contrast, asserted that the WCJ erred because (1) the medical evidence shows the left knee injury was non-industrial; and (2) as to the other body parts, the medical evidence either does not require further development, or applicant failed to exercise due diligence in pursuing medical discovery.

We received an Answer to applicant's petition from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) with regard to each petition, recommending that both petitions should be denied, except that defendant's petition should be granted with regard to the left knee, with the F&O amended accordingly.

We have considered the Petitions, the Answer, and the contents of the Reports, and we have reviewed the record in this matter. As our decision after reconsideration, we will affirm the WCJ's finding that further development of the record is required with regard to applicant's orthopedic injuries, except with regard to the reporting of Dr. Hannani, which we agree is substantial, not in need of further development, and indicates that applicant's left knee injury is not compensable. We will reverse the WCJ's finding that applicant's cumulative psyche claim is barred, because the question of whether applicant sustained a specific psyche injury is not identical to the question of whether she sustained a cumulative psyche injury, and therefore neither claim nor issue preclusion apply to bar the claim.

FACTUAL BACKGROUND

This case involves a cumulative trauma injury claim to multiple body parts. A specific injury claim alleging a psyche injury involving the same parties was adjudicated previously, with the WCJ ordering that applicant take nothing on that claim. Defendant accepted the cumulative claim with regard to applicant's lumbar spine, while denying it with regard to all other body parts.

This matter was initially set for hearing on August 29, 2024, over the applicant's objection that discovery was incomplete and that further development of the record was required with regard to the medical evidence. The issues were listed as: (1) parts of body injured; (2) permanent and stationary date; (3) permanent disability; (4) apportionment; (5) need for further medical treatment; (6) liability for self-procured medical treatment; (7) EDD lien (deferred); (8) attorney fees; (9) whether the reporting of Drs. Pietruszka and Moshfegh were substantial medical evidence; (10) credit for payments by EDD; and (11) applicant's objection to setting the case and moving the case forward to trial based on the need for further discovery. Evidence was admitted, with some exhibits marked for identification only, and the matter was continued for testimony. Further proceedings were held on November 21, 2024, with applicant providing extensive testimony. The matter was held open for post-trial briefing, and then taken under submission on January 15, 2025.

An initial Findings and Order issued on January 21, 2025; the instant amended F&O issued on January 30, 2025, with the WCJ finding in relevant part:

> 3. The left knee is industrial per the report of Kambiz Hannani, PQME.
> 4. Applicant did not sustain an industrial psychological injury.
> 5. As to other body parts, the medicals in this file are not substantial medical

> evidence. All require further development as to parts of the body injured, permanent disability, apportionment and future medical care, pursuant to the opinion attached hereto.

(F&O, at p. 1–2, ¶¶ 3–5.) The WCJ went on to order further development of the record in accordance with Finding of Fact 5. (*Id.* at p. 2.)

The instant Petitions for Reconsideration followed.

DISCUSSION

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue. The WCAB also has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].)

Additionally, any decision of the WCAB must be supported by substantial evidence. (Lab. Code,[1] § 5952(d); *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].)

In this regard, it has been long established that, in order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416-417, 419 [33 Cal.Comp.Cases 660]; *Travelers Ins. Co. v. Industrial Acc. Com. (Odello)* (1949) 33 Cal.2d 685, 687-688 [14 Cal.Comp.Cases 54]; *Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1702, 1705 [58 Cal.Comp.Cases 313].)

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. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd., supra,* 68 Cal.2d at |pp. 799, 800-801 (an opinion that fails to disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence); see also *People v. Bassett* (1968) 69 Cal.2d 122, 141, 144 (the chief value

[1] Further references are to the Labor Code unless otherwise specified.

of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based).)

In the past decade, California Courts have transitioned away from using the terms res judicata and collateral estoppel, and towards the terms claim preclusion and issue preclusion. (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.) As explained by the Supreme Court:

> We have sometimes described "res judicata" as synonymous with claim preclusion, while reserving the term "collateral estoppel" for issue preclusion. (See *Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896 (*Mycogen*).) On occasion, however, we have used the term "res judicata" more broadly, even in a case involving only issue preclusion, or collateral estoppel. (See *Bernhard v. Bank of America* (1942) 19 Cal.2d 807, 813.) We are not the only court to sometimes use the term "res judicata" with imprecision. (See, e.g., *Migra v. Warren City School Dist. Bd. of Ed.* (1984) 465 U.S. 75, 77, fn. 1.) To avoid future confusion, we will follow the example of other courts and use the terms "claim preclusion" to describe the primary aspect of the res judicata doctrine and "issue preclusion" to encompass the notion of collateral estoppel. (See *ibid.*) It is important to distinguish these two types of preclusion because they have different requirements.
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> *Claim preclusion* "prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them." (*Mycogen, supra,* 28 Cal.4th at p. 896.) Claim preclusion arises if a second suit involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit. (*Ibid.; In re Crow* (1971) 4 Cal.3d 613, 622[.]) If claim preclusion is established, it operates to bar relitigation of the claim altogether.
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> *Issue preclusion* prohibits the relitigation of issues argued and decided in a previous case, even if the second suit raises different causes of action. (*Mycogen, supra,* 28 Cal.4th at p. 896.) Under issue preclusion, the prior judgment conclusively resolves an issue actually litigated and determined in the first action. ([*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797].) There is a limit to the reach of issue preclusion, however. In accordance with due process, it can be asserted only against a party to the first lawsuit, or one in privity with a party. (*Bernhard v. Bank of America, supra,* 19 Cal.2d at p. 812.)
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> Issue preclusion differs from claim preclusion in two ways. First, issue preclusion does not bar entire causes of action. Instead, it prevents relitigation of previously decided issues. Second, unlike claim preclusion, issue preclusion can be raised by one who was not a party or privy in the first suit. (*Vandenberg v. Superior Court* (1999) 21 Cal.4th 815, 828.) "Only the party against whom

> the doctrine is invoked must be bound by the prior proceeding. [Citations.]" (*Ibid.*) In summary, issue preclusion applies (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341[.])

(*Id.* at pp. 824–825; some internal citations omitted.)

Here, it is clear from the Report that the WCJ's decision to find applicant did not suffer a compensable cumulative psyche injury was based upon the application of claim and/or issue preclusion, rather than an independent judgement on the merits of the evidence submitted in this claim. (See Report on Applicant's Petition for Reconsideration, at pp. 3–5.) Accordingly, we consider whether either form of preclusion properly applies here.

As the above citations illustrate, claim preclusion cannot apply to bar applicant's cumulative injury claim because it is not the same cause of action as the specific injury claim. (§§ 3208.1; 5303; see also *Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535, 1560 [an injury is either specific or cumulative, each distinct injury must be compensated separately, and by definition specific and cumulative injuries cannot occur simultaneously].)

Issue preclusion presents a thornier issue. Whether applicant suffered a psyche injury was the subject of a prior final adjudication and was necessarily decided in that proceeding, meeting the first, third and fourth requirements as outlined by the Supreme Court in *Lucido*. What is left to consider is element two: whether the issue presented in the prior proceeding was "identical" to the one to be decided in this proceeding. (*Lucido, supra,* at p. 341.) As specific to this case, the question becomes whether the finding that applicant did not suffer a *specific* psyche injury represents an "identical" issue to the question of whether applicant sustained a *cumulative* psyche injury.

Here, the two Labor Code sections referenced above provide the clearest answer. Section 3208.1 states:

> An injury may be either: (a) "specific," occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment.

Relatedly, section 5303 clarifies that "[t]here is but one cause of action for each injury coming within the provisions of this division" and "that no injury, whether specific or cumulative, shall,

for any purpose whatsoever, merge into or form a part of another injury; nor shall any award based on a cumulative injury include disability caused by any specific injury or by any other cumulative injury causing or contributing to the existing disability, need for medical treatment or death."

Section 3208.1 is stated in the disjunctive; an injury is *either* specific *or* cumulative; it cannot be both. Meanwhile, section 5303 makes clear that specific and cumulative claims cannot be merged, nor can a single award compensate an applicant for both specific and cumulative injuries together. It stands to reason, therefore, that the issue of whether an applicant suffered a specific psyche injury cannot be "identical" to the issue of whether they suffered a cumulative psyche injury. Put another way, the fact that applicant did not suffer a specific psyche injury does not preclude the possibility that she suffered a cumulative psyche injury. Issue preclusion does not, therefore, operate to bar applicant's cumulative psyche claim.

To be sure, as the WCJ noted, the issue of whether applicant suffered a cumulative psyche injury will no doubt involve many of the same facts and medical questions that resulted in the finding that she did not suffer a specific psyche injury, and the same reasons that led the WCJ to find the specific psyche injury non-compensable may lead the WCJ to a similar conclusion as to the cumulative psyche injury. But the legal issue is not identical, and as such, the WCJ erred in using issue preclusion to "cut to the chase" and avoid the need to reconsider the evidence and make new findings of fact and law with regard to applicant's cumulative injury claim.

We will therefore rescind the finding that applicant did not suffer a compensable cumulative psyche injury. Given the need to develop the record further with regard to applicant's other injuries, the parties are encouraged to wait to resubmit the issue for decision until all necessary development of the record has been completed with regard to all claimed body parts.

Next, we turn to defendant's Petition. First, we concur with the WCJ and defendant that applicant's left knee injury was non-industrial per the medical reporting of Dr. Hannani, and that the medical evidence on this point is substantial and not in need of further development. We will therefore rescind the finding that the left knee injury was industrial, and substitute a contrary finding.

We also agree with the WCJ that development of the record is required with regard to applicant's other claimed body parts. The cases defendant cites for the proposition that the Appeals Board does not have a responsibility to "bail out" an applicant who fails to prepare sufficient evidence to prove their claim are inapposite. The first case defendant cites, *Gaytan v. Payless*

Shoesource, Inc. (2011) 2011 Cal. Wrk. Comp. P.D. LEXIS 159 (panel decision), involved a failure to serve documents before trial and the WCJ's subsequent decision to exclude that evidence, not a situation where there is an actual lack of substantial medical evidence based upon insufficient reporting from the medical professionals. (*Id.* at p. *3.)

The next three cases defendant cites all involve situations where the applicant willingly proceeded to trial without objection, only to object on the basis of substantial evidence when they lost at trial. (*Quintero v. PBC Holding Corp. dba Commercial Cleaning Systems* (2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 610 (panel decision); *Brown v. State of California/California Department of Corrections and Rehabilitation* (2024 2024 Cal. Wrk. Comp. P.D. LEXIS 10 (panel decision); *Rivas v. Posada Whittier/Berg Senior Services* (2010) 2010 Cal. Wrk. Comp. P.D. LEXIS 114 (panel decision).) This is, needless to say, very different from the situation here, where applicant objected to the Declaration of Readiness based on the same lack of substantial medical evidence that applicant relies upon now, and which the WCJ vindicated in the F&O. The remainder of the cases cited by defendant either similarly consist of situations involving other failures by the party asserting a lack of substantial evidence, or situations where the party either failed to object to proceeding to trial or where it is unclear whether such an objection occurred.

Here, the WCJ was in the best position to evaluate whether further development of the record was warranted in light of the lack of substantial evidence, and we see no basis in the record to disagree with the WCJ's conclusion. Given the age of the case, however, we emphasize that our decision to uphold the WCJ's finding should not be interpreted as license for further delay, and caution that any future attempts to argue a lack of substantial evidence may not be treated with the same leniency.

Defendant also appears to contend that there is in fact substantial evidence to render a decision, and therefore that further development of the record is unnecessary. However, we agree with the WCJ that the record shows a lack of substantial evidence with regard to the reporting of Dr. Gaskins and Dr. Pietruszka. As noted by the WCJ, Dr. Gaskins' PQME report does not address the theory of injury articulated by applicant's primary treating physician that the hernia was an exacerbation of a prior work-related injury, and the WCJ reasonably determined that Dr. Gaskins' opinion on that possibility was necessary to decide the question. (See Report on Defendant's Petition for Reconsideration, at pp. 4–5.) Similarly, we cannot find fault with the WCJ's conclusion that further development of the record is also required with regard to applicant's

claimed internal injuries because Dr. Pietruszka not review the QME report of Dr. Vanfossen. (*Id.* at pp. 5–6.) As noted above, the WCJ was in the best position here to evaluate the substantiality of the evidence, and we will not lightly set aside her judgement that it was insufficient to render a reasoned decision.

Accordingly, we will amend the F&O to find that applicant's cumulative psyche injury claim is not barred by either claim or issue preclusion, and to find that applicant's knee injury is non-industrial per the substantial medical reporting of Dr. Hannani. The F&O is otherwise affirmed.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued by the workers' compensation administrative law judge on January 30, 2025 is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

3. Applicant's knee injury is non-industrial per the substantial medical reporting of Kambiz Hannani, PQME.

4. Applicant's cumulative psyche injury claim is not barred by claim and/or issue preclusion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I DISSENT (See Dissenting Opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 19, 2026

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

CECILIA DOLORES GARCIA
PEREZ LAW
BLITSTEIN, YOUNG & BLINDER

AW/*kl*

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

DISSENTING OPINION OF COMMISSIONER RAZO

Although I agree with my co-panelists on all other points, I respectfully dissent with regard to the application of issue preclusion to applicant's psyche injury claim. As noted in the majority opinion, "issue preclusion applies (1) after final adjudication (2) of an identical issue (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824–25, citing *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) I agree with my co-panelists that elements one, three and four are met. However, in contrast with my co-panelists, I would also hold that the issue presented in this claim – whether applicant suffered a compensable cumulative psyche injury – is in fact identical to the one presented in her prior claim for a specific psyche injury.

In my view, the fact that the prior claim was specific and this claim is cumulative is an illusory distinction in this particular case. It is clear from the facts and legal arguments presented that applicant is not asserting a new and distinct psyche claim based on different facts and evidence, but merely repackaging the claim that was previously denied in an attempt to bypass the prior adverse finding. (See Minutes of Hearing / Summary of Evidence, ("MOH/SOE") 11/21/24, at p. 4; MOH/SOE 12/16/2021 at pp. 2–5.) Moreover, it is also clear from the WCJ's Report that the reason she found against applicant in the specific injury case was that she was not convinced that the allegations forming the basis of applicant's specific psyche claim had actually occurred. (See Report on Applicant's Petition for Reconsideration, at p. 5.) If the events in question did not occur, they could not serve as the basis for a compensable cumulative psyche injury any more than they could serve as the basis for a compensable specific psyche injury.

For the above reasons, I would hold that the issue being presented is indeed identical in the functional, factual sense of the word, and therefore that issue preclusion should apply to bar the psyche portion of applicant's cumulative injury claim.

Accordingly, I respectfully dissent.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 19, 2026

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

CECILIA DOLORES GARCIA
PEREZ LAW
BLITSTEIN, YOUNG & BLINDER

AW/*kl*

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