WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DENA BELLAMY, *Applicant*

vs.

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION/CENTINELLA STATE PRISON, legally uninsured, administered by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ15398227
San Diego District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case.[1] We now issue our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the Findings and Award (F&A) issued on September 8, 2022 wherein the wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed by defendant as a senior psychiatric technician during the period from December 26, 2004 through November 8, 2021, applicant sustained injury arising out of and occurring during the course of employment (AOE/COE) to the heart pursuant to the presumption outlined under Labor Code[2] section 3212.2, resulting in permanent disability and need for further medical treatment.

Defendant contends that the WCJ erred by admitting into evidence, the June 27, 2022, and April 19, 2022, medical reports of cardiovascular panel Qualified Medical Evaluator (PQME) Jack Kleid, M.D. (Court Exhibits X and Y) as discovery had already closed pursuant to section 5502(d)(3). (Petition for Reconsideration (Petition), p. 5.) Defendant further contends that the reports of Dr. Kleid are lacking in substantial medical evidence as they provide incorrect

[1] Commissioner Sweeney was on the panel that issued the order granting reconsideration but no longer serves on the Appeals Board. A new panel member has been appointed in her place.
[2] Unless otherwise indicated, all further statutory references will be to the Labor Code.

information regarding applicant's weight, causing her to be placed into an obesity category which correlates with left ventricular hypertrophy (LVH). (*Id*. at pp. 5-6.) Defendant also alleges that the April 19, 2022 report is conclusory and the March 1, 2022 report lacking a medical record review. (*Id*. at p. 6.)

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations in the Petition and Answer the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will affirm the F&A.

FACTS

Applicant filed an Application for Adjudication of Claim on November 8, 2021 alleging that while employed by defendant as a senior psychiatric technician during the period from December 26, 2004 through November 8, 2021, she sustained injury AOE/COE to the heart, including hypertension.

The parties retained Dr. Kleid to serve as the cardiovascular PQME. Dr. Kleid issued three reports dated March 1, 2022, April 19, 2022, and June 27, 2022.

In his report dated March 1, 2022, Dr. Kleid diagnosed applicant with hypertension, diabetes, and obesity, and upon review of various diagnostic reports, including an echocardiogram (ECG), determined that applicant suffered from LVH and sustained a thirty percent (30%) whole person impairment under Table 4-2 for hypertensive cardiovascular disease. (Exhibit 1, p. 3.) He apportioned seventy percent (70%) of the impairment to work and the remaining 30% to nonindustrial causes. (*Ibid*.)

In his supplemental report dated April 19, 2022, Dr. Kleid noted his review of various records including ECGs dated August 7, 2014, and May 15, 2020, which showed abnormal findings, and chest x-rays from May 14, 2020, and May 26, 2020, which demonstrated shortness of breath. (Exhibit Y, p. 1.) Applicant completed numerous labs between August 7, 2014, and July 14, 2021, the results of which were mostly abnormal, including a D-dimer test from May 26, 2020. (*Id*. at pp. 15-16.)

In his supplemental report dated June 27, 2022, Dr. Kleid confirmed that the finding of a left ventricular mass found does not negate the presence of LVH. (Exhibit X, p. 1.)

On June 3, 2022, applicant filed a Declaration of Readiness to Proceed to a Mandatory Settlement Conference on the issues of compensation rate; temporary and permanent disability; rehabilitation/supplemental job displacement voucher; self-procured medical treatment; and future medical treatment. The matter proceeded to a hearing and was ultimately set for a trial, to be held on August 17, 2022.

At trial, issues set for determination included injury AOE/COE to the heart/hypertension; permanent disability; apportionment; need for future medical treatment; attorney fees; and whether applicant is entitled to the heart presumption under sections 3212.2 and 4650(e). Defendant submitted as an exhibit, a duty statement dated November 16, 2021. Applicant submitted as exhibits, the March 1, 2022, April 19, 2022, and June 27, 2022 reports of Dr. Kleid. Defendant objected to the June 27, 2022 report as it "was obtained after the MSC and after discovery." ("Transcript of Proceedings via Videoconference," August 17, 2022, p. 5.) Defendant also objected to the April 19, 2022 report as "not part of the Pretrial Conference Statement at the time of MSC when discovery was closed." All exhibits were admitted over defendant's objection.

On September 8, 2022, the WCJ issued an F&A which held, in relevant part, that while employed by defendant as a senior psychiatric technician during the period from December 26, 2004, through November 8, 2021, applicant sustained injury AOE/COE to the heart pursuant to section 3212.2 thereby resulting in permanent disability and a need for further medical treatment. The F&A was based upon the reports of Dr. Kleid.

It is from this F&A that defendant seeks reconsideration.

DISCUSSION

I.

Turning now to the merits of the Petition, it is well established that the burden of proof rests upon the party holding the affirmative of the issue. (Lab. Code, § 5705.) As such, when an employee claims injury AOE/COE, it is the employee, or lien claimant (who steps in the shoes of the employee), who carries the burden of proof in establishing industrial causation and they must show that the 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].)

Further, 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.4th922, 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.)

Per the WCJ's Opinion on Decision (OOD), the F&A was based upon the reports of Dr. Kleid dated March 1, 2022, April 19, 2022, and June 27, 2022. (F&A and OOD, p. 5; Exhibits X, Y, and A.)

Here, defendant contends that "the reports of Dr. Kleid are lacking in substantial medical evidence as they provide incorrect information regarding applicant's weight, thereby causing her to be placed into an obesity category which correlates with LVH. (*Id*. at pp. 5-6.) Defendant also alleges that Dr. Kleid's April 19, 2022 report is conclusory and his March 1, 2022 report lacking a medical record review. (*Id*. at p. 6.)

Based upon our review of the reports of Dr. Kleid, we believe he took an accurate and adequate history of the injury, thoroughly examined the applicant, reviewed all the medical reports provided, including completion and analysis of necessary diagnostic tests, and provided adequate reasoning in support of his conclusions. As such, we conclude that the reports of Dr. Kleid

constitute substantial medical evidence. Although defendant alleges that Dr. Kleid provided an incorrect weight for applicant (212 pounds versus 221 pounds), we see no clear evidence that this difference would have changed his opinions. Further, as noted by the WCJ in her report, defendant had the opportunity to pursue further discovery but did not seek a continuance to request a supplemental report from Dr. Kleid. (Report, p. 5.)

II.

Defendant further argues that the "WCJ erred by admitting Court Exhibit[s] 'X' and 'Y'" as discovery had already closed pursuant to subdivision (d)(3) of section 5502. (Petition, p. 5.) Subdivision (d)(3) states, in relevant part, that:

> If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

We note that the Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Bd. en banc).) This discretionary authority must be reconciled with the discovery cut-off pursuant to subdivision (d)(3) of section 5502. (See *Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396 [94 Cal. Rptr. 2d 130, 65 Cal.Comp.Cases 264]; *San Bernardino Community Hospital v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928 [88 Cal. Rptr. 2d 516, 64 Cal.Comp.Cases 986].) Pursuant to Kuykendall, "[s]ection 5502, subdivision (d)(3) was enacted to minimize delays and efficiently expedite case resolution by making sure parties are prepared for hearing." (*Kuykendall*, *supra*, at p. 404.)

At the same time, however, section 5708 provides that the Appeals Board is bound to accomplish substantial justice in all cases and is generally not bound by the common law or

statutory rules of evidence. The WCJ "may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division." Moreover, the WCJ always retains discretion to determine if evidence should be admitted into the record as a matter of due process and to ensure that their decision is based on substantial evidence.

As explained in *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton*, *supra*, at pp. 473, 475.) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Id.* at p. 475; see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22 (Appeals Bd. en banc).) This "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." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Based upon our review of the record, the WCJ properly admitted and considered the reports of Dr. Kleid dated June 27, 2022, and April 19, 2022 (Exhibits X and Y). The reports are substantial medical evidence, and admission was necessary to fully adjudicate the issues and accomplish substantial justice. Further, no delays were caused by the admission of said exhibits, and the pre-trial conference statement (PTCS) signed by the parties and dated June 29, 2022 specifically noted that "[a] supplemental report from QME Kleid is pending and necessary, without it there is no substantial medical evidence." (PTCS, June 29, 2022, p. 3.)

Accordingly, the F&A is affirmed.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the September 8, 2022 Findings and Award issued by the workers' compensation administrative law judge, is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,



/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 26, 2026

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

DENA BELLAMY
ADAMS, FERRONE & FERRONE
STATE COMPENSATION INSURANCE FUND

RL/cm

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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