WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JANET GILL, *Applicant*

vs.

COVENANT AVIATION SECURITY, LLC; ESIS, *Defendants*

Adjudication Number: ADJ13408105
San Jose 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.[1]

Applicant seeks reconsideration of the Findings and Order (F&O) issued January 14, 2022, wherein the workers' compensation administrative law judge (WCJ) found that applicant did not sustain an injury arising out of and occurring in the course of employment (AOE/COE), while employed as a security guard on September 15, 2019 and ordered that applicant take nothing.

Applicant contends that she met her burden of proof because her date of injury is September 10, 2019; that the incident depicted in defendant's videotape was not the incident that caused her injury; and that there is substantial medical evidence to support that she sustained an industrial injury.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report. Based on our review of the record, as our decision after reconsideration, we will rescind the WCJ's January 14, 2022 decision, substitute new findings and orders that find that applicant

[1] Commissioner Dodd, who was on the panel that issued the order granting reconsideration, was unable to participate in this decision. Another panelist was appointed in her place.

sustained injury AOE/COE on September 10, 2019, and return this matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

On July 16, 2020, applicant filed an Application for Adjudication of Claim (Application), claiming a specific injury to her back and neck on September 15, 2019, when she fell from a chair while employed as a security guard at San Francisco Airport, for defendant Covenant Aviation Security.

On August 20, 2020, defendant denied her claim.

Although the Application stated that the incident occurred on September 15, 2019, contemporaneous evidence, including applicant's same-day injury report, her employee statement, and her supervisor's accident report, all indicated that the injury occurred on September 10, 2019. (Joint Exhs. 3, 4 and 5.) In its Answer, defendant also states that the alleged injury occurred on September 10, 2019.

Applicant was evaluated by Qualified Medical Examiner (QME) Richard Chau, D.C. In his February 18, 2021 report, Dr. Chau noted that applicant's current medical concerns include pain in her neck, left arm, hand and shoulder; intermittent and constant severe pain in her midback that radiates into the left greater than right shoulder blade, feels bruised, and is aggravated by various movements; moderate to severe pain lower back pain, with tingling and numbness, which is aggravated by movement and by standing; intermittent severe pain in the shoulder blades; and abdominal pain, sleep issues, headaches, stress, anxiety, emotional difficulties, gastrointestinal disturbances, weight loss, weakness, and balance problems. (Joint Exh. 1, at pp. 6-7.) Applicant's pain has increased over the last year, and she attributes it to the fall from the chair at work, since she had none of these issues prior to that fall. (*Id.* at p. 29.) Dr. Chau diagnosed applicant with sprain and strain to her lumbar, cervical and thoracic spine, and concluded that applicant's injury arose out of and occurred during the course of employment (AOE/COE). (*Id.* at pp. 31, 33.) He noted that she is not yet permanent and stationary, and requires additional treatment, including physical therapy, follow-up care, chiropractic treatment, acupuncture and medication. (*Id.* at p. 34.)

Regarding the date of injury, Dr. Chau wrote that the injury occurred on September 15, 2019, and in his deposition testimony he indicated that he relied on what applicant told him, for

that date. (Joint Exh. 1, at p. 1; Joint Exh. 2, at pp. 7, 27.) He noted, however, that the medical records state that her injury occurred 1 ½ weeks prior to September 20, 2019, which would be approximately September 10, 2019. (Joint Exh. 1, at p. 25.)

Dr. Chau reviewed defendant's surveillance video (Defendant's Exh. A) and stated that the incident in the video could not have caused applicant's injuries, but the incident in the video could have aggravated applicant's medical condition, if she had a prior injury. (Joint Exh. 2, at pp. 32-34.)

Applicant's treating physician, Paul L. McBride, D.C., concurred with the QME that applicant's injuries were industrially caused. (Applicant's Exh. 1, at p. 3.) Although Dr. McBride's first report includes the September 15, 2019 date, all of his subsequent progress reports state that applicant was injured on September 10, 2019. (Applicant's Exhs. 3-8.)

The matter proceeded to trial on November 17, 2021. (11/17/21 Minutes of Hearing.) The parties stipulated, in pertinent part, that applicant, "while employed on date of injury, which is at issue, as a security screener/guard…" by defendant, claims to have sustained injury arising out of and in the course of employment to the neck and back. (*Id*. at p. 2.) Issues for trial were whether applicant's injury was AOE/COE, the date of injury, and if the claim was timely denied. (*Ibid*.)

John Aclado, the Covenant Aviation site manager, testified regarding the foundation for the surveillance video. (*Id*. at pp. 4-6.) He was aware that applicant was injured on September 10, 2019 and he sent an email and made a phone call, requesting the video of that date. (*Id*. at p. 4.) Surveillance videos usually have a time stamp, but "In this one, there is no time stamp but there should be one." (*Id*. at pp. 4-5.) He does not know what time is depicted in the video. (*Id*. at p. 6.)

Applicant testified, describing her fall off the chair, when working in Terminal F1, and the people that ran over to help her. (*Id*. at p. 7.) She explained that the surveillance video shows a different terminal, either B or C, and a different incident where she almost fell. (*Id*. at pp. 7-8) The video does not show the incident where she fell, which occurred two hours earlier. (*Id*. at p. 8.) She testified that the fall occurred on September 10, not on September 15. (*Ibid*.) She does not know why Dr. McBride's first report indicates a September 15 date of injury. (*Id*. at p. 9.)

Karen De Los Reyes, the assistant manager, testified that she was covering for Mr. Aclado on September 10, 2019 and was aware of incident that day. (*Id*. at p. 11.) She testified that applicant "declined" workers' compensation after the incident. (*Id*. at pp. 12-13.) She indicated that the video showed the F1 exit of Terminal 3, which was the location of the incident, as stated in Joint Exhibit

4. (*Id*. at p. 13.) She did not request the surveillance video, but based on the content of the video, her opinion is that the video was from September 10, 2019 at about 12:30 am. (*Id*. at pp. 13-14.)

On re-direct, applicant denied speaking to Ms. De Los Reyes on the day of the incident. (*Id*. at p. 14.) On September 10, 2019 she spoke to Ms. Singh and Ms. Lovelace, told them about her injury, asked to see a doctor at the airport, and was told to go to the hospital the next day. (*Id*. at p. 14.)

Defendant called no witnesses who were present when applicant's injury occurred.

The summary of the surveillance video (Defendant's Exh. A) in the Minutes of Hearing states that the video shows applicant at the security guard station, that she sits on the chair and it rolls back, and that she stumbles but does not fall. (*Id*. at p. 15.)

DISCUSSION

To be compensable, an injury must arise out of and occur in the course of employment. (Lab. Code, § 3600.) The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5, 5705.) Whether an employee's injury arose out of and in the course of employment is generally a question of fact to be determined in light of the particular circumstances of the case. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346, 353 [67 Cal.Comp.Cases 51].) "That 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].)

It is well established that decisions by the 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, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) The workers' compensation system is based on medical evidence. (*Peter Kiewit Sons v. I.A.C*. (1965) 234 Cal.App.2d 831, 838-839 [30 Cal.Comp.Cases 188]; *San Francisco v. I.A.C.* (*Murdock*) (1953) 117 Cal.App.2d 103, 106 [18 Cal.Comp.Cases 103]; *Doctors Med. Ctr. of Modesto v. Workers' Compensation Appeals Bd.,* 2005 Cal. Wrk. Comp. LEXIS 359, * 10 [writ den.] [70 Cal.Comp.Cases 1637].) Medical evidence that industrial causation was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury

AOE/COE. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660].) Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c), (d); 4061(i); 4062.3(l).) To constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls, CNA Ins. Co.* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).)

Labor Code Section 5709 states that:

> No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division. No order, decision, award, or rule shall be invalidated because of the admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure.

(Lab. Code, § 5709.)

WCAB Rule 10517 states:

> Pleadings shall be deemed amended to conform to the stipulations and statement of issues agreed to by the parties on the record. Pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof.

(Cal. Code Regs., tit. 8, § 10517.)

In our recent en banc opinion in *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830, 838 ("*Chicago Dogs*"), we held that: "In workers' compensation proceedings, pleadings are liberally construed and may be amended to conform to proof."

We reiterated that:

> The workers' compensation system "was intended to afford a simple and nontechnical path to relief." [citation] Generally, "the informality of pleadings in workers' compensation proceedings before the Board has been recognized." [citation] "[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits." [citation] Courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. [citation] "Necessarily, failure to comply with the rules as to details is not jurisdictional." [citation]

> Therefore, in workers' compensation proceedings, it is settled law that (1) pleadings may be informal. [citation]; (2) claims should be adjudicated based on substance rather than form [citation] (3) pleadings should liberally construed so as not to defeat or undermine an injured employee's right to make a claim [citation]; and (4) technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction [citation].

(*Ibid.*)

Since pleadings are presumed amended according to proof, ultimately, only the evidence is relevant. Findings of injury in workers' compensation cases are not based on allegations in pleadings. Here, regardless of whether the date of injury was correctly identified in the Application or other pleadings, the determination of when the injury took place must be based on the evidence. Only then are the pleadings presumed amended to conform to proof.

Defendant's contention in its Answer, that applicant should be denied relief due to filing her claim with an incorrect date of injury, is simply not legally supportable. There is ample evidence in the record supporting the conclusion that applicant intended to file a claim for injury on September 10, 2019. This evidence includes applicant's same-day injury report, her employee statement, and her supervisor's accident report, all of which were completed on September 10, 2019 and all of which state that the injury occurred on September 10, 2019. (Joint Exhs. 3, 4 and 5.) Additionally, applicant testified that the date of injury was September 10, 2019. (11/17/21 Minutes of Hearing, at p. 8.) Defendant's witnesses, Mr. Aclado and Ms. De Los Reyes, similarly testified that September 10, 2019 was the date that applicant's injury was reported. (*Id*. at pp. 4, 11.) There was no evidence or testimony that the incident occurred on September 15, 2019. The fact that applicant mistakenly wrote the September 15 date on her Application and may have repeated that incorrect date to her doctors, is immaterial. Based on the full evidentiary record, we find that the date of injury was September 10, 2019, and that applicant's Application is amended according to proof to claim injury on that date.

The WCJ made no findings regarding applicant's September 10, 2019 claim of injury, finding instead that applicant failed to prove that she was injured on September 15, 2019. The F&O did not address the adequacy of the medical evidence supporting applicant's claim. Applicant contends that on the date of injury, she fell backwards off a stool and injured her back and neck. The QME found that she was injured in that way and that the injury was AOE/COE. (Joint Exh. 1, at pp. 31, 33.) Applicant's treating physician similarly determined that applicant's injuries were

industrial. (Applicant's Exh. 1, at p. 3.) Based on this uncontroverted medical evidence, we find that applicant met her burden of proof, demonstrating that substantial medical evidence supported her claim of injury and that the injury was AOE/COE.

As discussed above, applicant bears the burden of proof to demonstrate by a preponderance of the evidence that her injury was AOE/COE. (*Clark*, *supra,* 61 Cal.4th at pp. 297-298, 302; Lab. Code, §§ 3600(a), 3202.5, 5705.) Here, applicant met that burden, and thus, the burden shifted to defendant to disprove applicant's claim, by way of affirmative defenses to the injury. (Lab. Code, §§ 3600, 5705.) Defendant, however, failed to put on any adequate evidence to disprove applicant's claim. We give no weight to the video evidence in Defendant's Exhibit A, since the surveillance video was not time stamped, there was no testimony from anyone other than applicant who was present when the video was made, and no valid evidence was put on by defendant to contradict applicant's testimony that the video did not depict the incident where she was injured.

Accordingly, as our Decision After Reconsideration, we rescind the January 14, 2022 decision, substitute new findings as indicated below, and return this matter to the WCJ for further proceedings.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration, of the Worker's Compensation Appeals Board that that the Findings and Order issued on January 14, 2022 is **RESCINDED** and the following is **SUBSTITUTED** in its place, and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

FINDINGS

1. Applicant Janet Gill, while employed on September 10, 2019, as a security screener/guard, in South San Francisco, California, by Covenant Aviation Security, sustained injury arising out of and in the course of employment to her neck and back.

2. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 29, 2026

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

JANET GILL
LAW OFFICES OF NOEL HIBBARD
WAI, CONNOR & HAMIDZADEH, LLP

MB/*ara*

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