WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SHIRLEY HAMMONS, *Applicant*

vs.

BOYS & GIRLS CLUB OF SANTA BARBARA; PROCENTURY INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ11656888
Oxnard District Office

OPINION AND DECISION AFTER RECONSIDERATION

In order to further study the factual and legal issues in these cases, we[1] granted defendant's Petition for Reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact and Order of August 13, 2021, wherein it was found "applicant did sustain injury to her right foot and bilateral knees on an industrial basis." Previously in this matter, in a Findings of Fact and Order of September 6, 2019, the WCJ had found industrial injury to the right foot. Defendant sought reconsideration of the September 6, 2019 decision and in an Opinion and Decision after Reconsideration of December 2, 2019, we found that the record as it then stood did not support a finding of industrial injury, but we sent the case back to the trial level to afford applicant the opportunity to procure and present substantial medical evidence of industrial injury.

Defendant contends that even on the augmented record, applicant has not carried her burden of showing that she sustained injury arising out of and in the course of employment. We have not received an answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

We agree that applicant has not presented substantial medical evidence of industrial causation. We therefore rescind the Findings of Fact and Order of August 13, 2021 and issue a new decision reflecting that applicant did not carry her burden of showing industrial causation.

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[1] Commissioner Deidra Lowe and Commissioner Marguerite Sweeney, who are no longer members of the Appeals Board, participated in issuing the Order Granting Reconsideration and in our Opinion and Decision of December 2, 2019 in this matter. Deputy Commissioner Lisa A. Sussman and Commissioner Joseph V. Capurro have been substituted in their place.

As we noted in our Opinion and Decision of December 2, 2019, applicant testified at the initial trial in this matter that while preparing lunch at work, a large can of tomato sauce fell on her right foot. She testified that she did not see a physician until the following week, when she saw Dr. Trujillo, her private primary care physician. According to applicant's testimony, Dr. Trujillo "immediately indicated she should go to the Cottage Hospital emergency room."

However, as also noted in our prior opinion, the only medical evidence in the evidentiary record at the time of the first trial were records from Cottage Hospital, which contained the following history:

> Ms. Hammons is a 64 year African American female with a PMH of HTN and sciatica who presented per the recommendation of Dr. Trejo [sic] for evaluation and surgical treatment of her painful, red, and swollen right foot. About 1 month ago the patient sustained an injury to her right foot after dropping a large metal can on it while at work. She reports that the pain and swelling eventually subsided from that injury with just ice. Patient reports that her foot began to swell and turn red after she hit it on a table at her home three days prior to admission.

(Ex. A, p. 1.)

Elsewhere in the records it states that she self-medicated the initial tomato sauce can incident with Tylenol, and that the second injury at home was sustained "by bumping [the foot] while walking in the kitchen." (Ex. A, pp. 2, 3.)

In the WCJ's original decision of September 6, 2019, he found industrial injury without commenting on the discrepancy between the applicant's testimony and the medical records, and without any medical evidence tying the tomato sauce can incident to any need for medical treatment or temporary or permanent disability. As we explained in our Opinion of December 2, 2019, a specific injury is defined by Labor Code section 3208.1(a), as an "incident … which causes disability or need for medical treatment." We explained that although the record supported the conclusion that there was an "incident" at work, no evidence was presented that the incident caused disability or the need for medical treatment. (See also Lab. Code, § 5401, subd. (a) [Employer only required to provide worker with claim form after receiving notice of "injury result[ing] in lost time beyond the employee's work shift at the time of injury or which results in medical treatment beyond first aid…."].) We returned the matter to the trial level to afford applicant the opportunity of carrying her burden of showing that the tomato sauce can incident caused disability or a need for medical treatment beyond first aid or over the counter medication.

The parties returned to trial on May 4, 2021. The applicant did not present any new testimony tying the tomato sauce can incident to her subsequent disability or further explaining the circumstances or timing of the work incident to her later symptoms. Defendant introduced the reporting of qualified medical evaluator hematologist Noam Drazin, M.D. and the reporting and deposition testimony of qualified medical evaluator orthopedist Robert Fields, M.D. into the evidentiary record.

In an October 1, 2020 report, Dr. Fields found industrial injury based on the following history given to him by the applicant:

> The patient's history of injury is that she went grocery shopping at Smart & Final for food for the kids. In the process of putting the food away, she picked up a 10-pound can of spaghetti sauce and it slipped out of her hand and hit her right foot. She reported the injury to the office right after the injury occurred.
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> When she went to her primary doctor, Dr. Trujillo, she told him she dropped a can on her foot. The doctor explained what it was and had his nurse rush her to the hospital.

(October 1, 2020 report at p. 3.)

Although Dr. Fields summarized the Cottage Hospital records, he did not discuss industrial causation based on the history in those records. Dr. Fields was deposed on February 9, 2021. He testified that his initial understanding of the history of injury was that "she was in a store, dropped something on her foot. My understanding is she developed a hematoma, and then three or four weeks later there was a small skin abrasion which turned into a necrotizing fasciitis, flesh-eating bacteria." (February 9, 2021 deposition at p. 8.) Defendant's attorney then presented Dr. Fields with the Cottage Hospital records, and the following exchange took place:

> Q. So then would it be more reasonably medically probable that the laceration occurred when she hit her foot in the kitchen as opposed to dropping a can on it?
>
> A. I don't think there's a question about that, so yes.
>
> Q. And her diagnosis on November 6, 2017, as you mentioned, was necrotizing soft tissue, infection, and systemic inflammatory response syndrome due to infection; correct?
>
> A. Yes.

Q. And your report indicated that Ms. Hammons had a small cut which eventually led to the necrotizing fasciitis and her need for debridement and a skin graft; correct?

A. Yes.

Q. So then would it be more reasonably medically probable that the necrotizing fasciitis was the result of bumping her foot in the kitchen when the laceration occurred?

A. Maybe. If she had a hematoma at the time of the cut, I don't know that I can actually answer that. The bugs that cause necrotizing fasciitis are on your skin right now. Most of us never see this in a lifetime. But I guess what I don't know is whether it was actually completely resolved or not.

Q. Well, she reported to both Dr. Tyrell and Dr. Tarleton that her symptoms resolved with ice from dropping the can, and I don't see any mention of any hematoma or any other complaints she had after that. So if we go off the medical records and her report to Cottage Health at the time of November 6, 2017, would it be more likely that the laceration from the kitchen incident precipitated the necrotizing fasciitis?

A. Definitely possible.

Q. To a degree of reasonable medical probability?

A. I am just trying to read this over again. I read this last night. Well, I don't know if the hematoma was gone, but there is certainly no complaint of it in her medical records from the several doctors who saw her.

Q. You have referred to a hematoma. What makes you say that she had a hematoma as a result of the can incident? Was that something she reported to you?

A. I am just looking. I can tell you what she reported to me because I wrote down her words exactly: "Went to the grocery store. Shopping at Smart & Final to feed the kids. In the process of putting the food away, I picked up a ten-pound can of spaghetti sauce, and it slipped out of my hand and hit my right foot." And then she said that she went to her doctor with that. No mention of the cut on her foot, which is only in the medical records, and that the doctor explained that's where she got that. So her history is a little different to me than it is in the medical records.

Q. Now, the medical records do not indicate any kind of a hematoma or any lasting symptoms as a result of the can incident; right?

A. Well, they don't, but I don't know that they would have seen it because by the time she got there she had the infection. They do mention that she said that it resolved.

Q. Is there any reason for us to believe that there was a hematoma at the time she hit her foot in the kitchen?

A. I can't actually answer that. I don't know the answer. There's no exam saying she had or had not had a persistent hematoma. I think you can say that the pain went away, but I don't know if you can say the skin was normal at the time.

(February 9, 2021 deposition at pp. 12-14.)

Later in the deposition, the following exchange took place:

Q. And so if we take the account that she gave to the physicians at Cottage Hospital that the initial incident resolved with ice at face value, assuming that her symptoms did resolve, then it would be more likely that the laceration from the kitchen incident caused the need for the skin graft and all those other issues; correct?

A. I can't really say that because, once again, the sentence is she reported she dropped a can on the foot and resolved the pain by icing it, but it doesn't say anything about the hematoma. I just don't have that one piece of information. I am sorry. I think this would be very straightforward if this were very clear, but it's just not as clear as it could be.

Q. Again, when you are referring to the hematoma, this is an assumption we are making at this point since we have no medical records of a hematoma prior to the kitchen incident; correct?

A. That's correct.

(February 9, 2021 deposition at pp. 12-14.)

Dr. Fields agreed with the statement that "at this point we really don't know the extent of her symptoms from the can incident, if any, at the time she bumped her foot and to what extent that would have contributed to the resulting necrotizing fasciitis and everything…." (February 9, 2021 deposition at p. 20.)

Dr. Drazin, for his part, did not understand why he was called on to give an expert opinion as a hematologist in this matter, and said that his history of injury was given to him by the applicant, and that he could not discern on the basis of the records and history given to him whether the tomato sauce can incident or a later incident led to applicant's disability. (February 10, 2021 report at p. 2.)

All findings of the WCAB must be based on substantial evidence. (*Le Vesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 [Appeals Bd. en banc].) Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and must be more than a mere scintilla. (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566].) There must be a solid and reasonable basis for a physician's final conclusion. It is not sufficient for the WCJ to blindly accept a medical opinion that lacks a solid underlying basis. (*National Convenience Stores v. Workers' Comp. Appeals Bd.* (*Kessler*) (1981) 121 Cal.App.3d 420, 427 [46 Cal.Comp.Cases 783].) As the Court of Appeal wrote in *E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687], "In order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. [Citation.] Also, 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. [Citation.] 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.]"

The applicant for workers' compensation benefits has the burden of proving industrial causation. (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] citing *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].)

Although the WCJ relied on Dr. Fields's initial report in finding industrial injury, that report was based on an inadequate and incomplete history, and does not constitute substantial evidence. Here there was insufficient evidence that applicant sustained a hematoma after the tomato sauce incident or that the hematoma contributed to applicant's disability. As Dr. Fields admits in his deposition testimony, any such conclusion is based on surmise and speculation.

Accordingly, we find that applicant did not sustain her burden of producing substantial evidence of the reasonable probability of industrial causation. We therefore rescind the WCJ's decision of August 13, 2021 and issue a new decision reflecting that applicant did not sustain her burden of proof.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Order of August 13, 2021 is **RESCINDED** and that the following is **SUBSTITUTED** therefor:

FINDING OF FACT

1. Applicant did not carry her burden of showing that she sustained industrial injury to her right foot and knees while employed as a food preparer on October 19, 2017, as alleged in this matter.

ORDER

IT IS ORDERED that applicant take nothing by way of her workers' compensation claim except any reasonable medical-legal costs in an amount to be adjusted by the parties, with jurisdiction reserved.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 9, 2026

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

SHIRLEY HAMMONS
JAY VALENTINE
BRADFORD & BARTHEL

DW/oo

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