WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

BIBIANA BRAVO VILLA, ***Applicant***

vs.

CALAVO GROWERS, INC.; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, ***Defendants***

Adjudication Number: ADJ12901281
(Santa Ana District Office)

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of May 20, 2024, wherein it was found that applicant did not sustain industrial injury to her nervous system, psyche, "body systems," or in the forms of stress, fibromyalgia, chronic fatigue or neck pain while employed as a corporate marketing manager during a cumulative period ending December 29, 2017. The WCJ thus issued an order that applicant take nothing by way of her workers' compensation claim. In making these findings, the WCJ relied on the opinions of qualified medical evaluators (QME) psychiatrist Andrea R. Bates, M.D. and rheumatologist Seymour Levine, M.D., who opined that applicant did not sustain industrial injury.

Applicant contends that the WCJ erred in finding that applicant did not sustain industrial injury, and in issuing the take nothing order, arguing that the reports of Dr. Bates and Dr. Levine did not constitute substantial medical evidence. We have received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant reconsideration, rescind the WCJ's decision and return this matter to the trial level for further development of the medical record and decision so that the QMEs reports may be clarified.

Applicant was initially evaluated in this matter by rheumatologist Richard N. Shaw, M.D. While Dr. Shaw noted that applicant's treating physicians had diagnosed her with fibromyalgia, Dr. Shaw noted that both depression and drug withdrawal symptoms from narcotics used to treat

applicant's physical complaints could mimic the symptoms and clinical presentation of fibromyalgia. (April 18, 2018 report at pp. 14-15.) However, Dr. Shaw noted repeatedly in the report that the relevant inquiry in the matter was not whether applicant specifically had "fibromyalgia, " writing "in the end, whether do or do not diagnose fibromyalgia at this time is really not important" and "I implore you not to concentrate upon whether we do or do not indicate at the end of this case that she does or does not have fibromyalgia." (April 18, 2018 report at p. 17.) Regardless of whether applicant's condition could truly be categorized as fibromyalgia, Dr. Shaw noted that applicant had physical complaints that were best treated by a rheumatologist. (April 18, 2018 report at p. 16.)

Dr. Shaw passed away and applicant was then evaluated by Dr. Levine. However, in contrast to Dr. Shaw, Dr. Levine wrote, "[T]he issue for me in this patient's case is whether she has fibromyalgia, and, if she does have fibromyalgia, is it work related." (October 27, 2022 report at p. 36.) Dr. Levine noted in his report that applicant did meet the 1990 criteria for the diagnosis of fibromyalgia but that he felt that applicant's symptoms were best explained by depression. "It is not necessary to invoke a separate diagnosis of fibromyalgia noting this patient's longstanding history of depression which may be accompanied by all the somatic symptoms of which this patient complains." (October 27, 2022 report at p. 39.)

Dr. Levine then noted that Dr. Bates "was of the opinion with reasonable medical probability that this patient's mental health diagnosis and consequent impairment and functioning were predominantly, greater than 51% , due to non-industrial factors. She pointed out that her mental health disorder was preexisting with which I agree based upon review of the patient's records." (October 27, 2022 report at p. 39.) Although Dr. Levine wrote in his report that "As I see it, this patient's case is a psychiatric/psychological case in terms of the explanation for her clinical complaints and not a rheumatological or orthopedic case" (October 27, 2022 report at p. 39), in his deposition testimony, Dr. Levine noted that the rheumatological care that applicant had been receiving for fibromyalgia was appropriate. (November 8, 2023 deposition at p. 10.)

Dr. Levine apparently concluded that applicant's physical complaints were nonindustrial because Dr. Bates concluded applicant's depression was nonindustrial. In addition to the fact that, as discussed below, Dr. Bates should clarify her opinions regarding industrial causation, Dr. Shaw used an incorrect standard in determining industrial causation of applicant's physical condition.

Stress by itself is not an injury. "Stress is not a diagnosis, disease, or syndrome. It is a nonspecific set of emotions or physical symptoms that may or may not be associated with a disease or syndrome. Whether or not stress contributes to a disease or syndrome depends on the vulnerability of the individual, the intensity, duration, and meaning of the stress; and the nature and availability of modifying resources." (American College of Occupational and Environmental Medicine (ACOEM) Practice Guidelines, 2nd Edition at p. 1055.) However, stress may cause a physical injury or a psychiatric injury or both. Unlike a physical condition, psychiatric injuries are subject to a heightened causation threshold. In order to be compensable, "actual events of employment [must be] predominant as to all causes combined of the psychiatric injury." (Lab. Code, § 3208.3, subd. (b)(1).) However, this heightened causation standard does not apply to physical injuries, even if the injuries were caused by emotional stress. (*Verizon/GTE v. Workers' Comp. Appeals Bd. (Garth)* (2002) 67 Cal.Comp.Cases 856, 857 [writ den.]; *May Co. Department Stores v. Workers' Comp. Appeals Bd. (Hull)* (2001) 66 Cal.Comp.Cases 1378, 1380 [writ den.]; *City of Cypress v. Workers' Comp. Appeals Bd. (Spernak)* (1996) 61 Cal.Comp.Cases 612, 613 [writ den.].) The relevant inquiry in a claim for physical injury is whether the work-related stress is a contributing cause of the applicant's injury. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 418 [33 Cal.Comp.Cases 660]; *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 299 [80 Cal. Comp. Cases 489].)

The proper inquiry in this case is if applicant subjectively perceived work stress, and whether that stress contributed to her physical injury. However, it appears that Dr. Levine and the WCJ may have incorrectly believed that applicant needed to have sustained a predicate psychiatric injury meeting the heightened criteria of Labor Code section 3208.3 in order to find rheumatological injury. Additionally, Dr. Levine unduly focused on whether applicant had a definitive case of fibromyalgia. Although Dr. Levine should clarify whether applicant's depression (whether industrial or nonindustrial) precludes a finding of fibromyalgia or whether applicant could have both fibromyalgia and depression, as Dr. Shaw noted, the relevant inquiry is not whether applicant had fibromyalgia but whether industrial factors were a contributing cause of a physical disability and/or need for medical treatment.

In any case, although causation of applicant's physical injury must be considered independently by Dr. Levine, regardless of causation of the psychiatric injury, we also believe that

Dr. Bates's reporting should be clarified. Although Dr. Bates took an extensive history from the applicant of both her industrial and nonindustrial stressors, Dr. Bates ultimately parcels out percentages of causation of injury to different factors without adequately explaining why certain percentages were ascribed to each factor. (January 12, 2020 report at p. 47.) Dr. Bates should explain in more detail the percentage of applicant's psychiatric injury caused by "past history of Unspecified Depressive Disorder and Somatic Symptom Disorder." Additionally, while Dr. Bates categorizes applicant's "opiate use disorder" as nonindustrial, applicant's use of opiates to relieve or cure her physical ailments may be found industrial in the further proceedings.

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].) Here, Dr. Bates report did not explain in sufficient detail why nonindustrial factors were the predominant cause of injury.

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]) medical evidence on an issue. The WCAB 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].) In accordance with that mandate, we will grant reconsideration rescind the WCJ's decision, and return this matter to the trial level for further proceedings and decision on the issue of industrial causation. In granting reconsideration and returning this matter to the trial level for further proceedings and decision, we are mindful of the fact that "[t]he applicant for workers' compensation benefits has the burden of establishing the 'reasonable probability of 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].) Applicant is reminded that she will have the burden of establishing industrial injury in the further proceedings. We express no opinion on the ultimate resolution of any issue in this case.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Order of May 20, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of May 20, 2024 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 13, 2024

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

BIBIANA BRAVO VILLA
JESSE A. MARINO
DIMACULANGAN & ASSOCIATES

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