WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CRISTINA GOODSON, ***Applicant***

vs.

CALIPATRIA STATE PRISON,
legally uninsured, administered by
STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Number: ADJ13406915
San Diego District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 1, 2024

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

CRISTINA GOODSON
FERRONE FERRONE
STATE COMPENSATION INSURANCE FUNF, LEGAL

AS/mc

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I. NATURE OF PETITION

On June 5, 2024, petitioner Cristina Goodson filed a timely, verified Petition for Reconsideration (hereinafter the "Petition for Reconsideration") from the Findings and Order issued on May 7, 2024. The Petition for Reconsideration contends that: (1) the workers' compensation judge acted without or in excess of his powers; and (2) the decision is not justified by the evidence.

Defendant Calipatria State Prison, legally uninsured, administered by State Compensation Insurance Fund has not filed an answer to the applicant's petition; however, the statutory time in which to do so has not elapsed.

The Petition for Reconsideration's main argument is that the Workers' Compensation Judge (hereinafter "WCJ") should have followed the medical opinion of Dr. Jeffrey Capen, rather than the medical opinion of Dr. Gerald Markovitz.

II. MEDICAL REPORTING OF DR. JEFFREY CAPEN AND DR. GERALD MARKOVITZ

The medical evidence submitted by the parties at trial was limited to the medical reporting of Panel Qualified Medical Evaluator, Dr. Jeffrey Caren, and the medical reporting and deposition testimony of Panel Qualified Medical Evaluator, Dr. Gerald Markovitz. (Exhibits 1-3 & A-G.)

Both Dr. Caren and Dr. Markovitz are internal medicine doctors. Dr. Caren's specialty is cardiology and Dr. Markovitz's specialty is pulmonology. The doctors agree the applicant suffered a pulmonary embolism (PE) due to a blood clot that developed from deep vein thrombosis (DVT). (Exhibit 3, p. 12 & Exhibit G 8:17-9:6.) The doctors disagree on the issue of whether Ms. Goodson's employment caused or contributed to the development of deep vein thrombosis. As set forth below, the WCJ found the opinion of Dr. Markovitz to be substantial medical evidence and more consistent with the applicant's testimony at trial and the medical articles submitted by the doctors, than the opinion of Dr. Capan. "[l]t is well established that the relevant and considered opinion of one physician may constitute substantial evidence in support of a factual determination of the WCAB." (*Braewood Convalescent Hospital v. WCAB* (Bolton) 34 Cal. 3d 159, 169.)

As set forth by Dr. Markovitz, 95% of all blood clots in the lungs are the result of developing deep vein thrombosis in the legs. (Exhibit G, 8:23-24.) There are three main causes of developing blo[od] clots: venous stasis, hypercoagulability, and vascular endothelium. (Exhibit G 9: 13-16 & Exhibit D, p. 3.) Vanous stasis refers to low blood flow in the legs and is usually caused by prolonged immobility, such as an operation, long flight on a plane, long car ride, or prolonged bed rest. (Exhibit G 9: 18-11 :.17 & Exhibit D, p. 3.) Hypercoagulability refers to a genetic predisposition for blood clots or a predisposition to blood clots caused by taking medication. (Exhibit G, 12:16-18 & Exhibit D, p. 3.) Vascular endothelium refers to damage to the vascular system that would develop from an event such as an intravenous catheter. (Exhibit G, 13:4-16.) Hypercoagulability and vascular endothelium are not present in the current case. (Exhibit G, 12:24-25 & 13:14-16.) There is no evidence in the medical record and no evidence was presented at trial to indicate the applicant had a recent operation, was on a long plane flight or car ride, or was on prolonged bedrest prior to the pulmonary embolism. As a result, there is no known cause for the development of the applicant's blood clot. (Exhibit G, 28:14-20.)

The question then becomes, did the applicant's job duties cause or contribute to the development of the deep vein thrombosis that resulted in the blood clot? The acceleration or aggravation of a pre-existing, nonindustrial condition is sufficient to establish an industrial injury. (*Guerra v. WCAB* (2016) 246 Cal.App.3d 1301, 1307.) Citing C*alifornia Exchange v. Ind. Acc. Com.* (1946) 76 Cal.App.2d 836, 840, the court in *Guerra* stated:

> If the disability, although arising from a [preexisting nonindustrial condition], was brought on by any strain or excitement incident to the employment, the industrial liability still exists. Acceleration or aggravation of a pre-existing disease is an injury in the occupation causing such acceleration.

(*Guerra v. WCAB* (2016) 81 Cal. Comp. Cases 324, 328.)

Dr. Caren opines that the applicant developed deep vein thrombosis as the result of obesity and constant sitting at work. (Exhibit 3, p. 13.) In support of his opinion, he attaches a copy of an article entitled "The Effects Of Obesity On Venous Thromboembolism: A Review" to his January 28, 2021, report. (Exhibit 3, pp. 13 & 17-33.) Dr. Caren proceeds to discuss the relationship between obesity and deep vein thrombosis. (Exhibit 3, p. 13.)

Dr. Caren notes there is a 2.33 times increase in the likelihood of obese patients developing deep vein thrombosis. (Exhibit 3, p. 13.) He then jumps to the conclusion that Ms. Goodson developed her deep vein thrombosis due to obesity and constant sitting at work. (Exhibit 3, p.13.) However, the article Dr. Caren cites and his discussion of causation in his report only addresses a connection between obesity and deep vein thrombosis. (Exhibit 3, p. 13.) Dr. Caren's reporting does not provide any evidence of a relationship between working a sedentary job and developing deep vein thrombosis. (Exhibit 3, p.13.)

Dr. Caren simply offers the conclusory opinion that:

> I find it reasonably medically probable that obesity and constant sitting to perform her work for the CDCR is the cause of the DVT; therefore, the DVT and consequential PE and therapeutic coagulopathy are AOE/COE.

(Exhibit 3, p. 13.)

Dr. Caren similarly offers a conclusory opinion that applicant's sedentary work is a risk factor for developing deep vein thrombosis in his medical report of October 28, 2021. (Exhibit 2, p. 6.) Again, he states the conclusory opinion that: "[s]**edentary** status is a risk factor for DVT." (Exhibit 2, p. 6.) He further opines that a sedentary job can result in a slowing of circulation on a cumulative basis, resulting in clotting in the deep veins. (Exhibit 2, p. 6.) Dr. Caren's conclusions are not persuasive because he does not cite any evidence to support his theory.

Applicant asserts that Dr. Capen's opinion that blood clots can develop on a cumulative trauma basis is supported by the article he cites entitled "The effects of obesity on venous thromboembolism: A review." Applicant repeatedly cites Exhibit 3, p. 18 of the above-referenced article and its reference to "immobilization" to support Dr. Capen's opinion. However, applicant takes the reference to "immobilization" out of context. When the passage is reviewed in context, it is clear that the passage is consistent with Dr developing deep vein thrombosis. (Exhibit 3, p. 13.) He then jumps to the conclusion that Ms. Goodson developed her deep vein thrombosis due to obesity and constant sitting at work. (Exhibit 3, p.13.) However, the article Dr. Caren cites and his discussion of causation in his report only addresses a connection between obesity and deep vein thrombosis. (Exhibit 3, p. 13.) Dr. Caren's reporting does not provide any evidence of a relationship between working a sedentary job and developing deep vein thrombosis. (Exhibit 3, p.13.)

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The passage in question discusses the development of deep vein thrombosis in different racial populations and different age groups. The article states:

> The incidences of PE and DVT also increase sharply with age. Stein et al. investigated the database of the National Hospital Discharge Survey, which consists of data obtained during the period 1979 through 1999 from patients of over 400 nonfederal short-stay hospitals in all 50 states and the District of Columbia. They found that the frequency of PE among patients 70 years of age or older was more than 4-times that among patients younger than 50 years of age. Also, hospitalized patients and recently discharged patients were seen to have a remarkably increased risk for VTE. Different from idiopathic or spontaneous VTE (venous thromboembolism) that occurs in the absence of known precipitating factors, VTE associated with hospitalization likely is provoked by multiple risk factors for VTE, including immobilization; surgery; trauma; childbirth; stroke; or the patient's comorbid medical conditions, such as infection, inflammatory bowel disease, or cancer.

(Exhibit 3, p. 18 (for clarification, this is page 2 of the article).)

The article draws a connection between age and immobilization in the incidence of pulmonary embolisms and deep vein thrombosis while in the hospital. The article does not discuss, or even touch on, any relationship between developing deep vein thrombosis, leading to a pulmonary embolism, on a cumulative trauma basis.

Applicant also asserts that Dr. Capan's opinion is supported by an article Dr. Markovitz cites to and attaches to his November 11, 2022 report. The article cited by Dr. Markovitz was published in Blood Transfusion and entitled "Risk factors for venous and arterial thrombosis." (Exhibit A, pp. 3 & 19-27.) Applicant again takes a phrase out of context, in this example "sitting position," to assert that the article supports Dr. Capen's position, when in fact the article supports the findings of Dr. Markovitz. The section of the article in question is captioned "Travel."

The article states:

> A more recent review that summarized available data on this topic concluded that long-distance travel is associated with an up to 4-fold increased risk of VTE. The absolute risk of a symptomatic event within 4 weeks of flights longer than 4 hours was 1 in 4600 flights, whereas the risk of acute PE increased with duration of travel, being up to 4.8 per million in flights longer than 12 hours. Taken together, these data are consistent with the hypothesis that medium- to long-distance travelers have a 2- to 4-fold increased relative risk of VTE compared to non-travelers. Among the several plausible explanations for this increased risk are immobilization and a sitting position.

(Exhibit A, p. 31 (for clarification, this is page 132 of the article).)

The article draws a connection between long distance travel and developing deep vein thrombosis, leading to a pulmonary embolism. Once again, the article does not discuss, or even touch on, any relationship between developing deep vein thrombosis, leading to a pulmonary embolism, on a cumulative trauma basis.

For the reasons set forth above, Dr. Caren's conclusions are not persuasive because he does not cite any evidence to support his theory. It is important to note that medical evidence must be evaluated as a whole. (*Gay v. WCAB* (1979) 96 Cal.App.3d. 555, 564.) In evaluating a medical report, isolated statements may be misleading.

Intellectual candor of a physician may lead to single statements which, when isolated, may be misunderstood. In evaluating the evidentiary value of medical evidence, a physician's report and testimony must be considered as a whole rather than in segregated parts. (*Gay v. WCAB* (1979)

96 Cal.App.3d 555, 564, citations omitted.) Applicant cites isolated words in the articles cited by Dr. Capan and Dr. Markovitz. When the articles are read as a whole, they do not support Dr. Capan's medical opinion.

As set forth in the Opinion on Decision, in addressing the issue of whether Ms. Goodson's employment caused or contributed to her injury, Dr. Markovitz cites to and attaches a journal article published in *Blood Transfus* titled "Risk Factors For Venous and Arterial Thrombosis." (Exhibit A, pp. 3 & 19-27.) The article discusses the strong, moderate, and weak risk factors associated with developing deep vein thrombosis.

(Exhibit A, pp. 3-4.)

Strong risk factors include trauma, fractures, and major surgery. (Exhibit A, p. 3.) Moderate risk factors include non-oncological surgery, oral contraceptives, hormone replacement therapy, pregnancy, puerperium, hypercoagulability, and previous venous thromboembolism. (Exhibit A, p. 3-4.) Weak risk factors include age, bedrest for more than three days, prolonged travel, metabolic syndrome, and air pollution. (Exhibit A, p. 4.)

Applicant asserts, without citing to the record, that Dr. Markovitz opines the applicant's injury can and must have been caused by one of the three factors. This unsupported statement misrepresents Dr. Markovitz's opinions in this matter. Dr. Markovitz testified there are three main causes of developing blot clots: venous stasis, hypercoagulability, and vascular endothelium. (Exhibit G 9: 13-16 & Exhibit D, p. 3.) He did not testify these are the only causes of blot clots. As set forth by Dr. Markovitz, 95% of all blood clots in the lungs are the result of developing deep vein thrombosis in the legs.(Exhibit G, 8:23-24.) However, in this case it is impossible to determine what caused the blood clots in the applicant's legs. (Exhibit G, 28:18-20.) Dr. Markovitz's opinion is consistent with the article cited by Dr. Capan quoted above.

> **Different from idiopathic or spontaneous VTE that occurs in the absence of known precipitating factors**, VTE associated with hospitalization likely is provoked by multiple risk factors for VTE, including immobilization; surgery; trauma; childbirth; stroke; or the patient's comorbid medical conditions, such as infection, inflammatory bowel disease, or cancer.

(Exhibit 3, p. 18 (emphasis added).) As the bolded section above states, idiopathic or spontaneous VTE occurs in the absence of known causes. In the present case, the applicant did not have an y of the known risk factors for developing deep vein thrombosis.

Ultimately, the exact cause of the applicant's blood clots is unknown. (Exhibit G, 28:18-20.)

Dr. Markovitz explains in detail why working a sedentary job is not a risk factor for developing deep vein thrombosis. (Exhibit A, p. 4.) Sedentary workers still shift positions in their chairs, walk to the bathroom every few hours, cross and uncross their legs, take lunch breaks, etc.; such activities are sufficient to promote blood flow in the legs. (Exhibit D, p. 3 & Exhibit A, p. 4.) There is a clear distinction between someone who works in a sedentary job and a person who develops a blood clot from being immobilized in a hospital or from sitting on a plane for 12 hours while on a long-distance flight. Moreover the evidence cited by both doctors does not demonstrate that blood clots develop on a cumulative trauma basis. (Exhibit G, 14:5-8.)

All parties shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence. (Labor Code §3202.5.) It is well established that the employee has the burden of proof to establish injury AOE/COE. (*Hercules Powder Company v. /AC* (Neyman) (1933) 131 Cal. App. 587, 593.)

The parties did not elicit testimony from the applicant at trial regarding her specific activities on April 17, 2017. However, she did testify that April 17, 2017, was a Monday and she had been off work on the Saturday and Sunday preceding April 17, 2017. (Minutes of Hearing/Summary of Evidence (MOH/SOE), 4-4-24, 5:21.) Applicant did describe her activities on April 17, 2017, to Dr. Markovitz and Dr. Caren. During her evaluation with Dr. Markovitz, applicant indicated she awoke with no symptoms on the morning of April 17, 2017. (Exhibit F, p. 2.) She arrived at work around 6:00 a.m. (Exhibit F, p. 2.) She ate breakfast sometime between 7:00 a.m. and 8:00 a.m. and developed symptoms after breakfast. (Exhibit F, p. 2.) She provided a similar history to Dr. Caren, indicating she began working at 6:00 a.m. and was sitting at her desk around 8:00 a.m. when she had a feeling of indigestion in her chest. (Exhibit 3, p. 3.) Therefore, at the time her symptoms developed, she had been at work for approximately two to three hours. (Exhibit F, p. 2; Exhibit 3, p. 3.)

At trial, applicant did testify that once she arrives at work, it takes her approximately three minutes to walk from her car to the first building she enters. (MOH/SOE, 4-4-24, 3:3.)

After she shows her identification card and enters the building, it takes approximately five minutes to walk to the next area. (MOH/SOE, 4-4-24, 3:5.) Applicant then walks for about four minutes more to reach her assigned building. (MOH/SOE, 4-4-24, 3:8.)

The WCJ finds Ms. Goodson's testimony regarding her activities upon arriving at work to be credible and consistent with the information she provided to Dr. Markovitz and Dr. Caren. (*Garza v. WCAB* (1970) 3 Cal.3d 312, 319.) As a general rule, the WCJ must accept as true the meaning of evidence that is uncontradicted and unimpeached. (*Ibid.*)

Applicant's credible, unrebutted testimony is that her symptoms developed on Monday April 17, 2017, within two or three hours of arriving at work.

Based on Ms. Goodson's testimony that she was not at work over the weekend and her testimony regarding her physical activity upon arriving at work on Monday and walking to her office, and the well-reasoned medical opinion of Dr. Markovitz set forth in his multiple reports

and deposition testimony, applicant did not develop deep vein thrombosis resulting in her pulmonary embolism arising out of or in the course of her employment.

Ill. RECOMMENDATION

For the reasons set forth above, the WCJ respectfully recommends the Petition for Reconsideration be denied.

Dated: June 17, 2024

DOUGLAS E WEBSTER
WORKERS COMPENSATION JUDGE