WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ELISA RODRIGUEZ, *Applicant*

vs.

COUNTY OF LOS ANGELES, permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Numbers: ADJ12566822; ADJ12566823
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of a March 26, 2024 Joint Findings and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) wherein the WCJ found injury arising out of and/or in the course of employment (AOE/COE) and a need for future medical to the teeth/dental based upon reporting from panel Qualified Medical Evaluators (QMEs), Drs. Hamlet Davari and David Abri.

Defendant contends that the WCJ's decision is conclusory and the reporting of the panel QMEs is not substantial medical evidence.

We have not received an Answer from the applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition and the Report. We have also reviewed the record in this matter. Based upon our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and the reasons discussed below, we deny the Petition.

Preliminarily, we note that the WCJ indicated in a March 26, 2024 Joint Opinion on Decision (OOD) that his decision was based upon the credible testimony of applicant. (OOD, p. 1.) Credibility determinations of the WCJ, as the trier of fact, are entitled to great weight based upon the WCJ's opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Further, a WCJ's credibility determination may

be disturbed only where there is contrary evidence of considerable substantiality. (*Id*.) There is no such evidence here. As such, there is no reason to disturb the credibility findings of the WCJ.

Labor Code section 5313 provides further guidance as to decisions issued by a WCJ. It states, in relevant part, that the WCJ must indicate the "reasons or grounds upon which the determination was made." 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." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350, 351].) As such, a decision "must be based on admitted evidence in the record" (*Hamilton*, *supra*, 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]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]; *Garza*, *supra*, at p. 312.) 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." (*Hamilton*, *supra*, at p. 475.)

Defendant contends that the WCJ did not "offer any explanation as to how or why the decision was reached, what specific portions of the evidentiary record [was] relied upon, or any determination [as to] the substantiality or reliability of the opinions offered by Dr. Davari or Dr. Abri." (Petition, p. 2.)

In his March 26, 2024 OOD, however, the WCJ clearly indicates that his decision was based upon "Applicant's credible testimony, and the medical report(s) of Panel Qualified Medical Evaluator (PQME), Dr. David Abri, dated January 18, 2023, May 9, 2023, December 11, 2023, and Dr. Hamlet Davari, dated February 18, 2020, February 13, 2023, May 22, 2023, January 9, 2024, the deposition testimony of PQME Dr. David Abri dated September 22, 2023, and the subpoenaed records from Pioneer Dental." (OOD, p. 1.)

It is well established that the employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a) & 3202.5.) However, the Supreme Court of California has long held that an employee need only show that "proof of industrial causation is reasonably probable, although not certain or 'convincing.'" (*McAllister v.*

Workmen's Comp. Appeals Bd. (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].)

As the above-listed evidence shows reasonably probable industrial causation, we believe the WCJ's decision is sufficient under case and stationary law. Although it would have been preferable for the WCJ to have provided further explanation, it is clear that any potential questions regarding the substantiality and reliability of the reports of Drs. Davari and Abri, did not rise to such a level that the WCJ believed applicant should be denied of a finding of injury AOE/COE to the teeth/dental and corresponding need for future medical. As such, we deny the Petition.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the March 26, 2024 Findings and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 13, 2024

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

ELISA RODRIGUEZ
KHACHIKYAN LAW GROUP
ALBERT & MACKENZIE

RL/*cs*

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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REPORT AND RECOMMENDATION ON PETITION FOR PETITION FOR RECONSIDERATION

I.
INTRODUCTION

1. Minutes of Hearing	February 13, 2024
2. Findings and Order	March 26, 2024
2. Identity of Petitioner	Defendant
3. Verification	Yes
4. Timeliness	Petition is timely
5. Petition for Reconsideration	April 15, 2024
6. Proof of Service	Yes

II.
FACTS AND PROCEDURAL HISTORY

Applicant, a now 59-year-old female, while employed on February 22, 2016, as an Eligibility Supervisor, at Rancho Dominguez, California, by the County of Los Angeles, Sustained an admitted injury arising out of and in the course of employment to her bilateral knees, psyche, diabetes. She also suffered an admitted cumulative trauma from December 5, 1990, through September 13, 2019, to her bilateral knees and psyche. Injury to teeth/dental was denied as to both cases. Following an expedited trial before the undersigned, it was determined that the applicant did sustain injury arising out of and in the course of employment to her dental/teeth injuries and there exists need for treatment of the same. The issues presented, as to both cases was: "(1) Whether there was injury arising out of and in the course of employment to teeth/dental, and (2) Whether there is a need for future medical care." (MOH and Summary, pg. 2, lines 21-25 and pg. 3, lines 13-16).

The undersigned issued Findings and Orders and an Opinion on Decision on March 26, 2024, in favor of the Applicant, namely, that (1) there was injury arising out of and in the course of employment to the applicant's teeth/dental requiring medical care. Thereafter, Defendant filed the instant Petition for Reconsideration on April 15, 2024.

Defendant's Petition for Reconsideration is based on the following grounds:

1. The evidence does not justify the findings of fact.

Defendant, petitioner, argues that (1) the PQME reports and deposition and PTP reporting are not substantial evidence.

III.
DISCUSSION

The petition should be denied. Drs. Davari and Abri emphasized facial pain as a significant component to applicant's overall dental condition. As defendants admit, "Dr. Davari thinks her underlying industrial injuries are the predominant cause, while Abri is careful to say there is at least 1% aggravation. (Pet for Recon, pg. 10, lines 4-5.) The doctors agree on the issue of industrial causation /aggravation but may differ on other issues not relevant for the instant proceedings such as apportionment.

The employee bears the burden of proving the injury arose out of and in the course of employment 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.) 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].) Based upon Applicant's credible testimony and the medical report(s) of Panel Qualified Medical Evaluator (PQME), Dr. David Abri and the reports of treater Dr. Hamlet Davari, and the deposition testimony of PQME Dr. David Abri it was found, by the undersigned, that Applicant sustained injury to her teeth/dental arising out of and occurring in the course of employment.

A WCJ's decision must be supported by substantial evidence in light of the entire record. (Lab. Code, § 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, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probativeforce on the issues. It is more than a mere scintilla, and means such relevant evidence as areasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." *(Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted).

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).) A medical opinion must be framed in terms of 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* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].) [I]t has been long established that, in order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. *(McAllister v. Workmen's Comp. Appeals Bd. (1968) 69 Cal.2d 408, 413, 416- 417, 419 [445 P.2d 313, 71 Cal. Rptr. 697] [33 Cal.Comp.Cases 660]; Travelers Ins. Co. v. Industrial Acc. Com. (Odello) (1949) 33 Cal.2d 685, 687-688 [203 P.2d 747] [14 Cal.Comp.Cases 54]; Rosas v. Workers' Comp. Appeals Bd. (1993) 16 Cal.App.4th 1692, 1700-1702, 1705 [20 Cal. Rptr. 2d 778] [58 Cal.Comp.Cases 313]*.

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. *(Granado v. Workers' Comp. Appeals Bd. (1970) 69 Cal.2d 399, 407 [445 P.2d 294, 71 Cal. Rptr. 678]* (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd., supra, 68 Cal.2d at pp. 799, 800-801* (an opinion that fails to disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence); see also *People v. Bassett (1968) 69 Cal.2d 122, 141, 144 [443 P.2d 777, 70 Cal. Rptr. 193]* (the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based).) (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).). The medical reporting in the instant case bears all the hallmarks of substantial medical evidence and that this is particularly true given the live credible testimony of the applicant.

The law dictates that the applicant must meet its burden through a preponderance of the evidence and does not have to meet a burden of proof with scientific certainty. This means that if the applicant can demonstrate a reasonable probability that the injury was industrial in nature, the claim can be upheld. Although the Panel Qualified Medical Evaluator (PQME), Dr. David Abri, and the treating physician Dr. Hamlet Davari, may disagree about the details, they concur that the applicant suffered injury to her teeth arising out of and/or in the course of employment. Defendant's jointly offered the reporting of the PQME that they now, strangely, claim to be non-substantial. Furthermore, the principle of apportionment, which divides an employee's disability between industrial and nonindustrial causes, does not apply to the determination of industrial causation itself but rather to how permanent disability benefits are calculated. This means that if an industrial injury contributes to a pre-existing condition, the focus is on the fact of contribution rather than its extent for establishing AOE/COE. Apportionment is not at issue, currently, in the instant case.

IV.
RECOMMENDATION

For the reasons stated above, it is respectfully requested that Defendant's Petition for Reconsideration be denied.

DATE: **May 10, 2024**

HON. TROY SLATEN
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE