

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

IRINEA GARCIA SOLIS, *Applicant*

vs.

**ANGEL'S JANITORIAL SOLUTIONS, INC.; SIRIUSPOINT AMERICA INSURANCE
COMPANY administered by CORVEL, *Defendants***

**Adjudication Number: ADJ13738554
Van Nuys District Office**

**OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order (F&O) issued on March 12, 2024, wherein the workers' compensation administrative law judge (WCJ) found as relevant that (1) while employed by defendant as a janitor, applicant did not sustain injury arising out of and the course of employment (AOE/COE) to the left shoulder, lumbar spine, left knee, dental, sleep, and psyche; (2) applicant is not permitted to be reexamined by dental QME Dr. Hatami; (3) the April 13, 2021 report from QME Dr. Rapoff constitutes substantial medical evidence; (4) the August 26, 2022 report from QME Dr. Hatami constitutes substantial medical evidence as to the AOE/COE issue; and (5) all other issues are moot.

The WCJ ordered that applicant take nothing on her claim.

Applicant contends that the WCJ erroneously found that the report from QME Dr. Rapoff constitutes substantial medical evidence on the grounds that the report was not informed by outpatient notes from LAC/USC Primary Care.

We did not receive an Answer.

We received a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have reviewed the contents of the Petition and the Report. Based upon our review of the record, and for the reasons set forth below, we will grant reconsideration, and, as our Decision After Reconsideration, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On February 1, 2024, the matter proceeded to trial on issues which include the following:

Injury arising out of and in the course of employment.
Parts of body injured.

...

Whether or not the applicant is permitted to schedule and attend a re-examination from dental QME Dr. Ramin Hatami, D.D.S., considering he has not elected the applicant as being permanent and stationary and requested that he see the applicant for a re-examination.

...

Defendant objects to Dr. Hatami's report and calls into question substantial medical evidence of report.

Applicant disputes AOE/COE and objects to QME Dr. Chris Rapoff's report. (Minutes of Hearing, February 1, 2024, pp. 2:15-3:8.)

The WCJ admitted exhibits entitled Outpatient Notes from LAC/USC Primary Care dated May 3, 2019, and Report by PQME Dr. Chris Rapoff dated April 13, 2021, into evidence. (Id., pp. 3:17-4:7.)

The Outpatient Notes from LAC/USC Primary Care dated May 3, 2019 states:

Chief Complaint

fell down x 1 wk ago slipped down ramp/hurt left knee/left hip discomfort . . .

...

History of Present Illness

...

Current: mainly gets dizziness when she is moving her head a lot, but does not occur otherwise, it is manageable. Fell at work on a ramp, fell in an awkward way straining her left arm. With some rest symptoms are somewhat better. No functional impairment.

(Ex. 3, Outpatient Notes from LAC/USC Primary Care dated May 3, 2019, p. 1.)

The Report by PQME Dr. Chris Rapoff dated April 13, 2021 states:

RECORDS - LISTED AND SUMMARIZED IN CHRONOLOGIC ORDER:

07/22/2020 S. Madanipour MD, - United Medical Imaging of Los Angeles – Radiology Report of Left Knee MRI

• IMPRESSION:

Moderate tricompartmental osteoarthritis with medium joint effusion and multifocal high-grade patellar facet osteochondral lesions and subchondral edema.

Abnormal marrow signal within the visualized distal femoral and proximal tibial metadiaphysis with sparing of the epiphysis.

...

Oblique tear of the posterior horn of the medial meniscus extending to the tibial articular surface and the posterior tibial root attachment.

Discoid lateral meniscus with superimposed myxoid degeneration.
Distal quadriceps and proximal patellar tendinosis.

...
10/28/2020 Bahan DC, - Harbor Chiropractic, Inc. - Doctors First Report of Occupational Injury or Illness:

History: Ms. Solis . . . "who reports having been involved in a specific injury during the course of performing her usual and customary work duties as a General Laborer for her employer, Angel's Janitorial Solutions incorporated. (SI - 04/20/2019 – back left shoulder, left knee, dental as well as symptoms of psyche and sleep disorder). She was never provided any medical care, nor did she seek any medical care on her own. . . . The patient states she had another fall in 10/2019 where she aggravated her pain symptoms. She was finally provided medical care on 06/2020 at the company's clinic where she was examined, underwent diagnostic studies, and informed she needed to undergo surgery for her left knee and needed therapy for her back. She has been unable to receive any further medical care after that date since she is unable to contact her employer."

Subjective Complaints: Lumbar spine pain, left shoulder pain; left knee pain; jaw pain; psychological.

Diagnosis:

Low back pain

Strain of unspecified muscle, fascia and tendon at shoulder and upper arm level

Sprain of unspecified site of left knee

Sleep related bruxism

Insomnia due to medical condition

Anxiety disorder

Causation: "Based on the information available to me and as outlined above, the patient suffers from the diagnoses as stated above. The patient is not permanent and stationary at this time . . .

(Ex. B, Report by PQME Dr. Chris Rapoff dated April 13, 2021, pp. 8-9.)

...
DIAGNOSES

1. Subjective neck pain without objective findings - M54.2. [Non-Industrial].
2. Left shoulder pain - M25.512. [Non-Industrial].
3. Subjective low back pain without objective findings - M54.5. [Non-Industrial].
4. Left knee pain - M25.562. [Non-Industrial].

DISCUSSION

NOTE: Symptoms with 1) Right Jaw, 2) Psych/ Sleep Disorder are outside my scope of practice as a Chiropractor. Therefore, I defer to the appropriate Specialists for evaluation of those symptoms. Herein below I provide my opinions and conclusions regarding industrial causation for specific incident of injury(ies) as alleged by Ms. Solis.

...
In my opinion, with reasonable medical probability, Ms. Solis did not suffer specific industrial injuries (10/2014, 04/20/2019, 10/2019) while employed Angel's Janitorial Solutions, Inc. to her 1) neck, 2) left shoulder, 3) low back, 4) left knee. Reasons for this conclusion include:

Left Shoulder, Left Knee:

Pre-Existing Condition of the Left Shoulder and Left Knee - It is evident after the examination of Ms. Solis that she does have a bona fide left shoulder and left knee condition. Diagnostic studies of the left shoulder and left knee obtained for this evaluation indicate pre-existing, degenerative changes in the left shoulder and left knee which can cause pain. . . . In my opinion Ms. Solis' left shoulder and left knee conditions are not the result of a specific industrial injury(ies), 10/2014, 04/20/2019, 09/2019, with Angel's Janitorial Solutions, Inc. (*Id.*, pp. 57-58.)

DISCUSSION

Applicant contends that the WCJ erroneously found that the report from QME Dr. Rapoff constitutes substantial medical evidence on the grounds that QME Dr. Rapoff did not review the outpatient notes from LAC/USC Primary Care showing that applicant sought medical treatment on May 3, 2019 for injuries related to her April 20, 2019 accident herein.

We observe decisions of the WCAB must be supported by substantial evidence such as medical opinion. (Labor Code §§ 5903, 5952; *Garza v. Workmen's Comp. App. Bd. (Garza)* (1970) 3 Cal.3d 312, 317-319 [33 Cal.Comp.Cases 500].) A medical opinion is not substantial evidence when based on incorrect facts, history, examination or legal theory, or surmise, speculation, conjecture or guess. (*Place v. Workers' Comp. Appeals Bd. (Place)* (1970) 3 Cal.3d 372, 378 [90 Cal. Rptr. 424, 475 P.2d 656, 35 Cal.Comp.Cases 525].) A medical opinion should be based on reasonable medical probability and logical and persuasive reasoning, which is consistent with the record. (*McAllister v. Workmen's Comp. Appeals Bd. (McAllister)* (1968) 69 Cal.2d 408, 413, 416-417 [33 Cal.Comp.Cases 660]; *Escobedo v. Marshalls (Escobedo)* (2005) 70 Cal.Comp.Cases 604, 620-621.)

Here, as stated by the WCJ in the Report, applicant had ample opportunity to provide the outpatient notes to QME Dr. Rapoff to ensure that he had a complete medical history from which to develop his medical opinion but did not do so. (Report, p. 2.) We concur with the WCJ that the absence of the outpatient notes from the medical history, without more, is insufficient to prove that QME Dr. Rapoff's report does not constitute substantial medical evidence. However, QME Dr. Rapoff's report reveals grounds from which we conclude that the medical record remains undeveloped on the issue of whether applicant sustained injury AOE/COE to the left shoulder and knee.

It is well established that for the purpose of meeting the causation requirement in a workers' compensation injury claim, it is sufficient if the work is a contributing cause of the injury. (*South*

Coast Framing, Inc. v. Workers' Comp. Appeals Bd. (2015) 61 Cal.4th 291 [80 Cal.Comp.Cases 489].) “[T]he proximate cause requirement of Labor Code section 3600 has been interpreted as merely elaborating on the general requirement that the injury arise out of the employment. The danger from which the employee’s injury results must be one to which he or she was exposed in the employment.” (*Id.*, at pp. 297 - 298 [citations omitted].) The acceleration, aggravation or ‘lighting up’ of a preexisting condition “is an injury in the occupation causing the same.” (*Id.*, at p. 301, quoting *Tanenbaum v. Industrial Acc. Com.* (1935) 4 Cal.2d 615, 617; see also *Zemke v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358]; *Reynolds Electrical & Engineering Co. v. Workers' Comp. Appeals Bd. (Buckner)* (1966) 65 Cal.2d 438 [31 Cal.Comp.Cases 421].)

Here, the record reveals that QME Dr. Rapoff reviewed diagnostic studies, including an MRI, that showed that applicant has “a bona fide left shoulder and left knee condition . . . [i.e.,] pre-existing, degenerative changes in the left shoulder and left knee which can cause pain.” (Ex. B, Report of QME Dr. Rapoff, April 13, 2023, p. 58.) Notwithstanding this record, QME Dr. Rapoff’s reporting offers no opinion as to whether applicant’s April 20, 2019 accident lit up her preexisting left shoulder and left knee conditions and caused her to sustain industrial injury. Nor does the reporting offer an explanation or rationale for failing to address the issue. Notably, QME Dr. Rapoff’s conclusion that applicant’s descriptions of the extent of her claimed injury lack credibility does not negate the question of whether applicant in fact sustained injury in the first instance. We therefore conclude that the record should be further developed on the issue of whether applicant sustained injury to the left shoulder and knee.

The Appeals Board has the discretionary authority to order development of the record when appropriate to provide due process or fully adjudicate the issues consistent with due process. (See *San Bernardino Community Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121–1122 [63 Cal.Comp.Cases 261, 264–265].)

Accordingly, we will rescind the F&O and return the matter to the trial level for development of the record as to the issue of whether applicant sustained injury to the left shoulder and knee.

Additionally, we note the WCJ's statement in the Report that dental QME Dr. Hatami opined that applicant had myofascial pain, bruxism, xerostomia, and periodontitis that were aggravated or exacerbated by her orthopedic injuries and that the extent of the aggravation or exacerbation could be determined once applicant became permanent and stationary. (Report, pp. 3-4.) However, the WCJ concluded that development of the record as to the extent of applicant's claimed dental injury was unwarranted because applicant did not sustain orthopedic injury. But since we have concluded that the record as to the claimed orthopedic injury should be developed, we likewise conclude that the record as to the claimed dental, sleep, and psyche injuries should be developed, as appropriate.

Accordingly, we will grant reconsideration, and, as the Decision After Reconsideration, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings and Order issued on March 12, 2024 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration, that the Findings and Order issued on March 12, 2024 is **RESCINDED** and the matter **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 30, 2024

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

**IRINEA GARCIA SOLIS
BARKHORDARIAN LAW FIRM
LAW OFFICES OF STACEY L. TOKUNAGA**

SRO/cs

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