

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

**MARGARITA RODRIGUEZ (Deceased) by EMILIO SOTO, *Applicant***

**vs.**

**PERSONNEL STAFFING GROUP LLC dba MVP PAYROLL LCF PRIORITY  
BUSINESS SERVICES INC. dba PRIORITY WORKFORCE; UNITED WISCONSIN  
INSURANCE COMPANY as administered by NEXT LEVEL ADMINISTRATORS,  
*Defendants***

**Adjudication Number: ADJ14538014  
Van Nuys 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/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**KATHERINE A. ZALEWSKI, CHAIR**  
**CONCURRING NOT SIGNING**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**July 23, 2024**

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

**EMILIO SOTO  
LAW OFFICE OF RAPHAEL B. HEDWAT  
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK, LLP**

**MB/ara**

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

## **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

Defendants herein have filed a timely Petition for Reconsideration of the Findings and Award by Judge Marrone dated 05/14/2024.

1. By the order, decision or award, the Board acted without or in excess of its powers.
2. The evidence does not justify the findings of fact.
3. The findings of fact do not support the order, decision or award.

### **FACTS**

Margarita Rodriguez (deceased), born [ ], while employed on or about 2/21/2021, as a laborer, at Tustin, California, by Personnel Staffing Group LLC dba MVP Payroll LCF Priority Business Services Inc., dba Priority Workforce, claims to have sustained injury arising out of and in the course of employment to a COVID death on 3/13/2021. At the time of injury, the employer's workers' compensation carrier was United Wisconsin Insurance Company, administered by Next Level.

The issue at trial was AOE/COE.

### **WAS THE REPORT OF THE PQME SUBSTANTIAL MEDICAL EVIDENCE**

The Petition for Reconsideration by Defense, page 6, sets forth the following to dispute the appropriateness of finding that the reports of the PQME were substantial medical evidence:

The QME found industrial causation despite being provided with multiple facts and evidence that support a finding that the Applicant did not contract COVID-19 at work, which include:

1. That Emilio Soto reportedly had COVID-19 and was symptomatic when the Applicant was symptomatic (Defendant's Exhibit D, pg. 3)
2. Without having the benefit of a timeline of Emilio Soto's diagnosis or symptoms (Court's Exhibit X, pgs. 25-27)
3. That Applicant went to the market and pharmacy (Id.)
4. That Applicant stated she was not in close contact with coworkers (Id.)
5. That the place of employment PLI Card Marketing had COVID-19 precautions in place (Defendant's Exhibit C)
6. That Applicant wore a mask at work (Defendant's Exhibit X, pg. 20, lines 12-25, pg. 21, lines 1-6)

7. That no other Priority Workforce employee tested positive in February 2021 OR March 2021 (Defendant's Exhibit E)

8. That Greater El Monte Hospital noted in a March 6, 2021 report that the Applicant was visited by a friend who later turned out to be positive for COVID-19 (Defendant's Exhibit B)

In response,

1) The Defense fails to note that the evidence presented indicates a timeline that the spouse had symptoms after deceased had tested onset.

2) The PQME reviewed the emails from Bernal and Pena. As noted, below, the evidence points to Soto having symptoms after the deceased tested positive.

3) The Bernal email only indicates that the deceased when to the market. It does not indicate whether this was before or after testing positive. But it does indicate she went to acquire medications. "Public areas visited in the last 14 days was the market for necessities and clinic for medicine."(Exhibit D).

4) The Covid 19 precautions are noted in Exhibit C. However, the PQME noted that the masks were not specified and if not N95, would not be adequate. The Defense does not present any witness from PLI, nor as to whether PLI was to report to the Staffing agency. Reporting to the staffing agency is not in the protocols provided.

5) The Petitioner Defendant did not produce evidence to confirm whether PLI employees had Covid in that relevant time frame. Only Staff employees.

6) The record of the hospital that a friend visited the Margarita almost 2 weeks after symptoms and positive testing is irrelevant, but reviewed by the PQME.

The PQME reviewed the records in a date by date format. It is unclear what timeline the Defense wants the PQME to follow. However, it has been found that he reporting, after review of the report and evidence, is substantial medical evidence.

In order to constitute substantial evidence, a medical opinion must be predicated on "reasonable medical probability." A medical opinion needn't be predicated on scientific certainty *McAllister v. WCAB* (1968) 33 CCC 660; *Rosas v. WCAB* (1993) 58 CCC 313; *E.L. Yeager Construction v. WCAB (Gatten)* (2006) 71 CCC 1687, 1691.

In the 03/04/2022 report (Exhibit C, page 70) the doctor provides his diagnosis and estimates the causation within a medical probability

I should state here that I cannot state definitively where Mrs. Rodriguez acquired the virus, but the probability seems to be that she did in fact acquire it at her place of work. She worked in a large factory with many workers, a setting and circumstances known to favor respiratory virus transmission. According to the husband's testimony, several other

workers had COVID virus. It is noteworthy that her husband was later diagnosed with COVID only after she got sick herself, indicating that she gave it to him and not vice versa.

The PQME, Dr Engelberg, in his 02/15/2023 report (Exhibit B), confirmed his opinion that the Covid exposure occurred at work, within a reasonable medical probability, even after review of the defense evidence of the Bernal email to Jennifer Pena, Scarlett Wang and Jennifer Perez On May 14, 2024, WCJ Marrone concluded that Applicant met the appropriate level of proof, finding that the PQME report was substantial medical evidence to substantiate that, within a reasonable medical probability, the deceased contracted Covid as a result of contact with co-workers. This brings the industrial causation to more than likely, but actually within a **medical probability**. There is not a need to meet a two prong test. However, the testimony of Mr. Soto had testified that the deceased had said she worked at PLI with others that had Covid. It was found that the testimony of Emilio Soto consistent with what he told the doctor and how he testified.

### **CREDIBILITY OF THE WITNESS**

The WCJ found Emilio Soto to be the more credible witness.

The defense notes that Soto was not consistent in that Emilio Soto denied that he had contracted Covid. However, the period he contracted Covid per the report of the PQME, was after the deceased already had symptoms. The difference in testimony was not sufficient to overcome the fact that the report of the PQME was anything but substantial medical evidence.

### **NON- PRESUMPTION ISSUE**

Non-occupational disease normally is compensable only if an employee could establish either that: (1) she was subject to an increased risk compared with that of the general public; or (2) the cause of the illness was an intervening human agency or instrumentality of employment. The injured worker has the burden of proving a compensable injury. The Board has required that it is Applicant's burden to show injury by Medical reports and evidence in this situation *Espinoza v. Browning Fire Protection, Inc.*, 2022 Cal. Wrk. Comp. P.D. LEXIS 277.

The Defense asserts that no legislative presumptions apply to this claim as Applicant had a COVID-19 positive test date of February 24, 2021. Outside of any legislative presumption period, COVID-19 is considered a non-occupational, communicable disease. The Board has held that in regards to communicable disease, "Medical evidence is required to establish industrial causation by demonstrating that it is more likely applicant acquired the disease at work or that the employment subjected the employee to a special risk of exposure in excess of that of the general population" (*Bethlehem Steel Co. v. Industrial Acc. Com.* (1943) 21 Cal.2d 742 [8 Cal.Comp.Cases 61]).

Based on the combination of the report of the PQME and the testimony of Emilio Soto, It was determined that the Applicant met the burden of proof.

It was found that the reported testimony of Jennifer Pena was truthful, but she did not have answers as to the exposures to the employees of PLI, were the deceased was working. She only acquired

information as to the Priority Workforce employees. She could not answer as to whether PLI employees had been found to have Covid in that exposure period.

The employer's offer of the email of Andrea Bernal (Exhibit D) was not adequate. It was not shown that Bernal had actually spoken with the deceased. The email was 2/14/2021, after deceased tested positive. It is not clear as to Emilio Soto's slight symptoms occurred after 2/21/2021. There was not the opportunity to cross examine Bernal to clarify the conversation. Note that the 03/01/2021 email in the chain of Exhibit D states that Margarita "is still experiencing symptoms making her unable to speak on the phone." Again, the 2/24/2021 email in Exhibit D does not indicate that Bernal actually spoke with Margarita.

The employer could have performed discovery to determine exposures to PLI employees. In all the defense did not adequately respond once the Applicant met their burden.

Therefore the facts do support the findings that the Applicant met the appropriate proof of medical findings within a reasonable medical probability, and further credible evidence by testimony of Emilio Soto that the Covid exposure was at work.

As the burden then shifts to Defense, they did not provide adequate evidence to show the condition could have occurred elsewhere.

## CONCLUSION

The Evidence does support the Findings of Fact.

The Evidence meets the burden of proof set as the base by Petitioner Defendant.

The result is that the determination finding industrial injury was appropriate.

Therefore, the Petition for Reconsideration should be, respectfully, denied.

DATE: 06/11/2024

**Jeffrey Marrone**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE