WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARK LERMA, ***Applicant***

vs.

DESERT SANDS UNIFIED SCHOOL DISTRICT, permissibly self-insured, administered by KEENAN & ASSOCIATES, ***Defendants***

Adjudication Number: ADJ16093500
Riverside District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the June 17, 2024 Findings and Award (F&A) wherein the workers' compensation administrative law judge (WCJ) found in relevant part that applicant, while employed by defendant as a custodian during the period from April 26, 2011 through March 22, 2022, sustained injury arising out of and in the course of employment (AOE/COE) to the hands, arms, fingers and elbows; and that applicant was entitled to medical treatment.

Defendant contends that the WCJ's finding of injury AOE/COE is not supported by the record or substantial medical evidence because the WCJ fails to "actually site [*sic*] to any section(s) of the QME's reporting where the QME addresses which specific parts of body" require "the need for ongoing medical treatment." (Petition, p. 3.) Defendant notes that except for the "left trigger ring finger," there are "no other body parts, symptoms, or conditions" which are "indicated as requiring treatment on an industrial basis." (Petition, p. 4.)

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

We have considered the Petition for Reconsideration (Petition), the contents of the Report, and we have reviewed the record in this matter. Based upon the Report, which we adopt and incorporate, we will deny defendant's Petition.

Pursuant to Labor Code section[1] 3600, to be compensable, an injury must arise out of and occur in the course of employment. Further, 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.) In applying this requirement, however, all reasonable doubts as to whether an injury arose out of employment are to be resolved in favor of the employee. (*Department of Rehabilitation v. Workers' Comp. Appeals Bd.* (*Lauher*) (2003) 30 Cal. 4th 1281, 1290–1291 [68 Cal. Comp. Cases 831]; *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal. 3d 274, 280 [39 Cal. Comp. Cases 310]; *Lundberg v. Workers' Comp. Appeals Bd.* (1968) 69 Cal. 2d 436, 439 [33 Cal. Comp. Cases 656].) As the California Supreme Court discussed in *Lauher*, pursuant to section 3202, issues of compensation for injured workers "shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." Thus, "[a]lthough the employee bears the burden of proving that his injury was sustained in the course of his employment, the established legislative policy is that the Workmen's Compensation Act must be liberally construed in the employee's favor … , and all reasonable doubts as to whether an injury arose out of employment are to be resolved in favor of the employee. …" (*Lauher*, supra, at 1290, quoting *Lamb*, supra, at 280 (emphasis added); see Lab. Code, § 3202.)

The determination of whether an injury arises out of and in the course of employment requires a two-prong analysis. (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal. 4th 644 [63 Cal. Comp. Cases 253].) First, the injury must occur "in the course of employment," which ordinarily "refers to the time, place, and circumstances under which the injury occurs." (*LaTourette*, supra, at 645.) Second, the injury must "arise out of" the employment, "that is, occur by reason of a condition or incident of employment, [however], the injury need not be of a kind anticipated by the employer nor peculiar to the employment in the sense that it would not have occurred elsewhere." (*Employers Mut. Liability Ins. Co. v. Industrial Acci. Com.* (*Gideon*) (1953) 41 Cal. 2d 676, 679-680.) If we look for a causal connection between the employment and the injury, such connection need not be the sole cause; it is sufficient if it is a contributory cause. (*Gideon*, supra, at 680; *Maher v. Workers' Comp. Appeals Bd.* (1983) 33 Cal. 3d 729, 736 [48 Cal. Comp. Cases 326]; *Madin v. Industrial Acc. Com.* (1956) 46 Cal. 2d 90, 92–93 [21 Cal. Comp. Cases 49].) "All that is required is that the employment be one of the contributing causes without

[1] All further references are to the Labor Code unless otherwise noted.

which the injury would not have occurred." (*Clark*, supra at 297–298, quoting *LaTourette*, supra, at 651, fn. 1; *Maher*, supra, at 734, fn. 3.)

In the case at hand, applicant's injury was found to be a result of cumulative trauma sustained by applicant during applicant's employment with defendant from April 26, 2011 through March 22, 2022. As indicated by the Qualified Medical Evaluator (QME), Dr. John Gonzalez, in his August 13, 2022 report: "applicant's symptoms are associated with the cumulative injury." (QME Report of Dr. John Gonzalez, August 13, 2022, p. 6.) Dr. Gonzalez further noted that applicant had recounted cumulative trauma to his "arms, elbows, hands, and fingers" due to "repetitive and prolonged work activities such as vacuuming, mopping, cleaning the toilet, and closing, opening, and locking doors." (Ibid, p. 2.)

We further note that "notwithstanding whatever an employer does (or does not do)" to contest medical treatment, applicant has the burden of proving, by a preponderance of the evidence, that the treatment in question is medically reasonable and necessary. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (2008) 44 Cal.4th 230, 242 [73 Cal.Comp.Cases 981], citing Lab. Code, §§ 3202.5 & 4600.) In addition, we note that section 4600 "consistently has been interpreted to require the employer to pay for all medical treatment once it has been established that an industrial injury *contributed* to an employee's need for it." (See *Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1249, 1261 [82 Cal.Comp.Cases 679], italics added, string citations[2] and internal quotations omitted; *South Coast Framing, supra,* 61 Cal.4th 291 [death benefits upheld where drugs prescribed to treat industrial injury contributed to employee's death]; *Braewood Convalescent Hospital v. Worker's Comp. Appeals Bd.* (1983) 34 Cal.3d 159, 165 [48 Cal.Comp.Cases 566] [employee suffering from pre-existing condition later disabled by industrial injury was entitled to treatment even for a non-industrial condition that was required to cure or relieve effects of industrial injury].)

Defendant alleges that the WCJ's finding of injury AOE/COE is not supported by the record or substantial medical evidence because, except for the left trigger finger, there is no need for future medical treatment on an industrial basis. Continuing or future medical treatment,

[2] One of the cases cited in *Hikida* was *Granado v. Workers' Compensation Appeals Board* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]. In *Granado*, our Supreme Court expressed concern that "the uncertainties attendant to the determination of the proper apportionment [of medical treatment] might cause employers to refuse to pay their share until there has been a hearing and decision on the question of apportionment, and such delay in payment may compel the injured [employee] to forego the prompt treatment to which [the employee] is entitled." (*Granado,* 69 Cal.2d at pp. 405–406.)

however, has never been a precursor or requirement to a finding of injury AOE/COE. We agree with the WCJ that "causation" is not "predicated on the parts of the body that need treatment."

Accordingly, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the June 17, 2024 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 15, 2024

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

MARK LERMA
JOHNSON SANDHU
MICHAEL SULLIVAN & ASSOCIATES

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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 RECONSIDERATION

I
INTRODUCTION

Date of Injury:	4/26/2011-3/22/2022
Age on DOI:	50
Occupation:	Custodian
Parts of Body Injured:	Bilateral upper extremities
Identity of Petitioner:	Defendant
Timeliness:	The petition was timely filed on June 21, 2024
Verification:	The petition was verified
Date of Order:	June 17, 2024
Petitioner's Contentions:	Petitioner contends the WCJ erred by issuing: A. The decision which found injury to applicant's bilateral upper extremities.

Petitioner, defendant, by and through its attorney of record, has filed a timely, verified Petition for Reconsideration on June 21, 2024, challenging the Findings and Award dated June 17, 2024.

Applicant, the Respondent, did not file an Answer at the time this report was filed.

In its Petition for Reconsideration, Petitioner argues the Board acted without or in excess of its powers and the evidence does not justify the Findings of Fact and the Findings of Fact do not support the Order, Decision or Award. Defendant contends that the injury should be limited to applicant's left trigger ring finger.

It is recommended that the defendant's reconsideration be denied.

II
FACTS AND PROCEDURAL HISTORY

Applicant, by and through his attorney, filed an Application for Adjudication of Claim, asserting a cumulative trauma to his bilateral hands, bilateral elbows, bilateral fingers, and bilateral arms, from his usual and customary job duties as a Custodian while employed by Desert Sands Unified School District from April 26, 2011 through March 22, 2022.

The parties utilized John Gonzalez, M.D., as the panel Qualified Medical Evaluator ("QME") and he issued several reports and had his deposition taken. He opined that the applicant's claim was compensable, and applicant's injury was caused by his work at this employer. Dr. Gonzalez's opinion never wavered. Dr. Gonzalez further stated the applicant needs treatment which includes left ring finger trigger release surgery.

Defendant denied the claim and the matter proceeded to trial on June 3, 2024. The undersigned issued the decision in favor of applicant on June 17, 2024, finding, inter alia, that the case is compensable, applicant's injury pertains to the upper extremities, and applicant needs further medical treatment to cure or relieve from the effects of the injury.

Based on defendant's Petition for reconsideration, they are not contesting the Award or AOE/COE per se but rather the specific parts of the body that need medical treatment. Defendant seeks to limit the part injured to only the applicant's left ring finger.

III

DISCUSSION

Petitioner greatly confuses causation and parts of the body that may need ongoing medical treatment. (Please see Petition for reconsideration 6/21/24, p. 3:7-15.) Petitioner has an incorrect and problematic premise that causation should only pertain to the parts of the body that need future medical treatment. Causation and treatment are two separate and distinct issues.

A. CAUSATION

Applicant was evaluated by Dr. John Gonzalez, M.D., the qualified medical evaluator ("QME"), who issued several reports and had his deposition taken.

Defendant's Petition for reconsideration does not attack the substantiality of the panel QME's opinions but rather the undersigned's application of the doctor's opinions.

Defendant never accepted the case, even after taking the doctor's deposition in February of 2023. Dr. Gonzalez unequivocally opined applicant has a cumulative trauma to the upper extremities while working for this employer.

The undersigned followed and applied Dr. Gonzalez's opinions regarding causation. To wit regarding causation, page 2 of the Opinion on Decision dated June 17, 2024, stated,

> He [Dr. Gonzalez] opined applicant's injury was industrially related. "The applicant's symptoms are associated with the cumulative injury as explained by the applicant in history today." (QME report by Dr. Gonzalez, M.D., dated

8/13/22, Exhibit 1, p. 6.) On page 2 of this report under "Mechanism of Injury: Mr. Lerma attributed his cumulative trauma in the arms, elbows, hands, and fingers from April 26, 2011 to March 22, 2022, as having result from his repetitive and prolonged work activities such as vacuuming, mopping, cleaning the toilet, and closing, opening, and locking doors. He is not able to recall when he noticed worsening of his pain. The injury was reported to his employer, but no report was filed."

(*Id*., at 2.) At trial, the applicant confirmed the onset of his upper extremity pain began from bathroom duties, and applicant had reported the problem. (SOE Trial 6/3/24, p. 5:10-16.)

Dr. Gonzalez had his deposition taken on February 24, 2023 (Exhibit 5), and the doctor was asked about applicant's medical history and outside activities including construction work. Dr. Gonzalez never recanted his opinion that work caused applicant's injury, but the doctor concluded that he would like to review any additional records and re-evaluate the applicant. (Deposition of Dr. Gonzalez dated 2/24/23, Exhibit 5, p. 22:1-10.)

In the final report, Dr. Gonzalez reiterated that work caused applicant's injury in the reevaluation report dated December 6, 2023. (QME report of Dr. Gonzalez dated 12/6/23, Exhibit 4, p. 5.)

B. **MEDICAL TREATMENT**

Petitioner further attempts to undermine the decision by making a nonsensical statement. That is, Petitioner stated, "the WCJ does not actually site to an section(s) o the QME's reporting where the QME addresses which specific parts of body were injure on an industrial basis requesting the need for ongoing medical treatment. This I problematic." (Petition for reconsideration 6/21/24, p. 3:12-15.)

The parts of the body injured on an industrial basis are not predicated on whether those parts need ongoing treatment. Causation was addressed in the section above and I the Opinion on Decision. And Applicant is entitled to treatment based on the evidence which the court allowed. The applicant's treatment may include a release of the left trigger ring finger as recommended by Dr. Gonzalez in his QME report dated December 2, 2023 (Exhibit 4, p. 4.)

IV

RECOMMENDATION

Causation and the parts of the body associated with the claim should not be predicated on the parts of the body that need treatment.

The court correctly identified the parts of the body affected by the claim and stated applicant needs further medical treatment to cure or relieve from the effects of the injury. Therefore, it is respectfully recommended that Defendant's Petition for Reconsideration be denied.

Respectfully submitted,

DATE: July 8, 2024

Eric Yee
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE