

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

MAHJABIN SEFAT, *Applicant*

vs.

**ROSS STORES, INC.; ARCH INSURANCE COMPANY, Administered BY SEDGWICK
CMS, *Defendants***

**Adjudication Numbers: ADJ12641877; ADJ12754152
Van Nuys District Office**

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

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Joint Findings of Fact of January 27, 2021, wherein it was found that while employed as a retail associate on November 18, 2018 (ADJ12641877) and during a cumulative period ending November 20, 2018 (ADJ12754152), applicant sustained industrial injury to her lumbar spine, cervical spine, right shoulder, right wrist and knees. Applicant had alleged injuries to these body parts only in the cumulative injury case (ADJ12754152). In the specific injury case (ADJ12641877), the Application for Adjudication of Claim claimed injury only to the "nervous system[,] stress[,] psyche[, and in the form of] insomnia." By the time of trial, applicant claimed only injury to the psyche. (WCAB Rule 10517, Cal. Code Regs., tit. 8, § 10517.) Nevertheless, the WCJ never made any findings regarding the alleged psyche injury, and found injury in both cases to the body parts alleged only in the cumulative injury case. The WCJ stated in his decision that he amended the pleadings in the specific injury case to conform to the evidence purportedly presented.

Defendant contends that the WCJ erred in finding industrial injury in either case. With regard to the specific injury case, defendant argues that there is no evidence that applicant injured her spine, right shoulder, right wrist or knees in a case that applicant alleges only injury to psyche due to being hit in the face by a customer. Although the WCJ never made a finding regarding industrial injury to the psyche, defendant argues that the record would not support such a finding, given that there are no psychiatric reports in evidence, and no reporting physician discussed the

elements of Labor Code section 3208.3, which governs the issue of psychiatric injury. With regard to the cumulative injury case, defendant argues that the WCJ erred in discounting the opinions of qualified medical evaluator orthopedist Gregg R. Sobeck, M.D.

We have not received an answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

As explained below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further development of the factual and medical record and decision.

The evidentiary record in this matter contains numerous reports authored by primary treating physician orthopedist Edwin Haronian, M.D., including the initial comprehensive report, various status reports, and the permanent and stationary report. In the Initial Comprehensive Orthopedic Evaluation report dated January 31, 2019, Dr. Haronian, was told by the applicant that on November 18, 2018, "she was attacked by a customer that struck her face. She had immediate headaches and pain to her face, and developed anxiety and stress." (January 31, 2019 report at p. 2.) With regard to applicant's cumulative injury claim, Dr. Haronian wrote:

The patient states over the course of employment, she developed pain to her neck, shoulders, and lower back, with pain shooting down her legs/knees, which she attributes to her work duties, entailing: assisting customers, cashiering, retailing, organizing the store, lifting and carrying merchandise, moving heavy items, and supervising.

The precise activities entailed prolonged standing and walking, as well as constant maneuvering of her arms and hands, and repetitive bending, stooping, squatting, twisting, turning, forceful pushing and pulling, forceful gripping and grasping, reaching to all levels, torquing, lifting and carrying up to 20 pounds.

(January 31, 2019 report at p. 2.)

Dr. Haronian noted spasm, tenderness and guarding in the cervical and lumbar spine along with decreased range of motion. Dr. Haronian also noted positive impingement over the shoulders, along with decreased range of motion. With regard to the knees, Dr. Haronian noted patellar crepitus along with decreased range of motion. (January 31, 2019 report at p. 10.)

Dr. Haronian concluded in his initial January 31, 2019 report, "As it relates to causation, the patient has sustained injuries to multiple body parts due to her specific and continuous trauma activities that occurred at work. (January 31, 2019 report at p. 10.)

In his Permanent and Stationary Report of October 3, 2019, Dr. Haronian repeated the conclusions of his earlier report:

On the specific date of injury of November 18, 2018, she was attacked by a customer and was struck in the face. She began having headaches along with anxiety and stress. She is also indicating that she worked for the employer Ross Stores for about five years. She was performing repetitive lifting, pushing, pulling and bending. She developed pain to multiple body parts due to the repetitive nature of her work.

Dr. Haronian noted that applicant's claim was denied "despite the fact that there is clear indication for industrial connectivity." (October 3, 2019 report at p. 6.)

Applicant was then evaluated by panel qualified medical evaluator orthopedist Gregg R. Sobeck, M.D., only with regard to the cumulative injury claim, as applicant alleged orthopedic injury on with regard to that claim. With regard to the onset of applicant's symptoms, Dr. Sobeck wrote:

The patient has claimed to me to have sustained two specific injuries, but indicates that she does not recall the dates of these. She claims that one incident occurred when she fell out of a chair while sitting in front of a computer since the chair was broken. She claims to have injured her neck, back, left shoulder, left leg, and left knee when she fell out of the chair.

The patient also claims a second incident that occurred, but does not recall the date, indicating that she was struck by a falling pot that struck her head. The patient further states that "all her problems started then." She again is asked about the date and does not recall a date, but claims that the pot fell on her prior to the fall out of the chair.

(May 22, 2020 report at pp. 1-2.)

Dr. Sobeck wrote in his report that applicant claimed cumulative trauma to Dr. Haronian, "but does not mention this to me, only indicating that her problems started when she fell out of a chair and when she was struck by a pot." (May 22, 2020 report at p. 7.) Dr. Sobeck found no industrial injury, writing that there was only subjective evidence of injury and that the "patient's physical examination is completely normal." (May 22, 2020 report at p. 7.) Dr. Sobeck also wrote that applicant was "involved in a prior motor vehicle accident and underwent treatment for similar complaints by Chiropractor Jalali in 2014 and 2015." The evidentiary record in this matter contains an April 15, 2015 report from Farahnaz Jalili, D.C. concerning orthopedic injuries sustained on November 17, 2014 motor vehicle accident by someone identified in the report as

Ameneh Habibvand. Although the subject of Dr. Jalili's report has the same date of birth and height as the applicant, the names do not match. It is noted that in Dr. Sobek's summary of the July 15, 2019 deposition of the applicant, the applicant admits that she was treated by a chiropractor after a motor vehicle accident. (May 22, 2020 Review of Medical Records at p. 2.)¹

The WCJ erred in finding a specific injury to the lumbar spine, cervical spine, right shoulder, right wrist and knees. Applicant's allegation in the specific injury case is that she was hit in the face. As noted above, in the Application for Adjudication of Claim, she alleged injury to the "nervous system[,] stress[,] psyche[, and in the form of] insomnia." By the time of trial, she alleged injury only to the psyche.²

While the WCJ states in his Report that he "based [his] findings in this case on the medical report of Dr. Haronian wherein he opined that applicant developed pain to her back, neck, right shoulder, right wrist, and knees due to the incident that occurred ... on 11/18/18" (Report at p. 6), we have perused the medical record and there is no evidence that applicant sustained injury to the spine, shoulder, wrist or knees as a result of being hit in the face. In finding specific injury to the spine, shoulder, wrist, and knees, the WCJ may have misinterpreted Dr. Haronian's statement that "the patient has sustained injuries to multiple body parts due to her specific and continuous trauma injuries." This statement does not ascribe injury to the spine, shoulder, wrist or knees specifically to the November 18, 2018 incident. It appears from the totality of his reports that Dr. Haronian ascribed injury to these body parts only to the cumulative injury. In any case, all findings of the WCAB must be based on substantial evidence. (*Le Vesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 [Appeals Bd. en banc].) As the Court of Appeal wrote in *E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687], a "medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. [Citation]." In order to constitute substantial evidence of specific injury to the spine, shoulder, wrist, or knees, Dr.

¹ The deposition transcript was not introduced into the evidentiary record.

² Pursuant to WCAB Rule 10517, "Pleadings shall be deemed amended to conform to the stipulations and statement of issues agreed to by the parties on the record." (Cal. Code Regs., tit. 8, § 10517.) Of course, amendment to pleadings is liberally allowed, and applicant may re-raise the issue of specific injury to these other body parts, if warranted by the evidence. (See generally *Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal.App.3d 1102 [53 Cal.Comp.Cases 502]); *Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196 [50 Cal.Comp.Cases 160].)

Haronian would have to explain how being hit in the head caused the need for medical treatment or disability related to these other body parts.

With regard to the cumulative injury claim, the WCJ did not consider Dr. Sobeck's reporting because "Dr. Sobeck attempted to determine injury itself rather than disability. This is not appropriate." (Opinion on Decision at p. 1.) We are confused by this statement because opining on the compensability of the injury was required, and was Dr. Sobeck's statutorily defined role. (Lab. Code, § 4060, subd. (c).) Generally, and especially in cases of cumulative injury, medical causation cannot be established without corroborating expert medical opinion. (*Peter Kiewit Sons v. Ind. Acc. Comm. (McLaughlin)* (1965) 234 Cal.App.2d 831, 838-839 [30 Cal.Comp.Cases 188].) Whether applicant has any disability or need for medical treatment, whether any disability or need for medical treatment was caused by applicant's work duties, or whether disability or need for medical treatment were unrelated to applicant's work are certainly appropriate issues that a reporting doctor must comment upon when compensability is disputed.

However, Dr. Sobeck should opine regarding whether applicant's purported work activities such as maneuvering of her arms and hands, and repetitive bending, stooping, squatting, twisting, turning, forceful pushing and pulling, forceful gripping and grasping, reaching to all levels, torquing, lifting and carrying up to 20 pounds contributed to any disability or need for medical treatment. Although applicant ascribed her orthopedic symptoms to two specific incidents at work at the qualified medical evaluation, Dr. Sobeck is the expert, not the applicant. Additionally, a foundation for Dr. Sobeck's reliance on the reports describing the injury caused by applicant's motor vehicle accident must be established by explaining the discrepancy between the name of the subject of those records and applicant's name.

Accordingly, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further development of the record, analysis, and decision. To the extent that applicant is alleging specific industrial injury to the psyche or in the form of headaches, the record must be developed with evaluations from the appropriate specialists. We take no position on the ultimate resolution of any issue in this matter.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Joint Findings of Fact of January 27, 2021 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings of Fact of January 27, 2021 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 19, 2021

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

**MAHJABIN SEFAT
DAVID ISSAPOUR
GRIFFIN, LOTZ & HOLZMAN**

DW/oo

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