

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MAUREEN FORD, *Applicant*

vs.

**COMMUNICATION ACTION BOARD OF SANTA CRUZ;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ8177678, ADJ8177385
Salinas 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, and for the reasons discussed below, we will deny reconsideration.

Defendant does not dispute the finding of new and further disability related to applicant's bilateral carpal tunnel, nor the finding of industrial causation of a compensable consequence psychiatric injury, nor the amount of orthopedic or psychiatric apportionment applied. The sole issue raised by defendant on reconsideration is that the WCJ erred in finding good cause to reopen the Award in Case No. ADJ8177385 for new and further psychiatric injury and disability where there was evidence of psychiatric injury at the time of the original Findings and Award.

Defendant argues that, because the medical record documents that applicant expressed psychiatric symptoms prior to the April 22, 2014 Findings and Award, the psychiatric injury and disability found by the WCJ now is not "new and further."

However, a psychiatric injury does not fall within the ambit of the workers' compensation system until it causes either disability or a need for medical treatment **and** it is diagnosed "using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners

in the field of psychiatric medicine.” (Lab. Code, §§ 3208.3(a); 139.2.) This is true of all claims of psychiatric injury whether or not an injury stands alone or is a compensable consequence of a physical injury. (See *Lockheed Martin Corp. v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1237, 1239–1240, 1249 [67 Cal.Comp.Cases 245].)

In this case, there are only brief mentions of psychiatric symptoms in the medical record. There is no evidence of any psychiatric condition causing either disability or a need for treatment nor is there evidence of a formal diagnosis. Therefore, there is no substantial medical evidence establishing industrial causation for the psychiatric injury pursuant to section 3208.3(a). Our decision here is consistent with the outcomes of the Appeals Board panel decisions in *Nicolas Gomez v. Wedemeyer Bakery, Illinois Midwest* (January 23, 2018, ADJ7986894) 2018 Cal. Wrk. Comp. P.D. LEXIS 30 and *Woodward v. Tri Corp. Construction* (September 23, 2014, ADJ6872063) 2014 Cal. Wrk. Comp. P.D. LEXIS 513.¹ Our decision is also consistent with a case cited in defendant’s petition, *Norris Industries/Waste King and California Casualty Management v. Workers' Comp. Appeals Bd. (Ocampo)* (1983) 48 Cal.Comp.Cases 393 (writ den.)[Appeals Board finding good cause to reopen where a psychiatric condition had preexisted the issuance of the original Findings and Award but had not been diagnosed or evaluated before the issuance of the original Findings and Award]. The other cases cited by defendant are distinguishable because they do not address psychiatric injuries.

¹ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 ft. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 3, 2021

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

**MAUREEN FORD
RUCKA O'BOYLE ET AL
STATE COMPENSATION INSURANCE FUND**

PAG/abs

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I INTRODUCTION

Defendant State Compensation Insurance Fund has filed a timely, verified Petition for Reconsideration from the Findings & Award of February 16, 2021, claiming that the evidence does not justify the findings of fact and that the findings of fact do not support the order, decision or award. Petitioner argues that the Workers' Compensation Judge (WCJ) erred in finding injury to the psyche and in finding that there was good cause to reopen based, among other things, on psychiatric disability. The Petition is without merit and should be denied.

II STATEMENT OF MATERIAL FACTS

As the Petition raises only the limited issue of the psychiatric injury, this review will be focused primarily on the facts pertinent to that issue.

On April 22, 2014, the parties filed joint Stipulations with Request for Award, for injury to "upper extremity" and "hand" on 8/19/11 (ADJ8177678) and for cumulative injury ending 9/26/11, to "upper extremity," "hand," "neck" and "back" (ADJ8177385), while employed as a landscape worker by Community Action Board, insured by State Compensation Insurance Fund. Defense counsel has subsequently explained, in his 12/29/2020 letter addressed to the WCJ, that the Stipulation to 33% PD was a compromise reached by the parties between their conflicting ratings of the 1/7/14 report from AME Pramila Gupta (in EAMS but not listed as a trial exhibit).

Applicant reported psychological symptoms to Doctors' Poree and Summa prior to entering into Stipulations with Request for Award in 2014 (Dr. Laasi psych. QME report, 3/29/18, Ex. A-1, pp. 5-6). According to Dr. Laasi's review, neither physician expressed an opinion on causation of the psychological symptoms or whether they caused disability. Applicant told Dr. Laasi, "I became anxious and depressed early on into the injury....slow progression of getting worse...the depression has become really severe in the last two years, but I was depressed before then. But not 'til Dr. Massey did I see a psychologist, Dr. Johnson." (Ibid, p. 8).

On 9/10/15, applicant filed a Petition to Reopen in both cases, alleging a change of condition, increase in PD, need for further medical treatment and different vocational factors. On 10/2/17, an Amended Application for Adjudication was filed in ADJ8177385, adding "psyche" as an additional injured body part. The cases went to trial on 9/30/2020, on the issues of injury to the psyche, good cause to reopen per applicant's 9/13/15 Petition, PD/apportionment and attorney fees.

On p. 31 of her 2018 report, Dr. Laasi concluded that applicant met the requirements of Labor Code Sec. 3208.3, because she had a mental disorder per the DSM that was predominantly caused by the industrial injury in August of 2011. She found applicant had reached maximum medical improvement and that applicant was left with permanent impairments in functioning, warranting a GAF score of 50. She apportioned 90% of the PD to the 8/19/11 injury and 10% to non-industrial factors.

Findings & Award were filed on 2/16/2021, finding psychiatric injury and good cause to reopen. Permanent disability was awarded based on the opinions of AME Gupta and QME Laasi.

III

DISCUSSION

Petitioner does not challenge applicant's right to amend the original Application in ADJ8177385 to add injury to the psyche. The contention is that applicant cannot reopen her claim to obtain benefits for a body part that was not listed in the Stipulations for the 2014 award.

In its decision in *Nicky Blair's Restaurant v. WCAB* (1980) 109 Cal. App. 3rd 941, at pp. 954 et seq., the Court defined the term, "new and further disability" to mean a "demonstrable change in an employee's condition....A gradual increase in disability is a 'new and further disability' ...A change in physical condition necessitating further medical treatment is considered 'new and further disability' whether or not accompanied by time lost from work..."Good cause" [to reopen] includes facts which for the first time develop subsequent to the decision sought to be reopened."

The Court in footnote 9, reviewed a medical report from Dr. Rose: "Dr. Rose's report of February 15, 1977 states in regard to disability: 'The patient continues to have increasing symptoms related to his low back problems. He is also now developing problems with his head and neck. *These are all new symptoms or intensification of symptoms that he had on my prior examination of February 1975. It is felt at this time that he has developed new and further difficulties.*'" (Emphasis added by WCJ) In overturning the Board's decision that found new and further disability, the Court said (p. 950) that the Board relied on a report from a different doctor, Dr. Patzakias, who opined that Macias' head and shoulder problems were unrelated to the industrial injury. The Court said: "Had the Board relied upon Dr. Rose in reopening the case, 'new and further disability' would clearly exist. Dr. Rose reports marked deterioration of Macias' condition and development of neck, shoulder and head discomfort. Dr. Rose relates all this to the original industrial injury."

Applying these principles to the facts of this case, applicant's psychiatric condition qualifies as "new and further disability." While applicant unquestionably had psychiatric symptoms at the time of the earlier 2014 award, it was not until 2016 that applicant's symptoms progressed to the point of her obtaining treatment for them from a psychologist, Dr. Johnson. Applicant's history to Dr. Laasi of what occurred in her psychological state after the 2014 award is what Dr. Rose described as an "intensification of symptoms" and fits what the *Nicky Blair* Court included as a "demonstrable change in an employee's condition....A gradual increase in disability... [or] ...A change in physical condition necessitating further medical treatment."

Finally, none of the doctors noting psychological symptoms before 2014 said that the symptoms were causally related to the industrial injury or causing disability. It was not until 2018 that a psychologist (Dr. Laasi) addressed those issues. When applicant reported psychological symptoms to her doctors prior to entering into Stipulations with Request for Award in 2014, the doctors did not provide opinions on causation, did not enroll her in a course of treatment by a mental health professional and did not say that those symptoms caused disability. Applicant's symptoms, according to her, progressed, until by 2016, she was receiving mental health treatment from psychologist Johnson. Expert opinion on the causation and disability issues was not provided until Dr. Laasi evaluated applicant in 2018. The psychiatric problems were a compensable consequence of the already pled physical injuries. Defendant was not taken off guard by applicant's claim for them, having apparently

authorized and paid for Dr. Johnson's treatment. The claim for psychiatric injury was timely raised, and the claim for new and further disability properly included additional PD caused by injury to the psyche.

IV
RECOMMENDATION

It is recommended that the Petition for Reconsideration be Denied.

Respectfully submitted,

Served 3/9/2021

MICHAEL H. YOUNG
Workers' Compensation
Administrative Law Judge