WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ANTHONY DE LA LAMA, ***Applicant***

vs.

SOUTHERN CALIFORNIA EDISON;
Permissibly Self Insured, ***Defendants***

Adjudication Number: ADJ11319973
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant filed a Petition for Reconsideration (Petition) of the Partial Findings and Notice of Further Proceedings (Partial Findings) issued March 18, 2025, wherein the workers' compensation administrative law judge (WCJ) found the applicant sustained injury arising out of and in the course of employment to his right ankle and right lower extremity.

Defendant asserts the WCJ erred in finding Dr. Haronian a treating physician, admitting Dr. Haronian's reports at trial, providing findings based on Dr. Haronian's opinions, and failing to address defendant's motion to strike Dr. Haronian's reporting.

The WCJ's Report and Recommendation (Report) recommends the Petition be denied. We did not receive an answer from applicant.

We have considered the allegations of the Petition, and the contents of the Report of the 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.

HISTORY

Injury Synopsis

As found by the WCJ in the Partial Findings, while employed on December February 23, 2017, by defendant as an apprentice lineman, applicant sustained injury to the right ankle and right lower extremity.

Almost two weeks prior to the injury, on February 11, 2017, applicant was playing with his children at home when his right ankle rolled and he felt immediate pain. Applicant then worked two days out of town with a significantly swollen foot and ankle before obtaining medical care on February 14, 2017. He was taken off work for the remainder of the week. (Applicant Exhibit 2, Edwin Horonian, M.D., August 1, 2018, pages 1 to 2; Defendant Exhibit B, Panel Qualified Medical Evaluator (PQME) Mark Ganjianpour, M.D., March 26, 2018, page 2.)

On February 21, 2017, while at home applicant's dog came running towards him and, when quickly getting out of the way, his right ankle popped. Applicant noticed that he was able to stand on his right foot better and without much difficulty. Applicant presented to his primary care physician and was released back to work with restrictions of no climbing. Applicant returned to work on February 22, 2017, and still felt soreness in his right ankle but was able to work with the restrictions of no climbing. (Applicant Exhibit 2, Edwin Horonian, M.D., August 1, 2018, page 2; Defendant Exhibit B, PQME Mark Ganjianpour, M.D., March 26, 2018, page 2.)

On February 23, 2017, his foreman instructed applicant to climb up a ladder. Applicant started climbing and when he took the fifth step, he felt and heard a "giant" pop from his right ankle. Immediately, he felt his right foot was very unstable. He climbed back down. (Applicant Exhibit 2, Edwin Horonian, M.D., August 1, 2018, page 2 to 3; Defendant Exhibit B, PQME Mark Ganjianpour, M.D., March 26, 2018, page 2.)

On February 27, 2017, applicant presented to his primary care physician and was referred for an emergency MRl of his right ankle which revealed a full thickness tear of the talofibular and calcaneofibular ligaments. (Applicant Exhibit 2, Edwin Horonian, M.D., August 1, 2018, page 4; Defendant Exhibit B, PQME Mark Ganjianpour, M.D., March 26, 2018, page 3.)

Applicant underwent right ankle surgery in early October 2017. (Applicant Exhibit 2, Edwin Horonian, M.D., August 1, 2018, page 12; Defendant Exhibit B, PQME Mark Ganjianpour, M.D., March 26, 2018, page 3.)

On March 26, 2018, applicant was evaluated by PQME Ganjianpour, M.D., who found:

> [I]t is within reasonable medical probability that those two events of 02/11/17 and 02/21/17 which is well documented caused the tear of the anterior talofibular ligament and calcaneofibular ligament. It is my opinion that the events subsequent to that when he was trying to climb a ladder and felt a pop in his ankle did not cause significant twisting injury to his ankle. It is within reasonable medical probability that this event did not significantly and measurably

> contribute to his anterior talofibular ligament tear, and this was simply a flare up of preexisting non-industrial injury.
>
> The flare up did not cause any worsening of the right ankle condition and did not contribute to the patient's eventually requiring surgery. (Defendant Exhibit B, PQME Mark Ganjianpour, M.D., March 26, 2018, page 15.)

On May 2, 2018, defendant denied applicant's claim. (Defendant Exhibit A).

On July 26, 2018, applicant designated Edwin Haronian, M.D., as his primary treating physician. (Applicant Exhibit 39.)

Dr. Haronian saw applicant on August 1, 2018, and in his initial report states, "remaining respectful to the opinions of the QME, it is my opinion that there is a component of industrial connectivity to the patient's ankle complaints and apportionment should be discussed once the patient reaches maximum medical improvement. (Applicant Exhibit 1, Edwin Haronian, M.D., August 1, 2018, page 13.)

Dr. Haronian was deposed on November 5, 2019, and further explained his opinion finding industrial injury. (Applicant Exhibit 36, Deposition, November 5, 2019.)

PQME Dr. Ganjianpour was deposed on April 3, 2020, and did not change his opinions. (Defendant Exhibit C, page 8, lines 13 to 18.)

Both Dr. Haronian and PQME Dr. Ganjianpour issued supplemental reports after reviewing additional medical records but did not change opinions. (Applicant Exhibit 40, Edwin Haronian, M.D., October 13, 2020, page 14; Defendant Exhibit G, PQME Mark Ganjianpour, M.D., August 7, 2023, page 2; Applicant Exhibit 41, Edwin Haronian, M.D., September 4, 2024, page 14.) Dr. Haronian also saw applicant via telemedicine on September 4, 2024. (Applicant Exhibit 42, Edwin Haronian, M.D., September 4, 2024, page 1.)

The record also contains treatment records from Sierra Medical Group that do not expressly address causation. (Applicant Exhibit 43.)

Procedural Synopsis

On September 29, 2020, defendant file a Petition to Strike the Medical Report of Edwin Haronian, M.D., or, in the alternative, for an Order Barring Admission into Evidence (Petition to Strike). The basis of the petition is most succinctly stated as "Dr. Haronian was not a treating physician." (Petition to Strike, September 29, 2020, page 5, lines 5 to 6.)

Trial was initially held April 28, 2022, with issues that included: "4. Whether the medical report of Edwin Haronian, dated 8/27/2017, and a deposition transcript dated 11/5/19, are admissible as evidence." (Minutes of Hearing, April 28, 2022, page 2, lines 18 to 21.)

The trial was continued to September 20, 2022, when exhibits were identified, and applicant testified. The Minutes reflect "that the Court will take Judicial Notice of Defendant's Petition to Strike the medical reporting of Dr. Haronian, dated 9/29/2020." (Minutes of Hearing (Further) and Summary of Evidence, September 20, 2022, page 7, lines 1 to 2.) The matter was submitted.

On November 16, 2022, the WCJ issued an Order Vacating Submission and Development of the Record (Order Vacating), which included as a finding that "Dr. Haronian is found to be the PTP in this matter pursuant to Exhibit 39, 4600 letter." Applicant filed a Petition for Removal, and on February 15, 2023, we issued our Opinion and Order Denying Petition for Removal on February 15, 2023.

On January 7, 2025, the case was again tried and included as issue number 10 "[w]hether the medical reporting and deposition of Dr. Haronian are admissible in evidence. Applicant alleges Edwin Haronian is the PTP, and defendant claims he does not meet the criteria to be a PTP." (Minutes of Hearing and Summary of Evidence, January 7, 2025, page 3, lines 2 to 4.) Dr. Haronian's reporting and deposition were all admitted into evidence without objection as Applicant's Exhibits 2, 36, 40, 41, 42, as was a July 23, 2018, designation of treater letter to Dr. Haronian as Applicant Exhibit 39. (Minutes of Hearing and Summary of Evidence, January 7, 2025, page 3, lines 6 to 20.)

On March 18, 2025, the WCJ issued the Partial Findings, finding that applicant while employed on February 23, 2017, as an apprentice lineman by defendant, sustained injury arising out of and in the course of employment to his right ankle and right lower extremity. In the Opinion on Decision, the WCJ found Dr. Haronian was the PTP, that Dr. Haronian in deposition persuasively supported finding injury, and that further discovery was necessary with all other issues reserved. (Partial Findings, Opinion on Decision, March 18, 2025, pages 2 to 5.)

It is from this Partial Findings that defendant seeks reconsideration asserting 1) "Dr. Haronian is not a Primary Treating Physician," 2) "his report should not have been admitted into evidence," 3) "Dr. Haronian's status can only be that of a Labor Code §4065 self-procured

consultant," and 4) the WCJ failed to address defendant's Motion to Strike. (Petition, April 11, 2025, page 4, line 1; page 7, line 5; page 8, lines 25 to 27; and page 9, lines 7 to 15.)

DISCUSSION
I.
A.

Former Labor Code section 5909[1] provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Former Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(Lab. Code, § 5909.)

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events the case was transmitted to the Appeals Board on April 22, 2025, and 60 days from the date of transmission is Friday, June 21, 2025. The time limit is also extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600(b).) Here, June 21, 2025, is a Saturday which by operation of law means this decision is due by the next business day, which is Monday, June 23, 2025. This decision

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

issued by or on June 23, 2025, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

According to the proof of service, the Report was served on April 22, 2025, and the case was transmitted to the Appeals Board on April 22, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 22, 2025.

B.

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" *(Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a "threshold" issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].)

Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd.* (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].)

While the issues raised by defendant appear to be interim discovery orders, the medical reporting of Dr. Haronian was the basis for the WCJ's finding of industrial injury. Thus, the WCJ's F&O resolves the threshold issue of injury which is fundamental to a claim for benefits.

Accordingly, the F&O is a "final" decision. The Petition is properly considered as a petition seeking reconsideration.

II.

To be compensable, an injury must arise out of and occur in the course of employment. (Lab. Code, § 3600.) The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5, 5705.) Medical evidence that industrial causation was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Worker's Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].) We observe, moreover, it is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525].)

Generally, the Appeals Board is broadly authorized to consider the reports of attending or examining physicians. (Lab. Code, § 5703(a)(1); *Valdez v. Workers' Comp. Appeals Bd.* (2013) 57 Cal. 4th 1231, 1239 [78 Cal. Comp. Cases 1209] (*Valdez*).) The weight accorded the evidence, including the weighing of medical-legal reporting in evidence, is a matter to be determined by the WCJ and by the Appeals Board. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312. 317 [35 Cal.Comp.Cases 500]; *Lundberg v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 436, 440 [33 Cal.Comp.Cases 656].) Similarly, the Appeals Board is broadly authorized to consider "[r]eports of attending or examining physicians." (§ 5703, subd. (a); *Valdez, supra*, at p. 1239.) Section 4064(d) provides the no party is prohibited from obtaining *any* medical evaluation or consultation at the party's own expense, and that *all* comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board except as provided in specified statutes. (Lab. Code, § 4064(d); *Valdez, supra,* at p. 1239.)

Here for the reasons stated by the WCJ in the Report, we discern no merit in defendant's Petition. We agree with the WCJ as stated in the Partial Findings that the opinions of Dr. Haronian are persuasive:

> Dr. Haronian commented that the x-rays obtained on February 21, 2017, reported no evidence of a fracture. Regarding a possibility of a tear to the ligaments, Dr. Haronian explained Radiologists usually report on those things if are seen, that's a major finding, so its absence would negate its presence. The absence of reporting of widening of the joints means it wasn't there. If it was wide, it would point to the fact that there is a higher degree of medical probability that there is a tear in the ligament if the joint is wide, but there was no report that the joint was wide. That does not a hundred percent rule in or out the presence of a tear. There's a higher degree of medical probability that there is no tear since there was no reported widening of the joint. (Exhibit 36 at 22:4 to 23:8.) "It is based on the fact that he was able to do his job, and after the specific injury of February 23rd, he was not able to. Considering the fact that he also felt a pop and there was increased pain on February 23rd of 2017, it is my opinion that with high degree of medical probability, the events of February 23rd of 2017 have contributed to worsening of his condition to the ankle." (Exhibit 36 at 23:20 to 24:2.) (Partial Findings, Opinion on Decision, page 3.)

As explained above, we agree with the WCJ that Dr. Haronian's reporting was substantial evidence to support the finding of industrial injury.

However, with respect to defendant's contentions, we note that Dr. Haronian is the PTP, and as stated by the WCJ: "On July 26, 2018, in a letter to the claims adjuster, the applicant selected Edwin Haronian, M.D. as his primary treating physician. (Exhibit 39.) There is no evidence that Applicant withdrew his selection or subsequently selected a different physician." (Partial Findings, Opinion on Decision, page 2 and 3.) Moreover, Dr. Haronian was previously found to be the PTP in the November 16, 2022, Order Vacating. On January 7, 2025, the case was again tried. Dr. Haronian's reporting and deposition were all admitted into evidence without objection by defendant. These exhibits consisted of Applicant's Exhibits 2, 36, 40, 41, 42, as was a July 23, 2018, letter to Dr. Haronian as Applicant Exhibit 39. (Minutes of Hearing and Summary of Evidence, January 7, 2025, page 3, lines 6 to 20.) Defendant waived any objection at trial to these exhibits as they were admitted without objection. The January 7, 2025, Minutes of Hearing and Summary of Evidence were served on the parties on January 13, 2025. The record reflects no objection by defendant thereafter to the Minutes to indicate they are incorrect. Nonetheless, even if defendant had objected, we would have concluded that the reporting was properly admitted as evidence of applicant's medical treatment and relevant to the determination herein.

Accordingly, we deny the Petition for 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 18, 2025

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

ANTHONY DE LA LAMA
LAW OFFICES OF ALI ASHKAN AZARAKHSH
LAW OFFICES OF INGBER & WEINBERG

PS/oo

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 OF WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION

Transmitted to recon unit on April 22, 2025

INTRODUCTION:

On April 14, 2025, Defendant filed a timely verified petition for reconsideration of the Partial Findings and Notice of Further Proceedings dated March 18, 2025. The petitioner contends the following:

a) Edwin Haronian, M.D. is not the primary treating physician;
b) The reports by Edwin Haronian should not have been admitted into evidence;
c) A decision cannot be based on the report by Edwin Haronian, M.D.; and,
d) Defendant's motion to strike Dr. Haronian's report was not addressed.

STATEMENT OF FACTS:

The parties appeared before WCJ Robert Sommer for trial on September 20, 2022, issues were framed, documentary evidence was admitted, testimony was taken, and the matter was submitted. On November 16, 2022, WCJ Robert Sommer vacated the submission and ordered the development of the record. On September 1, 2023, the parties submitted an additional medical report and on December 28, 2023, WCJ Robert Sommer issued a finding of fact. On January 19, 2024, the applicant filed a petition for reconsideration. On January 24, 2024, WCJ Robert Sommer rescinded the finding of fact and set the matter for further proceedings. WCJ Robert Sommer was unavailable and the matter was rotated to the undersigned WCJ. On January 7, 2025, issues were framed, documentary evidence was admitted, testimony was heard, and the matter was submitted.

On March 18, 2025, the undersigned WCJ issued Partial Findings and a Notice of Further Proceedings. The undersigned WCJ found the injury compensable and reserved on all other issues including but not limited to retroactive temporary disability indemnity and nature and extent. It is from the finding of compensability that Defendant seeks relief.

DISCUSSION:

EDWIN HARONIAN, M.D. IS THE PRIMARY TREATING PHYSICIAN

The treating physician primarily responsible for managing the care of the injured worker. (Labor Code § 4061.5.) Within 5 working days following initial examination, a primary treating physician shall submit a written report to the claims administrator on the form entitled "Doctor's First Report of Occupational Injury or Illness," Form 5021...the physician shall (A) list methods,

frequency, and duration of planned treatment(s), (B) specify planned consultations or referrals, surgery or hospitalization and (C) specify the type, frequency and duration of planned physical medicine services (e.g., physical therapy, manipulation, acupuncture.) (8 CCR § 9785(e)(1).) In this case, Applicant designated Dr. Haronian as the primary treating physician on July 23, 2018. (Exhibit 39.) Four reports by Edwin Haronian, M.D. were submitted into evidence plus the transcript of Dr. Haronian's deposition. A Doctor's First Report on form 5021 was not submitted into evidence. On August 1, 2018, Dr. Haronian issued a report titled "Initial Orthopedic Evaluation and Request for Authorization of a Primary Treating Physician."

Dr. Haronian's report dated August 1, 2018, stated "We request that all prior medical records with diagnostic studies be forwarded to our attention so we may avoid duplication in testing and treatment" (Exhibit 2 at page 12.) This statement meets the requirements of Rule 9785(e)(1) in that the doctor states at this time he cannot determine a list of methods, frequency, duration of planned treatment, make referrals, or plan physical medicine services without the knowledge of what has already been done. All of the required elements of form 5021 were in the report dated August 1, 2018. To say Dr. Haronian's reports are inadmissible for lack of form 5021 would impermissibly place form over substance.

Defendant also claims that Applicant was treating with his private insurance and not Dr. Haronian, therefore, Dr. Haronian is not the primary treating physician. The defendant did not authorize treatment with Dr. Haronian. Economics dictated Applicant treat with his private insurance.

Defendant further claims that the report in which Dr. Haronian found Applicant MMI was not labeled as a PR-4. That is because it is a telemedicine report, not a PR-4 with measurements and impairment ratings.

Defendant's objection to Dr. Haronian's reports being admitted is that Dr. Haronian is not the primary treating physician and therefore is a report obtained at the Applicant's own expense. A report obtained at the employee's own expense cannot be the sole basis of an award of compensation. Since Dr. Haronian is the primary treating physician, this objection to admission of the reports is overruled.

RECOMMENDATION:

The undersigned WCJ respectfully recommends that Defendant's Petition for Reconsideration filed April 14, 2025 be denied.

Dated: April 22, 2025

M. Victor Bushin
Workers' Compensation Judge

Filed and served by mail on above date on all affected parties
on the official address record