

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

GONZALO GONZALEZ, *Applicant*

vs.

**RED LOBSTER MANAGEMENT LLC;
ZURICH NORTH AMERICA, *Defendants***

**Adjudication Numbers: ADJ11202213; ADJ11202304
San Bernardino District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to further study the factual and legal issues. This is our Opinion and Decision after Reconsideration.¹

Applicant seeks reconsideration of the May 19, 2021 Joint Findings and Orders wherein the workers' compensation administrative law judge (WCJ) found applicant, while employed as a prep cook by defendant, did not sustain injury arising out of and in the course of employment (AOE/COE) to the circulatory system (stroke) on March 14, 2017, nor did applicant sustain injury AOE/COE to the bilateral upper extremities during the period January 1, 1991 to March 14, 2017. The WCJ ordered that applicant take nothing in both cases.

Applicant contends that the opinion of Agreed Medical Evaluator (AME) Arthur Lipper, M.D., is not substantial medical evidence as his opinion lacks sufficient review of applicant's medical history, and that the WCJ erred in refusing to permit discovery to remain open so that applicant could cross-examine the doctor as to this and other issues.

We have received an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny the Petition for Reconsideration. We have considered the Petition, Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will

¹ Commissioner Lowe was on the panel that issued the order granting reconsideration. Commissioner Lowe no longer serves on the Appeals Board. A new panel member has been appointed in her place.

rescind the Joint Findings and Order and return the matter to the trial level for development of the record.

FACTS

Case Numbers ADJ11202213 and ADJ11202304 were consolidated at trial. (Minutes of Hearing and Summary of Evidence (MOH/SOE) dated February 10, 2021, page 2, lines 13-15.) Applications in both cases were filed on February 15, 2018. The application in Case Number ADJ11202213 alleged that applicant sustained a specific injury of March 14, 2017 to the circulatory system in the form of a stroke arising out of and in the course of employment as a prep cook by Red Lobster Management LLC, insured by Zurich Los Angeles (the Uniform Assigned Name for Zurich North America). The application in Case Number ADJ11202304 alleged a cumulative trauma to the bilateral upper extremities arising out of and in the course of the same employment.

Applicant's Petition for an Additional Panel, which was admitted into evidence as Applicant's Exhibit 1, indicates that T. Eric Yokoo, M.D. evaluated applicant as a Panel Qualified Medical Evaluator (PQME) in Physical Medicine and Rehabilitation. After Dr. Yokoo "provided opinions contrary to the current law regarding presumptions" the parties "agreed to have the applicant submit to the evaluation of an agreed medical evaluator" (AME). (*Ibid.*, page 3, lines 6-8; Applicant's Petition for an Additional Panel, dated November 30, 2020, page 1, lines 23-27.) No report of PQME Dr. Yokoo was offered into evidence, but a transcript of his deposition of April 27, 2020 was offered into evidence as Defendant's Exhibit D and later admitted into evidence over applicant's objection as explained in the Opinion on Decision. (*Ibid.*, page 3, lines 24-25; Opinion on Decision dated May 18, 2021, numbered page 4, lines 14 ff.) That deposition transcript indicates that Dr. Yokoo evaluated applicant once, on December 20, 2017. (Deposition transcript of Eric Yokoo, M.D. dated April 27, 2020, page 6, lines 21-25.)

David Wood, M.D. evaluated applicant as an orthopedic AME on December 19, 2018, and his report of the same date was admitted into evidence as Defendant's Exhibit B (MOH/SOE dated February 10, 2021, page 5, lines 18-20.) A transcript of Dr. Wood's cross-examination of August 1, 2019 was admitted into evidence as Defendant's Exhibit C. (*Ibid.*, page 5, lines 21-23.) Dr. Wood found no orthopedic cumulative trauma, despite decreased motor power, which Dr. Wood attributed to the stroke, and notwithstanding an EMG showing carpal tunnel syndrome, with Dr.

Wood asserting that 20% of EMGs are wrong (Medical report of AME David Wood, M.D. dated August 28, 2020, page 13, last paragraph, and page 14, lines 1-2.)

Arthur Lipper, M.D. evaluated applicant as an internal medicine AME on August 15, 2020 and issued a report dated August 28, 2020, which was admitted into evidence as Defendant's Exhibit A. (*Ibid.*, page 5, lines 15-17.) Dr. Lipper's report states that applicant's stroke of March 14, 2017 was "100% nonindustrial" and not attributable to stress while working, but there is no explanation or discussion of how and why applicant's work-related stress did not contribute to the occurrence of the stroke. (Medical report from AME Arthur Lipper, M.D. dated August 28, 2020, page 7, lines 1-19.)

Applicant timely objected to defendants' September 18, 2020 joint declaration of readiness to proceed on the grounds that AME Dr. Lipper had deferred to a neurologist regarding permanent disability from the stroke. (Objection to Declaration of Readiness to Proceed dated September 21, 2020, admitted as Applicant's Exhibit 3, page 1, lines 20-21.) A Mandatory Settlement Conference (MSC) was continued on October 26, 2020 because of applicant's attorney's illness, and trial was set by joint request at the continued MSC on December 7, 2020. Trial was initially scheduled for January 5, 2021, then rescheduled to February 10, 2021, when issues including injury arising out of and in the course of employment were submitted in both cases based on the medical evidence described above, as well as testimony from applicant regarding stress that he felt while preparing food under time pressure at work. (MOH/SOE dated February 10, 2021, pages 2-5 and 6-14.)

DISCUSSION

It is well established that any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Escobedo v. Marshalls* (2007) 70 Cal.Comp.Cases 604, 620 (Appeals Board en banc), citing *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) Furthermore, "a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions." (*Escobedo*, cited *supra*, 70 Cal.Comp.Cases 604, 621, citing *Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal. 2d 399, 407 [33 Cal.Comp.Cases 647] (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd.*, *supra*, 68 Cal.2d at pp. 799, 800-801 [33 Cal.Comp.Cases 358] (an opinion that fails to disclose its underlying basis and gives a bare legal

conclusion does not constitute substantial evidence); *People v. Bassett* (1968) 69 Cal.2d 122, 141, 144 (the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based).) While we presume that the parties selected the agreed medical evaluator (AME) in internal medicine, Arthur Lipper, M.D., and the AME in orthopedics, David Wood, M.D., based on their expertise and neutrality, even the opinions of an AME must constitute substantial medical evidence, and will ordinarily be followed only if there is no reason to find them unpersuasive. (See *Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

Although internal AME Dr. Lipper is correct that the occurrence of applicant's stroke at work does not necessarily mean that it arose out of and in the course of employment, he does not explain how and why applicant's reported stress while working, the existence of which Dr. Lipper does not deny, played no role in the occurrence of the stroke at work. Dr. Lipper also does not explain how applicant's history of cigarette smoking, diabetes, and "lipid abnormalities" were the sole causes of applicant's stroke. (Medical report from AME Arthur Lipper, M.D. dated August 28, 2020, admitted as Defendant's A, at page 7.)

Similarly, orthopedic AME Dr. Wood does not persuasively explain and support his conclusion that there is no industrial injury to the upper extremities. In his report, he states: "I know that the EMG showed carpal tunnel but we frequently see these when there are no clinical findings. For carpal tunnel, he needs to have numbness and tingling worse with vibratory motions, prolonged use, positive Tinel's and Phalen. He only has a history of repetitive use..." (Medical report of AME David Wood, M.D. dated December 19, 2018, admitted as Defendant's B, at page 13, last paragraph.) At his deposition, Dr. Wood admitted that the results of testing for Tinel's sign and Phalen's test were missing from his report. He offered to perform these tests again, but thought that they would make no difference because applicant's entire arm was numb. (Deposition transcript of David Wood, M.D. dated August 1, 2019, admitted as Defendant's C, at page 15, line 4 to page 17, line 22.) Dr. Wood also acknowledges that applicant has decreased motor power in the left upper extremity, which he concludes is "from the stroke" without further explanation. (Medical report of AME David Wood, M.D. dated December 19, 2018, admitted as Defendant's B, at page 13, last paragraph.) Without considering any possible conditions of the upper extremities

other than carpal tunnel syndrome, Dr. Wood concludes, “I do not see a CT claim for orthopedic upper extremity conditions.” (*Ibid.*, at pages 13-14.) However, upon cross-examination, Dr. Wood acknowledged that there was decreased range of motion of the left shoulder and decreased grip strength of the left hand, and indicated that he could measure disability of the left upper extremity if the parties jointly asked him to re-evaluate applicant. (*Ibid.*, at page 17, lines 19-21.)

The conclusions of Dr. Lipper and Dr. Wood with respect to causation of injury do not constitute substantial medical evidence without further explanation. The medical evaluators do not question applicant’s reports of stress and repetitive use of the upper extremities at work, yet they fail to persuasively explain how and why these factors played no role in applicant’s injuries to the circulatory system and upper extremities. As explained by the California Supreme Court, industrial factors need only be a contributing cause of injury, however slight. (See *South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291, 299 [80 Cal.Comp.Cases 489].)

Applicant’s request for an additional panel in neurology, which was the stated basis for applicant’s objection to defendants’ declaration of readiness to proceed, is deferred as premature, because AME Dr. Lipper deferred to a neurologist regarding permanent disability, and not regarding the threshold issue of causation.

Accordingly, the March 14, 2017 Joint Findings and Order are rescinded, and the matter is returned to the trial WCJ for development of the record. Under the Appeals Board’s en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138, development of the record should include, at a minimum, supplemental opinions from the current AMEs, Dr. Lipper and Dr. Wood, followed by cross-examination if requested by any party, with the goal of obtaining substantial medical evidence on the disputed issue of causation with respect to each alleged injury.

For the foregoing reasons,

IT IS ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that the May 19, 2021 Joint Findings and Orders are **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 9, 2025

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

**GONZALO GONZALEZ
ROSE KLEIN & MARIAS
THE WENDEROFF LAW GROUP**

CWF/cs

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