WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

KEITH WILLIAMS, ***Applicant***

vs.

COUNTY OF SAN LUIS OBISPO;
INTERCARE ROSEVILLE,
Defendants

Adjudication Numbers: ADJ15770229; ADJ18313380
San Luis Obispo 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 and Recommendation (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, we will deny reconsideration.

Additionally, we note that the report of the primary treating physician, Jeffrey S. Friedman, Ph.D., properly assesses that "[t]here is no apportionment to non-industrial factors. 100% of Mr. William's psychiatric diagnoses are as a result of his 07/10/2019 assault at knifepoint" and remains unrebutted. (Joint Exhibit BB at p.9.) Specifically, the report of the Panel Qualified Medical Evaluator, Dr. Laura Beltran, Psy.D., cited to by Defendant contains no properly supported apportionment opinion. Furthermore, to the extent that any inconsistencies exist in the reporting, 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, 378-379 [35 Cal.Comp.Cases 525].)

Former Labor Code section 5909 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. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code 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.

Under Labor Code 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."

According to Events, the case was transmitted to the Appeals Board on January 13, 2025, and 60 days from the date of transmission is March 14, 2025. This decision is issued by or on March 14, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on January 13, 2025, and the case was transmitted to the Appeals Board on January 13, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on January 13, 2025.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

PAUL KELLY, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 14, 2025

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

KEITH WILLIAMS
HANNA BROPHY
HERRERAS FORSHER

LN/md

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
ON PETITION FOR RECONSIDERATION

1. Applicant's occupation: Social Worker Aide III

   Age at Date of Injury: 41-years-old for ADJ15770229; and
   42-years-old for ADJ18313380.
   Part(s) of Body Injured: ADJ15770229 = accepted specific injury to the 842-nervous system psychiatric/psych; ADJ18313380 = denied CT injury to the 842-nervous system psychiatric/psych.
   Manner of Injury: ADJ15770229 = applicant was threatened at knifepoint while monitoring a supervised visitation, and the perpetrator threatened to have his family killed and kidnapped the child. ADJ18313380 = continuous trauma vaguely described by the PQME. (Joint Exhibit MM at p. 23.)

2. Identity of Petitioner: Defendants by and through their attorney.
   Timeliness: The petition is timely after adjusting for additional time pursuant to Title 8, Cal. Code of Regs. section 10605.
   Other Defects: None for the petition, but the Findings Of Fact, Award, and Opinion on Decision contains non-material clerical errors by Court staff.
   Merits of Petition: The Judge recommends the Petition For Reconsideration be completely denied.
   Verification: The Petition is verified.

3. Decision and Issuance Date: Findings and Award of 12/4/2024. Part of Decision Challenged: The Award of 36% PD without apportionment in ADJ15770229 pursuant to the PTP's reporting.
4. Petitioner's Contentions: I. The Board acted in excess of its powers;
   II. The reporting of PTP Dr. Freidman does not constitute substantial evidence because it does not comply with the requirements of med-legal reporting.
   III. The reporting of PQME Dr. Beltran constitutes substantial evidence, and the applicant's PD is 9% after apportionment.

SYNOPSIS

The defendants claim they are significantly prejudiced and irreparably harmed by the Judge's determination that the applicant's Permanent Disability was solely apportionable to being violently threatened at knifepoint by a dangerous criminal during a supervised child custody visitation that culminated with said criminal kidnapping the child under the applicant's supervision and threatening to have the applicant's family murdered.

Instead, the defendants contend the Judge should have followed the QME's reporting that almost equally apportioned the applicant's Permanent Disability between the previously described knifepoint assault/kidnapping and other non- industrial sources

such as intermittent harassment by the applicant's brother and another individual since 2017, the deaths of two family friends in 2023, and the applicant's wife's medical condition.

The Judge contends that it was appropriate to find the applicant's Permanent Disability was solely apportionable to the knifepoint assault/kidnapping based upon the reporting of the Primary Treating Physician, the applicant's trial testimony, and the range of evidence.

II. FACTS

The defendants are seeking to remove the Findings Of Fact, Award, and Opinion on Decision issued in ADJ15770229 and ADJ18313380 on 12/4/2024.

That finding was issued following a Trial held on 10/15/2024, wherein the applicant was the sole witness and testified that on 7/10/2019, he was performing his job duties of monitoring and reporting on a supervised child custody visitation between a mother and their child. (Summary of Evidence at p.6, lns. 9-18.) He escorted the parent to a playground when the parent threatened the applicant with a knife and demanded the applicant hand over his cell phone. (Id.) The applicant refused, and the parent again demanded the applicant's phone and said if he did not hand it over, then she would have the child's father kill the applicant's family. (Id.) The parent then took off in a vehicle with the child. (Id.)

Since the incident, the applicant's activities of daily living changed in that he stopped coaching sports or having a social life, and he rarely leaves the house because he is afraid of encountering the people who attempted to rob him at knifepoint and threatened to kill his family. (Id. at p. 6, lns. 21-25.) The applicant also avoids going to parks or events that have lots of people. (Id.)

The applicant also testified regarding his present employment as an administrative assistant for the past two-years, but he emphasized the new job does not require him to work in a child welfare setting or do anything related to social work. (Id. at p. 7, lns. 13-17; and p. 8, lns. 9-12.)

The applicant did not testify regarding any non-industrial sources of psychological injury other than to comment that his treatment with his primary treating physician, Dr. Friedman, has somewhat helped with his relationship with his wife. (Id. at p.7, lns. 23-25.) The applicant's wife also campaigned for an elected position to the school board, but the applicant did not make any public appearances. (Id. at p.8 2-7.) His wife's campaigning affected his PTSD because he feared retaliation by the people who assaulted him. (Id.)

III. DISCUSSION

A. The medical records by both the PQME and the PTP are both problematic, but the evidence as a whole supports the PTP's conclusions and not the PQME's.

A Trial Court is often forced to deal with imperfect evidence, and we have the duty of deciding which doctor's findings were superior despite their shortcomings. After careful consideration, PTP Dr. Friedman's conclusions are clearly supported by a preponderance of the evidence, but PQME Dr. Beltran's conclusions are not.
Generally, PQME Dr. Laura Beltran's reporting was well-organized and detailed, but her final report made leaps that were insufficiently explained. The petitioner also made no attempt to cure these defects at Trial.

By contrast, PTP Dr. Jeffery Friedman's reports were somewhat disorganized and read like they were dictated with little editing, but his conclusions were internally consistent and conformed with the evidence.

a. The Petitioner's concerns about PTP Friedman's reporting are not compelling because the applicant's Trial testimony and the rest of the evidence support the doctor's conclusions.

The petitioner's primary arguments against the Court's finding that PTP Friedman's reports constitute substantial evidence are:

1. They do not believe he adequately considered the applicant's non-industrial stressors, (Petition For Reconsideration at p. 3, lns. 13-27);
2. They believe the doctor materially changed his findings by concluding the applicant's GAF score increased by 1 point from 58 to 59 from his original 4/14/2022 PR-4 to the last report of 7/17/2024, (Id. at p. 5, lns. 6-27); and
3. The doctor initially indicated he agreed with the PQME's non- final comments on causation and apportionment. (Id. at p.6, lns. 6-18.)

However, all the petitioner's contentions focus on the PTP's reporting in isolation and not as part of the larger record of evidence.

At Trial, the applicant presented compelling testimony about the events surrounding his accepted specific injury to his psyche: on 7/10/2019, his job was to closely supervise a parent-child visitation when the parent tried robbing him of his phone at knifepoint, threatened to have the applicant's family killed, and then kidnapped the child the applicant was responsible for supervising. (Summary of Evidence at p.6, lns. 12-18.) The Judge recalls the applicant being visibly shaken and disturbed during this testimony, and there was absolutely no evidence or argument presented to attack the applicant's credibility or version of events.

The applicant also testified about how the incident impacted his life and he stated that his social life largely ceased. (Id. at p.6, lns. 21-25.) He avoids attending heavily populated events and does not leave the house because he is afraid of encountering the people who assaulted him. (Ibid.) He also is usually hyper-vigilant about his surroundings and does not sleep well. (Id. at p.7, lns. 1- 9.) The applicant's testimony did not link these changes to any non-industrial sources.

The petitioner did not question the applicant about any of the non- industrial stressors that they now claim are the most important part of this case. The petitioners also presented no evidence that the applicant is faking or exaggerating his problems.

As discussed in our decision following the Trial, Dr. Friedman issued a PR-4 on 4/14/2022, concluding that the applicant had a GAF score of 59 and that the applicant's injury to his psyche was 100% caused by the 7/10/2019 specific injury. No apportionment to non-industrial factors was provided. (Joint Exhibit BB at p.9.) The report noted that the 7/10/2019 incident was "burned into [the applicant's] memory", and that he is not able to work around children and continued to blame himself for what happened. (Id. at p.6.) The impact of the 7/10/2019 incident is also noted in Dr. Friedman's other reports. (Joint Exhibit CC at pps. 2-3; Joint Exhibit DD at. p. 3; Joint Exhibit EE at p.3; Joint Exhibit FF at p. 2; Joint Exhibit GG at p. 2-3; Joint Exhibit HH at pps. 2-3; Joint Exhibit II at pps. 2-3; and Joint Exhibit JJ at pps. 2-4.)

We do not know why the petitioner failed to question the applicant about the non-industrial stressors depicted by PQME Dr. Beltran and it would be improper to speculate what that testimony would have been. However, the result is that the Trial testimony was unrebutted and mostly corroborates the nine PTP reports authored by Dr. Jeffrey Friedman that ultimately concluded all the applicant's psychological permanent disability was due to the 7/10/2019 incident. (Joint Exhibits AA through JJ.)

Once again: we emphasize that the issue at Trial was not which doctor wrote a more organized report or produced more pages of material. The issue was whether either of the doctors' reporting constituted substantial medical evidence more compelling than the other. And after considering the evidence in its entirety including the applicant's Trial testimony, the Court determined the PTP's findings was substantial and more persuasive.

b. PQME Dr. Beltran's conclusions are inconsistent, unsupported by the evidence, and inadequately explained.

Even though PQME Dr. Beltran's reporting was more voluminous, (the PQME's 3 reports were 122 pages long vs. the 49 pages of PTP exhibits), the Court was troubled by Dr. Beltran's inadequately explained conclusion that the applicant's permanent disability should be apportioned 55% to the 7/10/2019 specific injury and 45% to four non-industrial sources that the applicant told the PQME did not distress him. (Joint Exhibit MM at pps. 20-22) This conclusion contradicts the testimony presented at Trial

and the PTP reports submitted as Trial exhibits dating back to 4/14/2022. (Note: Joint Exhibit AA is dated as far back as 6/24/21, but it is merely an e-mail about scheduling psychological testing. Joint Exhibit BB is dated 4/14/2022, but the PQME notes there are PTP reports by Dr. Friedman dating as far back as 9/17/19. Joint Exhibit KK at p. 27.)

As noted in our decision after Trial, PQME Dr. Beltran found the applicant was mostly credible, consistent, and forthcoming, but the PQME then completely disregards the applicant's statements that the problems with his brother, "the individual", the recent losses, and the applicant's wife's medical condition did not cause emotional distress. (Joint Exhibit KK at pps. 20-21; Joint Exhibit LL at p.19; and Joint Exhibit MM at p.20.) Little to no explanation is provided for this decision other than to note the applicant may have an "all or nothing" mentality when it came to symptom endorsement, but Dr. Beltran noted "there is supporting medical records of psychological injury ruling out [the malingering of emotional symptoms]. I find his symptoms are more consistent with a Post- traumatic Stress Disorder, chronic." (Joint Exhibit MM at p. 18.)
We also note the applicant's trial testimony and the PTP reports describe several ways the applicant's psychological injury significantly changed his lifestyle including avoiding heavily populated events, having no social life, not coaching sports, and even changing his job to an administrative assistant that does not involve any social work. (Summary of Evidence at p.7, lns.13-26.) There is nothing in the record linking these lifestyle changes to any of the non- industrial stressors identified by PQME Dr. Beltran. In fact, there was no substantial evidence that any of these non-industrial sources had any serious on-going impact on the applicant's lifestyle at all.

Finally, PQME Beltran also provided a Benson analysis that greatly differs from the apportionment discussion by providing 90% "apportionment" to the 7/10/2019 injury and 10% to a Cumulative Trauma injury that is not meaningfully discussed anywhere. (Joint Exhibit MM at p.23.) It is not clear why the Benson analysis is so different from the PQME's prior 55% industrial/45% non-industrial conclusion. It also is not clear where the CT came from.

Interestingly, the petitioner does not discuss the PQME's sudden invention of a Cumulative Trauma injury. Instead of admitting this is a substantial change of the PQME's prior reporting and trying to rehabilitate the PQME, the petitioner instead argues that the PTP's change in GAF score from 58 to 59 with no apportionment is a larger change than a new CT injury.

We disagree and acknowledge both doctors' reporting are problematic, but at least the conclusions drawn by PTP Dr. Friedman fit the testimony presented at Trial and the rest of the evidence without inventing new unexplained injuries.

IV. RECOMMENDATION

For the reasons stated above, it is respectfully requested that defendant's Petition for Reconsideration be denied in its entirety.

Date: January 13, 2025

Bryce Y. Hatakeyama
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE