WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LAJOS PAPP, *Applicant*

vs.

CISCO SYSTEMS, INC.;
AMERICAN ZURICH INSURANCE COMPANY, Adjusted by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants*

Adjudication Number: ADJ14772071
Sacramento District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and the Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated below, we will grant reconsideration to admit applicant's Exhibit 2 into evidence. We will otherwise affirm the WCJ's decision for the reasons stated in the WCJ's Report and the Opinion on Decision, both of which we adopt and incorporate, as quoted in the attachment to this decision.

I.

Preliminarily, we note that former Labor Code[1] 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, 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.

[1] All further statutory references are to the Labor Code, unless otherwise noted.

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

Here, 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 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 January 13, 2025.

II.

The Supreme Court in *Valdez v. Workers' Comp. Appeals Bd*. (2013) 57 Cal.4th 1231, 1239 [78 Cal. Comp. Cases 1209] held that sections 4060, 4064(d) and 5703 suggest an expansive

rather than limiting approach by the Legislature regarding the admissibility of medical evidence. Accordingly, the reports of primary treating physicians are generally admissible. Accordingly, we will grant reconsideration to admit applicant's Exhibit 2.

Nevertheless, 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].) In this case, we agree with the WCJ's reliance on the substantial medical opinion of panel qualified medical evaluator (PQME) Nicole Chitnis, M.D., on the issue of causation.

In addition, we have given the WCJ's credibility determination) great weight because the WCJ had the opportunity to observe the demeanor of the witness. *(Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id*.)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the December 12, 2024 Findings of Fact and Orders is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 12, 2024 Findings of Fact and Orders is **AFFIRMED, EXCEPT** that it is **AMENDED** below:

FINDINGS OF FACT

* * *

4. Applicant's Exhibit 2 is admitted.

* * *

ORDERS

* * *

c. Applicant's Exhibit 2 is admitted.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSE H. RAZO, COMMISSIONER

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.

LAJOS PAPP
NYMAN TURKISH
LAUGHLIN, FALBO, LEVY & MORESI

PAG/bp

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 AND NOTICE OF TRANSMISSION TO THE APPEALS BOARD

INTRODUCTION

Issue:	Disagreement with Findings of Fact
Date of Findings and Award:	December 12, 2024
Petitioner:	Applicant
Timeliness of Petition:	Timely
Verification of Petition:	Verified

PETITIONER'S CONTENTION(S)

Applicant contends the findings of fact do not support the order, decision or award and the WCJ acted without or in excess of her powers. Specifically, applicant contends the reporting of panel Qualified Medical Evaluator, Nicole Chitnis, MD, is not substantial medical evidence and applicant's proposed Exhibit 2 was erroneously excluded from evidence.

[CREDIBILITY] OF APPLICANT

In a bench trial, the trial court is the "sole judge" of witness credibility. (*Davis v. Kahn* (1970) 7 Cal.App.3d 868, 874.) The trial judge may believe or disbelieve uncontradicted witnesses if there is any rational ground for doing so. (*Id*.) The fact finder's determination of the veracity of a witness is final. (*People v. Bobeda* (1956) 143 Cal.App.2d 496, 500.) Credibility determinations thus are subject to extremely deferential review. (*La Jolla Casa deManana v. Hopkins* (1950) 98 Cal.App.2d 339, 345–346 ["[A] trial judge has an inherent right to disregard the testimony of any witness…The trial judge is the arbiter of the credibility of the witnesses"].) (*Schmidt v. Superior Court* (2020) 44 Cal.App.5th 570, 582 [emphasis added].) Furthermore, in workers' compensation proceedings, a WCJ's credibility determinations are "entitled to great weight because of the [WCJ's] 'opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand ….' [Citation.]" (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

The applicant's testimony that Dr. Chitnis did not spend at least 30 minutes with him at in-person evaluations was not credible and therefore insufficient to rebut the declaration contained in Dr. Chitnis' reports. The subjective determination was based, in part, on the observations of applicant's demeanor, behavior, and the overall impression made during testimony. This included the applicant's tone of voice and hesitation in answering questions which might suggest evasiveness or lack of confidence in his statements.

Additionally, applicant's goal of excluding Dr. Chitnis' reporting and admitting his self-procured proposed Exhibit 2 clearly supports a bias to obtain a specific result. Applicant appeared overly defensive with some questions while excessively eager to please on the questions that supported his position. The lack of credibility assessment as it relates to the Dr. Chitnis' examinations was drawn from the totality of the witness' presentation by the trier-of-fact. This clearly requires the trier-of-fact to rely upon her intuition, experience and judgment in evaluating credibility

beyond the hard facts of the case. These factors are beyond the authority of the appeals board to overturn absent substantial independent evidence to the contrary. This portion of applicant's testimony was not credible.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

In 2003, applicant underwent a lumbar discectomy, thereafter his back condition resolved based on applicant's lifestyle and lack of ongoing medical treatment. (Exhibit D at p. 29.) Then, applicant suffered a specific, non-industrial back injury on October 17, 2015, when he lifted his 14 years-old niece and felt a "pop" in his back. (*Id*. at p. 27.) Applicant sought medical care for this incident on October 20, 2015. (*Id*. at p. 7.) Within a few months, applicant was dissatisfied with his regular treaters, transferred his care to Stanford and underwent a spine surgery a few days later on December 24, 2015. (MOH/SOE at p. 5:15-18.) Applicant did not have a good surgical result, his condition deteriorated, and multiple spine surgeries have followed. (*Id*. at p. 5:20-28.)

Dr. Chitnis evaluated applicant on July 7, 2022. (Exhibit A.) Applicant was not happy with the reporting and on October 16, 2023, he self-procured an industrial medical treatment report from his primary care physician. (Exhibit 3.) Dr. Chitnis reevaluated applicant on January 14, 2024. (Exhibit C.) Applicant was not happy with the reporting and on April 1, 2024, self- procured a Primary Treating Physician's Initial and PR-4 Permanent and Stationary Comprehensive Medical-Legal Evaluation and Report from Michael Clark, DC.

DISCUSSION

Reporting of PQME, Nicole Chitnis, MD

Applicant contends that the reporting of Dr. Chitnis is not substantial medical evidence. In order to be substantial medical evidence, ". . . medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions."

(*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Dr. Chitnis performed thorough and complete evaluations of applicant. Correctly, Dr. Chitnis insisted that applicant's voluminous medical treatment records be provided to her for review and commentary. Dr. Chitnis causation opinion was provided to a reasonable degree of medical probability. Dr. Chitnis' reporting is substantial medical evidence. Based on the substantial medical evidence of Dr. Chitnis, applicant did not sustain any industrial injury arising out of and in the course of employment.

* * *

NOTICE OF TRANSMISSION:

Pursuant to Labor Code section 5909, the parties and the appeals board are hereby notified that this matter has been transmitted to the appeals board on date set out below.

ON: January 13, 2025

Sarah Lopez
WORKERS'COMPENSATION JUDGE

OPINION ON DECISION

This matter came on for trial on November 5, 2024, and was submitted before Sarah Lopez, Workers' Compensation Judge. Applicant testified on his own behalf. Documentary evidence was received.

Nicole Chitnis, MD, served as PQME. Dr. Chitnis evaluated applicant in person twice, reports dated July 7, 2022, and January 14, 2024. (Exhibit A; Exhibit C.) Dr. Chitnis issued two supplemental reports on July 3, 2023, and July 8, 2024. (Exhibit B; Exhibit D.) Dr. Chitnis was deposed on November 15, 2023. (Exhibit E.)

* * *[1] [2]

ADMISSIBILITY OF DEFENDANT'S EXHIBITS A AND C

Applicant objected to the admissibility of defendant's proposed Exhibits A and C. Title 8 CCR §49.9 states:

> A medical evaluation concerning a claim for any injury (whether specific or cumulative in nature) not specifically included in this article shall not be completed by a QME in fewer than 30 minutes of face to face time. Thirty minutes is the minimum allowable face to face time for an uncomplicated evaluation. The evaluator shall state in the evaluation report the amount of face to face time actually spent with the injured worker and explain in detail any variance below the minimum amount of face to face time stated in this regulation.

Dr. Chitnis evaluated applicant in person on July 7, 2022, and under the penalty of perjury stated she spent 45 minutes of face-to-face time with applicant. (Exhibit A at pp. 2;21.) Dr. Chitnis evaluated applicant in person on July 14, 2024, and under the penalty of perjury stated she spent 30 minutes of face-to-face time with applicant. (Exhibit C at pp. 2;42.)

Applicant testified that Dr. Chitnis spent less than 30 minutes with him at both in-person evaluations. (MOH/SOE at p. 6:4-8.) Applicant's testimony was not credible and was, at best, self-serving. Applicant presented no credible evidence to rebut Dr. Chitnis' sworn statements about face-to-face time spent with him.

[1] ***

[2] ***

INJURY AOE/COE:

The burden of proof is a fundamental aspect of workers' compensation litigation.[3] The applicant has the burden of proving, by a preponderance of the evidence[4], all parts of the claim including injury and industrial causation. The liberal construction required by Labor Code §3202 does not relieve a party from meeting its evidentiary burden of proof.

On July 8, 2024, Dr. Chitnis issued a final report after reviewing well over 8,620 pages of records. (Exhibit D.) Dr. Chitnis reported that applicant underwent a lumbar discectomy in 2003, thereafter his back condition resolved based on applicant's lifestyle and lack of ongoing medical treatment. (*Id*. at p. 27.)

Then, applicant suffered a specific, non-industrial back injury on October 17, 2015, when he lifted his niece and felt a "pop" in his back.[5] (*Id*. at pp. 7;27.) Applicant stopped working in October 2015. (*Id*. at p. 29.) On December 24, 2015, applicant underwent lumbar spine redo surgeries. (*Id*. at p. 28.)

Post-operatively, applicant returned to work briefly, part-time from March 2016 – May 2016, when he went off work for another surgery. (*Id*. at p. 29.) Then, applicant returned to part-time work in April 2017, eventually worked full-time, but stopped working completely in April 2018 when he was laid-off. (*Id*.) Of note, after 2015, applicant was working a hybrid schedule, part-time at home, part-time in the office. (*Id*. at p. 24.) Applicant's last two years of work, 2016 – 2018, were completely remote/at home. (*Id*.)

Based on the foregoing information, Dr. Chitnis determined that the is no medical evidence of industrial injury. (*Id*. at p. 34.)

To be substantial medical evidence, ". . . medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Dr. Chitnis performed thorough and complete evaluations of applicant. Correctly, Dr. Chitnis insisted that applicant's voluminous medical treatment records be provided to her for review and commentary. Dr. Chitnis causation opinion was provided to a reasonable degree of medical probability. (Exhibit A at p. 2.)

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[3] Labor Code §5705.

[4] Labor Code §3202.5.

[5] The weight of applicant's niece is unknown, but she was 14 years old at the time.

To rebut Dr. Chitnis, applicant relies on the reporting of his non-industrial treaters. On October 16, 2023, applicant had a virtual appointment with Kathleen Tam McManus, PA. (Exhibit 3.) PA Tam McManus reported "prolonged sitting (at one point, 60 hours a week, sometimes 12 hours/day) contributed to low back pain and disability and eventual need for surgery." (*Id*. at p. 1.) The same day, applicant called the treater's office, thanked PA Tam McManus for her report, and requested that the word "WORK" be added be added to the hours statement. (*Id*. at p. 2.) On October 17, 2023, a formal note issued from PA Tam McManus and Serena S. Hu, MD, with the word "work" added as requested by applicant[6]. (Exhibit 4.) Exhibits 3 and 4, as obtained by applicant, are at best self-serving; they are not substantial medical evidence. Hence, lastly, there is no credible evidence, medical or otherwise, to rebut the conclusions of Dr. Chitnis.

DATE: December 12, 2024

Sarah Lopez
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

[6] Dr. Chitnis reviewed this note. (Exhibit C at p. 42.)