

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

MARISA KELLY, *Applicant*

vs.

**SACRAMENTO COUNTY CHILD PROTECTIVE SERVICES, PSI,
administered by COUNTY OF SACRAMENTO, *Defendants***

**Adjudication Number: ADJ16528931
Sacramento District Office**

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact, Awards and Orders (F&O) issued on February 5, 2025, wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her psyche.

The WCJ issued an award ordering defendant to provide applicant workers' compensation benefits for her injury.

Defendant contends that the record lacks substantial medical evidence to support the finding that applicant sustained injury to her psyche.

We did not receive an Answer.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that the Petition be denied.

We have reviewed the contents of the Petition and the Report. Based upon our review of the record, and for the reasons discussed below, we will deny the Petition.

FACTUAL BACKGROUND

This matter was initially set for trial on February 15, 2024, at which time both applicant and her supervisor testified and the medical reporting, including the reports of the Panel Qualified Medical Examiner (PQME) Trevor Macklin, PSy.D., were admitted.

On April 2, 2024, the trial issued a Findings and Order, in which it was found that 1) applicant's claimed industrial injury to her nervous system, stress, and psyche arising out of and in the course of employment involved actual events of employment, 2) the actual events of

employment are not good faith personnel actions and good faith personnel actions were not a substantial cause of at least 35% to 40% of the claimed injury, 3) defendant failed to prove the affirmative defense of the good faith personnel action, and 4) the record requires development to determine whether the medical evidence establishes predominant cause of industrial causation. The WCJ ordered the parties to request a supplemental report from the PQME regarding causation, specifically whether there is an aggravation of pre-existing conditions and thus a compensable psychiatric injury due to work-related factors/an industrial injury to the psyche, or alternatively, only a temporary exacerbation and thus no compensable psychiatric injury/no industrial injury to the psyche. (F&O, 4/2/24.)

Thereafter, the parties procured a supplemental reporting from the PQME, and on January 30, 2025, the matter returned to trial on the following issue.

1. Injury arising out of and in the course of employment.

The lien of EDD and all other issues are being deferred.

(Minutes of Hearing and Summary of Evidence, January 30, 2025, pp. 2:36-38.)

The WCJ admitted the PQME supplemental report in psychology from Trevor B. Mackin, Psy.D, QME, dated August 30, 2024, into evidence as Court Exhibit 1. (*Id.*, p. 3:8-9.)

The PQME report of Dr. Mackin states:

On July 1, 2024 my office received a letter from Mr. Cyrus Chen, Attorney at Law, of Chen Nowzari, LLP, dated 04/03/2024 . . . Mr. Chen's letter reads in part:

... This matter proceeded to trial on February 15, 2024. Judge Aldrich ordered the parties to request a supplemental report regarding causation, addressing and answering the following question: Is there an aggravation of pre-existing conditions or, alternatively, is there a temporary exacerbation of pre-existing conditions ...

...

In this report I offer the following opinion as to causation and apportionment of Ms. Kelly's psychiatric/psychological injury:

Causation:

...

The opinions offered below are done so with a reasonable degree of medical probability.

...

As part of present evaluation of (inclusive of the supplemental report and Initial PQME) Ms. Kelly I reviewed the voluminous medical records forwarded to me, administered psychological testing and conducted a clinical interview on

11/16/2022. As a result, I have developed the opinion Ms. Kelly suffers from three DSM-5-TR diagnosable mental disorders: posttraumatic stress disorder (PTSD); bipolar II disorder, current episode depressed, with anxious distress; and gambling disorder, episodic.

While I don't have documentation to substantiate the precise onset of any of Ms. Kelly's mental disorders, the medical records and my clinical interview with her on 11/16/2022 indicate Ms. Kelly's PTSD and bipolar II disorder pre-exist her employment with Sacramento County Child Protective Services by many years. For example, one of the earliest records I reviewed-if not the earliest-indicates Ms. Kelly presented with a history of "bipolar disease" (Peck, 10/02/2012) and in my interview with her she indicated a history of PTSD stemming from numerous childhood/adolescent/early adulthood traumas. I am also of the opinion, that while the *development* of these underlying disorders precede the present Workers' Compensation Claim by many years, Ms. Kelly's *current presentation* represents an exacerbation of the already well-developed psychiatric injury. That is to say, Ms. Kelly's most recent expression of depression, anxiety and trauma-related responses represent a temporary worsening of a pre-existing mental disorder which is expected to return to baseline. In my opinion, this exacerbation of her already well-developed mental disorders, was caused ***predominately*** (over 50%) by work related causative factors. This exacerbation resulted from a series of work-related incidents which occurred while Ms. Kelly was employed with Sacramento County Child Protective Services in conjunction with non-industrial causes, which contributed but did not predominate.

...

Causation of the Psychological Injury

Ms. Kelly satisfies DSM-5 criteria for PTSD, bipolar II disorder and a gambling disorder-the first two of which predate the events which precipitated her current Workers' Compensation Claim. As such, I have carefully considered the presence of the underlying disorder in connection with other potential causative factors both work-related and non-work related.

...

Ms. Kelly's most recent expression of mental illness-an exacerbation of her underlying disorders-was caused predominantly (over 50%) by workplace incidents. Ms. Kelly consistently related to myself and various treatment providers, her experience of workplace stress and trauma. (Gold, 03/22/2019; Lipman, 07/05/2019; Tubis, 06/19/2019; Miscellaneous, 08/18/2020; Caragan, 08/21/2020; McKee, 08/21/2020, 07/01/2022 and 08/25/2022; Holman, 08/27/2020; Peters, 09/04/2020; Lehman, 09/24/2020, 11/06/2020, 01/15/2021, 03/26/2021, 10/22/2021, 06/03/2022 and 08/26/2022; Jenkins, 07/13/2021 and 12/14/2021; Marques, 03/09/2022; Grande, 05/19/2022 and 07/22/2022; Bito, 08/17/2022; Espinoza, 09/09/2022 and 09/15/2022)

She generally described her workplace stressors as related to workload, the content of work (e.g., stressful, dangerous and/or upsetting cases) and--to a lesser extent--

not feeling supported by her immediate supervisor. However, the medical records are quite clear that around May of 2022, Ms. Kelly began to suffer from a more acute episode of trauma/stressor-related symptomatology which in turn impacted her experience of anxiety and depression. (Grande 05/19/2022) This more acute episode is well documented and supported by Ms. Kelly's consistent self-report to me on 11/16/2022. She was suffering from nightmares, anxiety and depression related to traumatic exposures at work which necessitated additional medication management (Grande, 05/19/2022 and 07/22/2022; Lehman, 06/03/2022 and 08/26/2022; Bito, 08/17/2022; McKee, 08/25/2022; and Espinoza 09/09/2022 and 09/15/2022).

In my discussion with her on 11/16/2022, Ms. Kelly related to me the following significant traumatic exposures at work: witnessing the aftermath of a suicide; witnessing "a dad holding a baby at knifepoint and starting a fire while holding the baby at knifepoint" and following up on the case at the Intensive Care Unit (ICU); having a psychotic parent inform her that he had murdered his girlfriend (though he hadn't in fact committed that act). That same parent later showed up at Ms. Kelly's work to give her flowers "and telling me god told him he's in love with me;" working a case where a man "kidnapped his wife and took her across state lines and cut her hair off-threatened to kill her." This man later attempted suicide while he was in jail; Ms. Kelly reported, "Chasing kids in the community. Kids fighting with me. Parents with significant mental health issues so I had to deal with all that without a lot of support in the community. She recalled "chasing" one "kid in the community who was dealing drugs and sexually exploiting other kids-he'd disappear a lot and I'd have to find him." A number of these incidents were consistent with the medical records I reviewed. (McKee, 07/01/2022)

...

In my opinion, 65% Ms. Kelly's most recent exacerbation of her underlying mental disorders was related to the following work-related causative factors inclusive of the following percentages:

50% Traumatic exposures in the workplace inclusive of and in equal proportion to the following incidents:

- *Witnessing the aftermath of a suicide*
- *Witnessing "a dad holding a baby at knifepoint and starting a fire while holding the baby at knifepoint" and following up on the case at the Intensive Care Unit (ICU)*
- *Having a psychotic parent inform her that he had murdered his girlfriend (though he hadn't in fact committed that act). That same parent later showed up at Ms. Kelly's work to give her flowers "and telling me god told him he's in love with me;" working a case where a man "kidnapped his wife and took her across state lines and cut her hair off--threatened to kill her. " This man later attempted suicide while he was in jail*
- *Ms. Kelly reported, "Chasing kids in the community. Kids fighting with me. Parents with significant mental health issues so I had to deal with all that without*

a lot of support in the community. She recalled "chasing" one "kid in the community who was dealing drugs and sexually exploiting other kids-he'd disappear a lot and I'd have to find him."

5% Feeling unsupported by her supervisor

5% Unmanageable caseload/workload

5% Believing she was discriminated against due to being Caucasian

Because Ms. Kelly has a significant history of apparently non-industrial medical and mental health illness (e.g., hypothyroidism, chronic pain, migraine, heart disease, bipolar disorder, PTSD, gambling disorder etc.), I carefully considered the extent to which her current presentation and most recent exacerbation of her underlying mental disorders might be related to these causative factors. In my opinion, while these causes do contribute to the most recent exacerbation of her underlying mental disorders, they do not predominate.

...

In my opinion, 35% Ms. Kelly's most recent exacerbation of her underlying mental disorders was related to the following non-work-related causative factors inclusive of the following percentages:

20% Heart attack and subsequent angiogram and stent placement

15% Compulsive gambling related to her gambling disorder

...

As to Ms. Kelly's disability status, I report the following:

Global Assessment of Functioning (GAF) Score

The Labor Code of the State of California section 4660(b)(1) requires use of " ... the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition)," in establishing impairment. The AMA Guides established, " ... Psychiatric impairment shall be evaluated by the physician using the Global Assessment of Function (GAF) ... " which then gets converted into a whole person impairment (WPI) rating using a supplied conversion table.

I have followed the AMA Guides rubric for assessment, evaluated Ms. Kelly's impairment and arrived at a **GAF score of 66**.

Permanent Disability

There is no permanent disability on a psychiatric/psychological basis as Ms. Kelly is not yet considered to have achieved maximum medical improvement.

Temporary Disability

There is a period of temporary total disability on a psychiatric/psychological basis. Ms. Kelly should be considered temporarily totally disabled on a psychiatric/psychological basis from 05/19/2022 through 09/15/2022.

There is a period of temporary partial disability on a psychiatric/psychological basis. Ms. Kelly should be considered temporarily partially disabled on a psychiatric/psychological basis from 03/09/2022 through 05/19/2022.

There is an additional period of temporary partial disability on a psychiatric/psychological basis. Ms. Kelly should be considered temporarily partially disabled on a psychiatric/psychological basis from 09/15/2022 through the present time and continuing.

(Court Ex. 1, PQME supplemental report of Trevor B. Mackin, Psy.D, QME, August 30, 2024, pp. 3-11.)

In the Report, the WCJ states:

Marisa Kelly (Applicant), was forty-five (45) years old on May 9, 2022, the last day of the alleged cumulative trauma, and employed as a social worker, occupational group 111, at North Highlands, California, by Sacramento County Child Protective Services (Employer/Defendant), where she claims to have sustained injury arising out of and in the course of employment to the nervous system, stress, and psyche.

...

Dr. Mackin gave his expert medical opinion that Applicant's current psychiatric/psychological problems rendered her temporarily partially disabled from March 9, 2022 through May 19, 2022, temporarily totally disabled from May 19, 2022 through September 15, 2022 and then temporarily partially disabled from September 15, 2022 through the August 30, 2024 report and continuing.

...

Dr. Mackin's reporting was found to be substantial medical evidence as he explained both how and why Applicant's employment led to periods of temporary disability and a need for medical treatment. (OOD 2-5-2025 Pg. 3 - 4)

...

Dr. Mackin's reasoning throughout his reports clearly explains and supports his expert medical opinion regarding causation of Applicant's temporary disability and need for medical treatment on an industrial basis.

Defendant has maintained a denial of Applicant's claim for benefits based on Dr. Mackin's use of the word "exacerbation" to describe Applicant's injury. "If parties are searching for a magic word to use during a doctor's deposition, that word is "Why?". Rather than focusing on whether a specific term, including the term synergy, was used, it is imperative that parties focus on an analysis that applies critical thinking based on the principles articulated in *Escobedo* to support a conclusion based on the facts of the case." (*Vigil v. County of Kern* (2024) 89

CCC686 (WCAB en bane) Dr. Mackin has clearly explained how Applicant's exposure to traumatic events at work created an ongoing period of temporary partial and total disability from March 9, 2022 through August 30, 2024. He has also explained that Applicant required both psychiatric treatment including medications and psychological treatment including counseling to reach maximum medical improvement. (Joint Ex. AA and Court Ex. 1) . . .When asked "why" Applicant is temporarily disabled and in need of medical treatment, Dr. Mackin explained Applicant's employment caused a cumulative trauma that resulted in a period of temporary disability exceeding two years and an ongoing need for medical treatment. Dr. Mackin clearly explained that Applicant's condition will not reach maximum medical improvement until the psychiatric injury is treated. Applicant met both prongs of the statutory either/or requirement for disability or medical care. Therefore, Applicant proved by a preponderance of the evidence that she suffered an injury to her psyche predominantly caused by her employment that has caused both disability and a need for medical care. (Report, pp. 1-4.)

DISCUSSION

I.

Former Labor Code section 5909¹ 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. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part:

- (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 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 February 24, 2025, and 60 days from the date of transmission is April 25, 2025. This decision is issued by or

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

on April 25, 2025, so that we have timely acted on the petition as required by Labor Code 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 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 February 24, 2025, and the case was transmitted to the Appeals Board on February 24, 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 Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on February 24, 2025.

II.

Defendant argues that the record lacks substantial medical evidence to support the finding that applicant sustained injury AOE/COE to her psyche. Specifically, defendant argues that Dr. Mackin's reporting fails to establish that applicant's "pre-existing condition was aggravated by employment events" because it uses "the word 'exacerbation' in referring to the effect of the employment events on applicant's condition" rather than "the term 'aggravation.'" (Petition, pp. 4:25-28, 5:16-17.)

We observe that applicant 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, 302 [80 Cal.Comp.Cases 489]; §§ 3600(a); 3202.5.)

As to applicant's claim of injury to her psyche, section 3208.3 provides:

(a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until these procedures are promulgated, 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.

(b) (1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury. (§ 3208.3(a)-(b)(1).)

"Predominant as to all causes" for purposes of section 3208.3(b)(1) has been interpreted to mean more than 50 percent of the psychiatric injury was caused by actual events of employment. (*Dept. of Corr. v. Workers' Comp. Appeals Bd. (Garcia)* (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356].)² The Labor Code does not define "actual events of employment," but the Court of Appeals has defined it as follows:

First, the factor must be an "event"; i.e., it must be "something that takes place" (American Heritage Dict. (4th ed. 2000) p. 616) in the employment relationship. Second, the event must be "of employment"; i.e., it must arise out of an employee's working relationship with his or her employer.

(*Pacific Gas & Electric Co. v. Workers' Comp. Appeals Bd. (Bryan)* (2004) 114 Cal. App. 4th 1174, 1181 [8 Cal. Rptr. 3d 467, 69 Cal. Comp. Cases 21]; see also *Verga v. Workers' Comp. Appeals Bd.* (2008) 159 Cal.App.4th 174, 186 [73 Cal. Comp. Cases 63] [actual events of employment "'can be interpreted' as requiring the employee to establish 'objective evidence of harassment, persecution, or other basis for the alleged psychiatric injury'."].)

Here, the medical reporting shows that (1) applicant sustained a mental disorder which causes disability and need for treatment; (2) the disorder was diagnosed under the proper criteria; and (3) the disorder was substantially caused by traumatic exposures at work. (Court Ex. 1, PQME supplemental report of Trevor B. Mackin, Psy.D, QME, August 30, 2024, pp. 3-11; Report, pp. 1-4.) Thus we agree with the WCJ that the reporting constitutes substantial medical evidence.

We also agree with the WCJ that *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 [2024 Cal. Wrk. Comp. LEXIS 23] (Appeals Board en banc) provides a useful example for determining whether medical reporting which allegedly fails to use certain words constitutes substantial medical evidence. There, we evaluated whether medical reporting which allegedly failed to use the word "synergy" in determining whether an injured worker's impairments should be added or combined to rate the worker's permanent disability as follows:

² Applicant has not claimed that her psychiatric condition was caused by "being a victim of a violent act or from direct exposure to a significant violent act," which would decrease the causation threshold to "at least 35 to 40 percent of the causation from all sources combined." (§ 3208.3(b)(2)-(3).)

We cannot emphasize enough that to constitute substantial evidence " ... a 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), (emphasis added).) The term 'synergy' is not a "magic word" that immediately rebuts the use of the CVC. Instead, a physician must set forth a reasoned analysis explaining how and why synergistic ADL overlap exists. If parties are searching for a magic word to use during a doctor's deposition, that word is "Why?". Rather than focusing on whether a specific term, including the term synergy, was used, it is imperative that parties focus on an analysis that applies critical thinking based on the principles articulated in *Escobedo* to support a conclusion based on the facts of the case. Such an analysis must include a detailed description of the impact of ADLs and how those ADLs interact. (*Vigil, supra*, at pp. 691–693.)

Here, we have explained that Dr. Mackin's reporting adequately set forth his reasons for concluding that applicant's employment caused a cumulative trauma which resulted in temporary disability and need for treatment. It follows that Dr. Mackin's use of the word "exacerbation" instead of "aggravation" is immaterial to our determination of whether the reporting constitutes substantial evidence. Accordingly, we are unable to discern merit to the Petition. Accordingly, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact, Awards and Orders issued on February 5, 2025 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 25, 2025

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

**MARISA KELLY
LAW OFFICE OF FAITH HASHEMI
COLEMAN, CHAVEZ & ASSOCIATES**

SRO/bp

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