

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

NAVIN RAZO, *Applicant*

vs.

**STATE OF CALIFORNIA, DEPARTMENT OF INSURANCE, legally uninsured;
adjusted by STATE COMPENSATION INSURANCE FUND/STATE CONTRACT
SERVICES, *Defendants***

**Adjudication Numbers: ADJ11645837; ADJ11645835
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the January 21, 2025 Joint Findings of Fact, Order and Award (FO&A) wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed as a senior insurance examiner/financial analyst by defendant during the period from October 19, 2017 through October 19, 2018 (ADJ11645837), applicant sustained injury arising out of and in the course of employment (AOE/COE) to the cervical and lumbar spine, bilateral shoulders, right hand, psyche, fibromyalgia, gastritis, IBS, migraines, and dermatitis. The WCJ also found injury AOE/COE on October 25, 2018 (ADJ11645835) to the overlapping body parts of the cervical and lumbar spine, bilateral shoulders, right hand, psyche, fibromyalgia, gastritis, IBS, and migraines. The WCJ awarded retroactive temporary disability from July 20, 2019, through September 2, 2020, for the cumulative injury (less credit for prior temporary disability or ILD payments for the same period), as well as permanent disability based upon combined impairment from both injuries.

Defendant apparently contends that the reports of Dr. Kambiz Hannani, Dr. Ronald Zlotolow, and Dr. Frederic Edelman, which were relied upon by the WCJ in the making of his above findings, are not substantial medical evidence. (Petition, pp. 4-5.) As such, defendant argues that "the [resulting] DEU rating cannot be relied on as an accurate finding of permanent disability."

(*Id.* at p. 5.) Defendant further contends that the WCJ erred in awarding retroactive temporary disability as “it is in conflict with the prior findings and award and orders issued by [former] WCJ Stringfellow” on September 22, 2020. (*Ibid.*)

We have not received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration (Petition) be denied.

Upon issuance of the Report, defendant submitted and requested permission for acceptance of a supplemental pleading pursuant to WCAB Rule 10964. (See Cal. Code Regs., tit. 8, § 10964.) We have reviewed, and will accept, the supplemental pleading.

We have considered the Petition, the contents of the Report, and the supplemental pleading, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition.

FACTS

Applicant claimed that while employed by defendant as a senior insurance examiner/financial analyst during the period from October 19, 2017, through October 19, 2018 (ADJ11645837), she sustained injury AOE/COE to her cervical and lumbar spine, bilateral shoulders, right hand, psyche, fibromyalgia, gastritis, IBS, migraines, and dermatitis.

Applicant also claimed an October 25, 2018 specific injury (ADJ11645835) to the overlapping body parts of the cervical and lumbar spine, bilateral shoulders, right hand, psyche, fibromyalgia, gastritis, IBS, and migraines.

The parties proceeded with discovery and obtained panel Qualified Medical Evaluators (QMEs) in the specialties of orthopedic surgery (Dr. Darren Bergey), gastroenterology (Dr. Pedram Enayati), dermatology (Dr. Cindy Chen), psyche (George Gamez, Ph.D.), and rheumatology (Dr. Kevyan Yousefi and Dr. Robert Fisher).

Applicant received treatment from various physicians, including orthopedic surgeon, Dr. Kambiz Hannani, internist, Dr. Ronald Zlotolow, and neurosurgeon, Dr. Frederic Edelman.

On August 20, 2020, a Declaration of Readiness to Proceed to Expedited Hearing was filed by applicant on the issues of temporary disability and the need for various consultations and treatment.

On September 14, 2020, the expedited hearing was held on the issues of the “present need for temporary total disability” and “substantive medical evidence” of the need for applicant’s requested consults/treatment. (Minutes of Hearing, September 14, 2020.)

On September 22, 2020, the WCJ issued a Findings and Award and Orders (FA&O) which held, in relevant part, as follows:

1. Navin Razo, born [], while employed during the period 10/19/17 through 10/19/18 as a financial analyst, Occupational Group number unknown, at Sacramento, California, by the State of California, Department of Insurance, sustained injuries arising out of and in the course of her employment to her head, neck, back, bilateral shoulders, bilateral legs, eczema, fibromyalgia, and psyche.
...
3. At the time of injury the employee’s earnings were \$1,820.77 per week warranting a rate of \$1,213.91 per week for temporary disability.
4. The injury caused temporary partial disability from 4/21/2020 through 6/21/2020.
5. The Applicant declined a bona fide offer of modified work made on 6/22/2020.
6. The Applicant is not entitled to temporary partial or total disability from 6/22/2020 through 8/11/2020.
7. Any claim for temporary disability before 4/21/2020 is unresolved.
8. The injury caused temporary disability commencing 8/21/2020 to the present and continuing.

On October 14, 2020, a Petition for Reconsideration was filed by defendant regarding the WCJ’s findings on temporary disability in his September 22, 2020 FA&O.

On December 7, 2020, the Appeals Board issued an Opinion and Order Denying Petition for Reconsideration based upon the WCJ’s October 19, 2020 Report and Recommendation on Petition for Reconsideration.

On February 15, 2023, applicant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on all issues.

On March 14, 2023, a mandatory settlement conference was held, and the matter was set for trial.

On August 1, 2023, trial was held on the issues of entitlement to temporary disability from July 20, 2019 through September 2, 2020 for the cumulative trauma, permanent and stationary

dates for both injuries, permanent disability, occupational code, need for future medical, and attorney's fees.

On October 27, 2023, a Joint Findings of Fact, Order, and Award was issued.

Shortly thereafter, on November 16, 2023, applicant filed a Petition for Reconsideration of the WCJ's October 27, 2023 Joint Findings, Order, and Award.

On November 30, 2023, the WCJ issued an Order vacating submission and rescinding his October 27, 2023 Joint Findings, Order, and Award.

Thereafter, the matter proceeded to multiple hearings on various issues. Ultimately, the parties reached an impasse on these issues and the WCJ submitted formal rating instructions for the upper and low gastrointestinal system, fibromyalgia, dermatitis, cervical and lumbar spine, and bilateral shoulders based upon the June 16, 2021 report of Dr. Enayati, March 3, 2020 report of Dr. Zlotolow, January 25, 2022 report of Dr. Edelman, August 10, 2020 report of Dr. Chen, and February 3, 2022 report of Dr. Hannani.

On January 21, 2025, the WCJ issued a FO&A which held, in relevant part, that while employed as a senior insurance examiner/financial analyst by defendant during the period from October 19, 2017 through October 19, 2018 (ADJ11645837), applicant sustained injury AOE/COE to the cervical and lumbar spine, bilateral shoulders, right hand, psyche, fibromyalgia, gastritis, IBS, migraines, and dermatitis. The WCJ also found an October 25, 2018 (ADJ11645835) specific injury to the cervical and lumbar spine, bilateral shoulders, right hand, psyche, fibromyalgia, gastritis, IBS, and migraines. The WCJ awarded retroactive temporary disability from July 20, 2019, through September 2, 2020, for the cumulative injury (less credit for prior temporary disability or ILD payments for the same period) as well as permanent disability based upon the combined impairment of both injuries.

DISCUSSION

I.

Preliminarily, former Labor Code¹ 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:

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

- (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 under the Events tab 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 March 12, 2025, and 60 days from the date of transmission is May 11, 2025, which is a Sunday. The next business day that is 60 days from the date of transmission is Monday, May 12, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision was issued by or on May 12, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on March 12, 2025, and the case was transmitted to the Appeals Board on March 12, 2025. Service of the Report and

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 March 12, 2025.

II.

Defendant apparently contends that the reports of Drs. Edelman, Zlotolow, and Hannani, which were relied upon by the WCJ, are not substantial medical evidence. (Petition, pp. 4-5.) As such, defendant argues that “the DEU rating cannot be relied on as an accurate finding of permanent disability.” (*Id.* at p. 5.)

As explained in *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision “must be based on admitted evidence in the record” (*Id.* at p. 478) and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) “The term ‘substantial evidence’ means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) A medical opinion proffered as substantial evidence must be framed in terms of reasonable medical probability, be based on pertinent facts, an adequate examination, and history, set forth reasoning in support of its conclusions, and not be speculative. (*E.L. Yeager v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc).) Reasonable medical probability, however, does not require that applicant prove causation by “scientific certainty.” (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700- 1701 [58 Cal.Comp.Cases 313].) Also, “[a] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (citations) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citations)” (*Gatten*,

supra, at p. 928.) “A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation)” (*Kyle v. Workers’ Comp. Appeals Bd (City and County of San Francisco)* (1987) 195 Cal.App.3d 614, 621.)

Here, defendant alleges that the reports of Dr. Edelman are not substantial medical evidence on the issues of injury AOE/COE and impairment for applicant’s migraines because Dr. Edelman “did not review any records of the applicant.” (Petition, pp. 6-7.) As proof, defendant points to a September 28, 2021 report wherein Dr. Edelman provided only a “provisional” diagnosis for applicant’s migraines. (*Id.* at p. 7.) Defendant also references an August 11, 2020 report of Dr. Zlotolow as evidence of inconsistencies between applicant’s medical history and the doctors’ finding of injury AOE/COE for applicant’s migraines. (*Ibid.*) The above reports, however, have not been admitted into the evidentiary record. As such, we will not consider any references to these reports. Pursuant to WCAB Rule 10620, “[a]ny document that a party proposes to offer into evidence at a trial shall be filed with the Workers' Compensation Appeals Board at least 20 days prior to the trial unless otherwise ordered by the Workers' Compensation Appeals Board.” (Cal. Code Regs., tit. 8, § 10620.) WCAB Rule 10670(b) further provides, in relevant part, that the Appeals Board “may decline to receive in evidence ... [a]ny document not filed 20 days prior to trial, unless otherwise ordered by a workers’ compensation judge or good cause is shown.” (Cal. Code Regs., tit. 8, § 10670(b)(3).) No good cause has been shown here.

We note also that lack of review of medical records is not necessarily fatal, particularly in instances wherein the records pertain to injuries and/or treatment of body parts which do not overlap with those of the subject injury and/or are far removed from the subject injury. Further, defendant was provided with ample opportunity to conduct additional discovery, including provision of the alleged records to Dr. Edelman and payment for his review and reporting. Defendant, however, failed to proceed with further discovery and may not now use their lack of diligence as an excuse to invalidate Dr. Edelman’s reports.

Defendant similarly argues that the reports of Dr. Zlotolow are lacking in substantial medical evidence. (Petition, pp. 7-8.) Defendant alleges that Dr. Zlotolow’s March 3, 2020 report does not “explain causation” or “what section within the four corners of the AMA Guides” were used to establish injury AOE/COE and impairment for applicant’s fibromyalgia. (Petition, p. 8.) In his report, however, Dr. Zlotolow clearly explains that his impairment findings are based upon

applicant's "problems with her ADLs" as well as "sleep issues" and an ongoing need for "prescribed medication." (Exhibit 11, p. 4.) He also notes that his conclusions were reached only after review of "the patient's history and diagnostic studies, as well as the report of Dr. Fisher." (*Id.* at p. 4.) In reference to Dr. Fisher's December 10, 2019 report, Dr. Zlotolow underscores his "complete agreement" that applicant's fibromyalgia is due to her "injuries on the job." (*Ibid.*) In his own report, Dr. Fisher refers to an article by D. Goldenberg entitled "Pathogenesis of Fibromyalgia" wherein Goldberg found that no "single event causes fibromyalgia. Rather, fibromyalgia is caused by "many physical and/or emotional stressors [that] may trigger or aggravate symptoms." (Exhibit 17, pp. 107-108.) Based upon the foregoing, we therefore conclude that Dr. Zlotolow's March 3, 2020 report constitutes substantial medical evidence of injury AOE/COE and impairment for applicant's fibromyalgia, attributable to both dates of injury.

Defendant also contends that Dr. Hannani's reports are lacking in substantial medical evidence "[w]ith respect to the [WCJ's] finding of permanent disability for [applicant's] multiple orthopedic injuries[.]" (Petition, p. 9.) Defendant refers to Dr. Hannani's February 3, 2022 report and alleges that Dr. Hannani failed to provide apportionment despite applicant's alleged prior history of injuries. (Petition, p. 9.) Notwithstanding the fact that apportionment findings between physicians will oftentimes vary, based upon our review of Dr. Hannani's report, we conclude that that his conclusions were based upon reasonable medical probability, pertinent facts, an adequate examination, and history. As such, we conclude that Dr. Hannani's February 3, 2022 report constitutes substantial medical evidence.

III.

Lastly, defendant contends that the WCJ erred in ordering retroactive temporary disability for the period from July 20, 2019, through September 2, 2020 as "it is in conflict with the prior FA&O issued by [former] WCJ Stringfellow on 9/22/2020." (Petition, p. 12.) In his September 22, 2020 FA&O, the WCJ found, in relevant part, that:

4. The injury caused temporary partial disability from 4/21/2020 through 6/21/2020.
5. The Applicant declined a bona fide offer of modified work made on 6/22/2020.
6. The Applicant is not entitled to temporary partial or total disability from 6/22/2020 through 8/11/2020.
7. Any claim for temporary disability before 4/21/2020 is unresolved.

8. The injury caused temporary disability commencing 8/21/2020 to the present and continuing.

Based upon our review of the January 21, 2025 FO&A and the September 22, 2020 FA&O, we see no conflicts. As demonstrated above, applicant has been seen by numerous treaters and QMEs for various ailments related to her injuries. This has given rise to a great many reports, sometimes with differing opinions, and corresponding changes to applicant's ability to return to work, permanent and stationary date, and benefits due. As such, although it is true that at the time of the September 22, 2020 FA&O, applicant had been made "a bona fide offer of modified work" and was therefore "not entitled to temporary partial or total disability from 6/22/2020 through 8/11/2020," it is also true applicant was later determined to be temporarily totally disabled and not permanent and stationary or able to work in any capacity during the period from July 20, 2019 through September 2, 2020.

Accordingly, we deny applicant's Petition.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the January 21, 2025 Joint Findings of Fact, Order and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSISONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 12, 2025

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

**NAVIN RAZO
GLAUBER, BERENSON, VEGO
STATE COMPENSATION INSURANCE FUND**

RL/cs

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