WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

PEDRO JIMENEZ, *Applicant*

vs.

GREEN PROJECT, INC.;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants*

Adjudication Number: ADJ11685054
Santa Ana District Office

OPINION AND DECISION AFTER RECONSIDERATION

The Appeals Board previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration.[1] Having completed our review, we now issue our Decision After Reconsideration.

Lien claimant Spectrum Medical Group Los Angeles seeks reconsideration and removal of the Findings and Order (F&O) of May 7, 2021, wherein the workers' compensation judge (WCJ) found that applicant did not sustain injury arising out of employment and in the course of employment (AOE/COE) and disallowed the lien. Lien claimant contends that it met its burden of proof that applicant sustained injury AOE/COE, and that it met its burden of proof for recovery on its lien.

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

We have considered the allegations in the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. As our Decision After Reconsideration, we will rescind the F&O and substitute a new F&O that finds that the injury occurred AOE/COE and defers all other issues. We will return this matter to the WCJ for further proceedings consistent with this decision.

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[1] Commissioner Sweeney, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panel member has been assigned in her place.

FACTS

Applicant claimed a cumulative injury to his back, hips neck, arms, and multiple body parts while working for defendant as a general laborer to for the period from October 1 to November 8, 2018.

Defendant denied liability for the injury on November 13, 2018, on the grounds that there was no substantial medical evidence that applicant suffered an industrial injury. (Def. Ex. A, pp. 1-2.) On November 14, 2018, applicant filed an Application for Adjudication.

On May 4, 2019, applicant designated lien claimant Dr. Amin Nia, D.C., as the primary treating physician pursuant to Labor Code[2] section 4600. (LC Ex. 2, p. 8.) The Doctor's First Report of Occupational Injury or Illness, by Dr. Nia, dated April 22, 2019, includes a description of history of injury of a specific injury on "October 2018," when applicant held onto a pallet to keep it from tipping over. (LC Ex. 2, pp. 2-3.) The record also contains a progress report dated January 13, 2020, but there was no discussion of injury or date of injury. (LC Ex. 4, pp. 1-4.)

On September 19, 2019, defendant authorized treatment by Dr. Nia for six visits. (LC Ex. 3. p. 1.)

On July 11, 2019, Qualified Medical Evaluator (QME) Kesho Hurria, M.D., examined applicant, and he issued a report on July 20, 2019. (LC Ex. 1, July 11, 2019.) By way of history, applicant told him that he had worked at his present job since 2015, and that:

> The applicant denies any pain in his neck, shoulders, wrists/hands and back prior to a specific injury which occurred in October 2018. He attributes all his present orthopedic complaints to that specific date of injury.
>
> In October 2018, he seen a pallet of stacked product about to topple and he rushed over to push and hold the 300-pound product from falling. He estimates that he held the product from falling for approximately 10 minutes. He notes that this specific incident caused him to experience pain in the low back and days later in the neck, shoulders and hands. He continued to work and a week after the injury his employer referred him to a doctor who prescribed him pain relieving medication, placed him on work restrictions and he subsequently received an acupuncture session for the back.
>
> The applicant reports that secondary to continuing to work and despite having work restrictions, he noted worsening neck pain, bilateral arm pain, bilateral wrist/hand pain and low back pain, secondary being in his feet for his entire work shift,

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

> walking/standing on hard ground, bending, stooping, reaching, grasping, gripping, twisting and lifting/carrying 8-10 pound boxes, October 2018.

(LC Ex. 1, July 11, 2019, pp. 2, 3.)

Dr. Hurria reviewed medical records, including Dr. Nia's April 12, 2019 report, and the physical therapy records from lien claimant Spectrum Medical Group from May 1, 2019 to June 21, 2019. He also reviewed and summarized applicant's deposition transcript. As relevant here, Dr. Hurria noted that applicant had testified as follows:

> On page 31, he stated that his injury occurred at 15335 Don Juan Road and that was his place of work located for Green Project. The specific injury in October occurred when they were unloading the container and they was unloading some pallets that was about 250 to 300 pieces and each pallet weighed more than 300 pounds. There was two people were unloading the container.
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> On pages 32-33, when they were stacking the pallet on top of the other pallet, the one on the top was tipping over and he ran and tried to hold it. He kept holding the pallet for 10 or 12 minutes before the forklift came to pick up.
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> On page 34, he was trying to straighten up the pallet on the top so it would not tip over. 40 minutes after, when he was sitting down, the pain started and he could not get up. He told to his manager, Peter that he was injured and Peter told to president that he was injured.

(LC Ex. 1, July 11, 2019, p. 14.)

> Dr. Hurria concluded that:
>
> Based on the history, review of medical records, clinical examination, and current reviewed medical literature, there is an industrial injury as the injury arose out of the employment and occurred during the course of employment. This injury is industrial in causation.

(LC Ex. 1, July 11, 2019, p. 19.) He noted that applicant's "[p]ast medical care was appropriate," and that applicant had a need for future medical care.

On October 31, 2019, Dr. Hurria reexamined applicant, and he issued a report on November 7, 2019. (LC Ex. 1, November 7, 2019.) Applicant was continuing to attend physical therapy, and applicant told Dr. Hurria that "his pain and discomfort have gotten better mainly because he is under medical treatment and therapy, which he attends once per week." (LC Ex. 1, November 7, 2019, p. 16.) Dr. Hurria reviewed medical records from lien claimant Spectrum from

June 11, 2019 to August 13, 2019, and from Dr. Nia from July 19, 2019 and September 9, 2019. (LC Ex. 1, November 7, 2019, p. 16.) He again stated that:

> Based on the history, review of medical records, clinical examination, and current reviewed medical literature, there is an industrial injury as the injury arose out of the employment and occurred during the course of employment. This injury is industrial in causation.
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> ***
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> 100% of the disability is apportioned to the industrial injury.

(Ex. 1, November 7, 2019, p. 17.)

> With respect to medical treatment, he opined that:
>
> Future medical treatment is necessary to cure or relieve the effects of the alleged injury and this would be further orthopedic evaluations, physical therapy/chiropractic treatments, the use of non-steroidal anti-inflammatory medications, and non-narcotic analgesic medications. He will also need in home exercise.

(Ex. 1, November 7, 2019, p. 18.)

The case resolved through a Compromise and Release Agreement (C&R) signed by the parties with an Order Approving Compromise and Release issued by the WCJ on February 25, 2020. The date of injury AOE/COE listed in the C&R was October 1, 2018 to November 8, 2018. (C&R, ¶ 1.) According to Paragraph 9, settlement was based in part on the findings of QME Dr. Hurria "per his MMI report of 11/07/2019." (C&R, p. 7.)

On August 10, 2020, lien claimant filed a Notice and Request for Allowance of Lien. The lien includes charges from Dr. Nia and from Julie Krauss, physical therapist for Spectrum.

On March 10, 2021, the case proceeded to trial on the issues of the lien for the balance of $1,212.19 and the related issue of AOE/COE. According to the MOH, all other issues were deferred except for AOE/COE. "If AOE/COE is found, the Court will order the parties to go to an independent bill review or IBR." (3/10/21 Minutes of Hearing (MOH), p. 2.)

On May 7, 2021, the WCJ issued the F&O, and found that applicant did not sustain injury AOE/COE and that lien claimant did not meet its burden of proof. He disallowed the lien.

I.

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one that either

"determines any substantive right or liability of those involved in the case" *(Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a "threshold" issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Id*. at p. 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

Here, the WCJ's decision includes a finding of no injury AOE/COE. The decision determines a substantive right or liability and determines a threshold issue. Thus, it is a "final" decision, and we need not consider the Petition as one for removal. Accordingly, we will treat the Petition solely as one seeking reconsideration.

II.

Substantial medical evidence supports a finding of injury AOE/COE. Pursuant to section 5705, the "burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) "All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence." (Lab. Code §3202.5.) "A lien claimant ... has the burden of proving by a preponderance of the evidence that the claim is industrial...." (*Hand*

Rehabilitation Center v. Workers' Comp. Appeals Bd. (*Obernier*) (1995) 34 Cal.App.4th 1204, 1210 [60 Cal.Comp.Cases 289].)

Section 3600(a) provides for liability for injuries sustained "arising out of and in the course of the employment." An employer is liable for workers' compensation benefits "without regard to negligence." (Lab. Code, § 3600(a).) Whether an employee's injury arose out of and in the course of employment is generally a question of fact to be determined in light of the particular circumstances of the case. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346, 353 [67 Cal.Comp.Cases 51].)

Decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *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].)

A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction 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, 620-621 [2005 Cal.Wrk.Comp.LEXIS 71] (Appeals Bd. 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." (*Hegglinbirthbirth v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

On the other hand, there must be some solid basis in the medical report for the doctor's ultimate opinion; the Board may not blindly accept a medical opinion which lacks a solid underlying basis and must carefully judge its weight and credibility. (*National Convenience Stores v. Workers' Comp. Appeals Bd*. (*Kesser*) (1981) 121 Cal.App.3d 420, 426 [46 Cal.Comp.Cases 783].) In other words, the Board must look to the underlying facts of a medical opinion to determine whether or not that opinion constitutes substantial evidence, and accordingly, the expert's opinion is no better than the facts on which it is based. (*Turner v. Workers' Comp. Appeals Bd.* (1974) 42 Cal.App.3d 1036, 1044 [39 Cal.Comp.Cases 780].)

In the QME Report of July 20, 2019, QME Dr. Hurria stated that applicant suffered from an industrial injury AOE/COE. (LC Ex. 1, p. 19.) Based on applicant's recounting of the incident, Dr. Hurria reported that the injury was specific and occurred in October 2018, when applicant held a falling pallet in place for approximately 10 minutes. (LC Ex. 1, pp. 3, 14-17.) The QME report included a history of the injury according to applicant, pre-existing injuries, a physical examination, and a review of applicant's medical records and his deposition before concluding that the injury was industrial. (LC Ex. 1, pp. 2-19.) In the QME report of November 7, 2019, Dr. Hurria again concluded that applicant had suffered an industrial injury that was specific in nature. (LC Ex. 1, p. 36.)

Dr. Hurria's medical opinion was based on an adequate examination and history, it was not speculative, and it set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction 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, 620-621 [2005 Cal.Wrk.Comp.LEXIS 71] (Appeals Bd. en banc).) The relevant and considered opinion of one physician may constitute substantial evidence. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal. 3d 372, 378-379 [35 Cal.Comp.Cases 525].) Therefore, substantial medical evidence supports a finding that applicant sustained injury AOE/COE.

WCAB Rule 10517 states that: "Pleadings shall be deemed amended to conform to the stipulations and statement of issues agreed to by the parties on the record. Pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof." (Cal. Code Regs., tit. 8, § 10517.) "[P]leadings should liberally construed so as not to defeat or undermine an injured employee's right to make a claim." (*Perez v. Chicago Dogs* (2025) 90 Cal. Comp. Cases 830, 839 [Appeals Bd. en banc].) Therefore, the lien is presumed amended according to proof.

While Dr. Hurria's conclusion does not support a cumulative injury, it does support a specific injury. We will deem the lien amended to confirm to proof to establish that applicant sustained injury AOE/COE. Since applicant reported that his injury "sometime in October," we will find that the date of injury was on October 15, 2018.

If further evidence is available to defendant which demonstrates that the injury occurred on a different day in October 2018, defendant should timely seek reconsideration of this decision.

Therefore, as our Decision After Reconsideration, we will amend the F&O to state that applicant sustained injury AOE/COE on October 15, 2018, and return the matter to the WCJ to determine all other issues related to the lien.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration that the May 7, 2021 Findings and Order is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Pedro Jimenez, while employed as a general laborer, at Hacienda Heights, California, by Green Project, Inc., on October 15, 2018, whose workers' compensation carrier was Travelers Property Casualty Company of America, sustained injury arising out of and in the course of employment to his neck, arm, back, and hips.
2. All other issues are deferred.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 12, 2025

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

SPECTRUM MEDICAL GROUP
DIMACULANGAN ASSOCIATES

JMR/*pm*

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