WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

RANDE FERGUSON, *Applicant*

vs.

CITY OF PALM SPRINGS; permissibly self-insured, administered by ADMINSURE, *Defendants*

Adjudication Number: ADJ15018771
Riverside District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the December 16, 2024 Findings and Award (F&A) wherein the workers' compensation administrative law judge (WCJ) found that the opinions of panel Qualified Medical Evaluator (QME), Dr. Jeffrey Holmes, are substantial medical evidence, and that applicant, while employed by defendant as a fire fighter during the period from August 5, 1992 through May 5, 2021, sustained an industrial injury to the lumbar spine, hearing, skin, heart, hypertension, knees, shoulders, and ankles, and is entitled to future medical treatment to cure or relieve from the effects of the injury.

Defendant contends that applicant failed to meet his burden his burden of proof under Labor Code[1] section 3202.5 as the reporting of Dr. Holmes "provides an inadequate medical history, is incomplete, and therefore is not substantial evidence." (Petition for Reconsideration (Petition), p. 11.)

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

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

We have considered the Petition for Reconsideration, the Answer, the contents of the Report, 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 fire fighter during the period from August 5, 1992 through May 5, 2021, he sustained an industrial injury to the lumbar spine, hearing, skin, heart, hypertension, and the bilateral shoulders, knees, and ankles.

Applicant sought treatment with Dr. Keola Chun who served as his primary treating physician. Applicant also sought treatment with Dr. David Wood.

In his August 31, 2022 report, Dr. Wood diagnosed applicant with right shoulder rotator cuff tear, left shoulder impingement, internal derangement of the bilateral knees, and strain of the bilateral ankles. (Exhibit 11, p. 14.)

The parties proceeded with discovery and retained Dr. Jeffrey Holmes as the panel QME. Dr. Holmes issued five reports dated September 23, 2021, June 22, 2022, September 25, 2023, October 13, 2023, and December 17, 2023. Dr. Holmes was also deposed on November 22, 2024.

In his June 22, 2022 report, Dr. Holmes found that with respect to the bilateral shoulders, knees, and ankles, applicant "did sustain a cumulative trauma injury from his activities at work as a firefighter." (Exhibit 4, p. 9.)

During his November 22, 2024 deposition, Dr. Holmes reiterated that "activities at work were a reasonable mechanism of injury of injurious cumulative trauma exposure that contributed at least in some part to his now current condition in his multiple body parts." (Exhibit 19, p. 40, lines 17-21.)

On December 2, 2024, the parties proceeded to trial as applicant and defendant had reached an impasse on several issues including injury arising out of and in the course of employment (AOE/COE) and need for future medical.

On December 16, 2024, the WCJ issued a F&A wherein he held that applicant sustained an industrial injury to the lumbar spine, hearing, skin, heart, hypertension, knees, shoulders, and ankles; is entitled to future medical treatment to cure or relieve from the effects of the injury; and that the opinions of QME, Dr. Holmes, are substantial medical evidence.

DISCUSSION

I.

Preliminarily, former 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.
>
> (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 January 13, 2025, and 60 days from the date of transmission is March 14, 2025. This decision was 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. Section 5909(b)(2) provides that service of the Report and Recommendation shall constitute notice of transmission.

Here, according to the proof of service for the Report, it 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.

Turning now to the merits of the Petition, defendant contends that applicant failed to meet his burden of proof pursuant to section 3202.5 in establishing injury AOE/COE to the shoulders, knees, and ankles as the reporting of Dr. Holmes "provides an inadequate medical history, is incomplete, and therefore is not substantial evidence." (Petition, pp. 2-3, 11.)

Section 3202.5 states, in relevant part, that parties are to "meet the evidentiary burden of proof on all issues by a preponderance of the evidence. Pursuant to section 5705, the burden of proof rests upon the party holding the affirmative of the issue. The burden therefore rests with the applicant (or lien claimant, who steps into the shoes of the applicant). To meet this burden, the applicant must provide substantial evidence of injury AOE/COE. Any medical opinion proffered as substantial evidence, however, 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 Board en banc).) "[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.)

In the instant matter, we find that Dr. Holmes took an adequate examination and history, including review of extensive medical reports, and provided a well-reasoned opinion in support of injury AOE/COE to the bilateral knees, shoulders, and ankles with an ongoing need for future medical. We also find that based upon the evidence in the record, including the reports of Dr. Holmes, but also, the reports of Dr. Wood, applicant's burden has been met. We remind defendant that although the onus is on applicant to provide substantial evidence of injury AOE/COE, the

"burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1701 [58 Cal.Comp.Cases 313].) Further, once this burden has been met, the burden shifts to defendant to provide evidence in rebuttal. Defendant isolated portions of Dr. Holmes's reports to bolster their arguments, but no real contradictory evidence has been presented here. The record overwhelmingly supports a finding of industrial causation. Accordingly, we agree with the WCJ that the reports from QME, Dr. Holmes, are substantial medical evidence and that applicant sustained an injury AOE/COE to the shoulders, knees, and ankles with a need for continuing medical care.

Defendant contends that the "Opinion on Decision does not explain the reasoning or basis for finding industrial causation." (Petition, p. 12.) Section 5313 states, in relevant part, that the WCJ must indicate the "reasons or grounds upon which the determination was made." This "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision "must be based on admitted evidence in the record" (*Hamilton*, *supra*, 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.) As required by Section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton*, *supra*, at p. 475.)

Here, the WCJ's December 16, 2024 OOD, clearly indicates that the decision was "[b]ased on the medical evidence and applicant's credible testimony." (OOD, p. 2.) The WCJ also

underscores the fact that Dr. Holmes "reviewed all pertinent information, examined the applicant, performed and/or reviewed various tests" and "never wavered" in his opinions despite the issuance of "several QME reports" and a deposition. (*Id.* at p. 4.) Accordingly, we find that the WCJ's decision is supported by substantial evidence and we deny defendant's Petition.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the December 16, 2024 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, 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.

RANDE FERGUSON
O'MARA & HAMPTON
LAW OFFICES OF HAMBLIN & TAHVILDARAN

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