

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

SANDRA BUENDIA, *Applicant*

vs.

**HOSPITALITY STAFFING SOLUTIONS; ACE AMERICAN INSURANCE COMPANY,
administered by ESIS, INC., *Defendants***

**Adjudication Number: ADJ9499857
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Opinion on Decision and the Report, both of which we adopt and incorporate, we will deny reconsideration.

I.

We note that 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. (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.

¹ All section references are to the Labor Code, unless otherwise indicated.

(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 4, 2025 and 60 days from the date of transmission is Saturday, April 5, 2025. The next business day that is 60 days from the date of transmission is Monday, April 7, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, April 7, 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 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 4, 2025, and the case was transmitted to the Appeals Board on February 4, 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 February 4, 2025.

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.

II.

A petition for reconsideration must fairly state all of the material evidence relative to the point or points at issue. (Lab. Code, § 5902; Cal. Code Regs., tit. 8, § 10945(a).) As the WCJ pointed out in the report, defendant failed to reference its own exhibit, which demonstrated that defendant's contention that the NSAIDs taken by applicant were not authorized or certified, was incorrect. (Report, at pp. 3-4; Defendant's Exhibit D.) This omission is a violation of WCAB Rule 10945. (Cal. Code Regs., tit. 8, § 10945(a).)

Defendants Hospitality Staffing Solutions and ACE American Insurance Company, administered by ESIS, Inc., and their attorneys Kimberly R. Ogata and Samuelsen, Gonzalez, Valenzuela & Brown, LLP are therefore admonished to follow the Appeals Board's Rules of Practice and Procedure, including but not limited to WCAB Rule 10945, in all future matters. Failure to comply with the Rules may subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 3, 2025

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

**SANDRA BUENDIA
MOISES VAZQUEZ, ATTORNEY AT LAW
SAMUELSEN, GONZALEZ, VALENZUELA & BROWN, LLP**

MB/ara

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

OPINION ON DECISION

The Parties presented for Trial on October 21, 2024 on the limited issue of what body parts and systems were injured in the course and scope of employment on May 13, 2014. All other issues were deferred.

The Parties stipulated to injury to the knees and low back. At issue is injury to the neck, hips, shoulders, head-in the form of headaches, excretory system, circulatory system, internal organs-in the form of renal issues, upper GI issues, and hypertension, psyche, and sleep disorder.

Renal Issues –

Dr. Saghafi, QME in Internal Medicine, opines in his report of April 12, 2019 [Applicant's Exhibit 18 EAMS DOC ID# 44129086] at page 99 that:

“Use of non-steroidal anti-inflammatory drugs (NSAIDs) can cause acute renal failure which can then, in some cases, progress to chronic renal failure. Use of NSAIDs can also cause progression of already-present renal disease to the point of chronic renal failure. Ms. Buenida has been prescribed NSAIDs (Ibuprofen and naproxen) chronically for her orthopedic injuries that 3 orthopedic QMEs have opined to be industrially caused.”

“Thus with the information available, there is industrial contribution to the development of her renal failure secondary to use of NSAIDs and PPI medications”

In Dr. Saghafi's report of March 7, 2024 [Applicant's Exhibit 13 / EAMS DOC ID# 54040450] he notes the review of new records from Dr. Chang that bolster his opinion that the Applicant's renal failure has industrial causation and is related to the chronic use of NSAIDs and proton pump inhibitors which were prescribed for her orthopedic injuries (page 104).

Hypertension –

Dr. Saghafi reports in the April 12, 2019 report referenced above, at pages 99-100, that the Applicant's hypertension has industrial causation due to chronic pain, chronic stress, use of NSAIDs and renal failure. The Doctor also notes that, in this case, the renal failure has contributed to hypertension rather than hypertension causing end stage renal failure. The Doctor notes in his report of March 7, 2024 [Applicants Exhibit 13/supra] that the Applicant “has had an aggravation of hypertension on an industrial basis” (page 105)

Gastritis / Gastroesophageal Reflux Disease [GERD] –

Dr. Saghafi opines in his report of April 12, 2019, referenced above, at pages 99-100, that the Applicant suffered from gastritis and GERD.

“Ms. Buenida reports developing heartburn, epigastric pain and reflux

approximately five months after the onset of her injury and being prescribed naproxen and other NSAIDs. Use of NSAIDs are notoriously associated with injury to the gastrointestinal tract.”

“With reasonable medical probability 100% of the permanent disability related to her upper GI disease should be apportioned to industrial cause (use of NSAIDs) and 0% to non-industrial cause”

Left Hip –

Dr. Saghaifi opines in his report of March 7, 2024 [Applicant’s Exhibit 13/surpa] that the left hip fracture was caused by hyperparathyroidism. He goes on to state “Ms. Buendia has *secondary* hyperparathyroidism directly caused by her ERSD and by the related elevated phosphorus” (page 105).

Orthopedic Body Parts –

The parties stipulated to injury to the Applicant's knees and low back. At issue on an orthopedic basis are the neck, hips, and shoulders. Dr. Saghaifi concluded that the left hip is work related as it is connected to the hyperparathyroidism which was caused by end stage renal failure.

Zan Lewis M.D. is the Qualified Medical Evaluator (QME) in this case. Actually, Dr. Lewis is the third QME in this case as the first two QMEs have passed away. Thus, through no fault of his own, Dr. Lewis comes to this matter four years after the date of injury and has conflicting records and histories as to the mechanism of injury and the body parts alleged as injured in the trip and fall on May 13, 2014. Dr. Lewis states in his report of September 29, 2023 [Applicant’s Exhibit 22 / EAMS DOC ID# 54041069] at page 75:

“If the Trier of Fact finds the history the patient provided to me on December 3, 2018 is accurate and finds that the documentation in the currently available medical records from May 22, 2014 and June 4, 2014 are accurate, it is medically probable that the patient also sustained injury to her neck, lower back, left shoulder, and bilateral hips”.

In Dr. Lewis’ deposition of December 5, 2023 [Applicant’s Exhibit 21/EAMS DOC ID# 54041164], the Doctor defers to the Trier of Fact as to what body parts were injured. At page 22 of the deposition, Dr. Lewis references a June 16, 2014 of Dr. Sirakoff as being instructive regarding mechanism of injury and body parts injured.

The Court was not provided with the medical records from May 22, 2014 and June 4, 2014 nor did the parties offer the report of Dr. Sirakoff. The Court needs to review these records before determining if the record is sufficient to determine which body parts injured. Dr. Lewis notes in his reporting that the Applicant had complaints of pain at various times before various Doctors. This is relevant but hardly conclusive as a report of pain does not equate to an analysis of the mechanism of injury.

The parties are to file the reports/records referenced by Dr. Lewis so that the Court can endeavor to determine if there is enough of a discussion of the mechanism of causation to determine injury.

On a particular note regarding the hips, Dr. Saghafi has already opined that the left hip is due to hypoparathyroidism which resulted from the end stage renal failure. This is industrial. As to the right hip, QME Zan Lewis M.D. opines in his report of July 17, 2024 [Applicant's Exhibit 20 / EAMS DOC ID# 54041100] that:

“It is my working diagnosis that the loss of cartilage interval in both hips is unrelated to the specific injury of May 13, 2014 and rather, represents the sequelae of nonindustrial degeneration of both hips.”

Dr. Lewis goes on to state:

“It is medically probable that the resorption[sic] of the right femoral neck was caused by hypothyroidism which resulted from her chronic end stage renal disease” (page 10)

The Applicant hasn't been diagnosed with thyroid problems. The Applicant appears to be suffering from parathyroid problems. This may be a typographical error by Dr. Lewis but it will need to be addressed along with a more detailed analysis of how the right hip was injured, if at all, during the trip and fall incident. Dr. Saghafi has already opined that the left hip is industrially injured in that the parathyroid issues stem from the end stage renal failure. Dr. Saghafi does not comment specifically on the right hip as industrially injured in the same fashion. Clarification is needed as to the left hip.

Headaches –

The Applicant was evaluated by William Hammesfahr M.D. as a QME in Neurology on May 23, 2023. [Applicant's Exhibit 29 / EAMS DOC ID# 54041386] Dr. Hammesfahr reports that the Applicant has headaches that are brought on by neck pain (page 2). However, the Doctor also notes that the Applicant “gets headaches with dialysis” (page 3). The dialysis headaches are more severe.

Since Dr. Saghafi has already opined that the Applicant's kidney problems leading to end stage renal failure were, in part, due to the use of NSAIDs and PPIs, the headaches associated with the dialysis are considered industrially related. The cervogenic headaches will be further addressed, if necessary, after review of the medical reporting referenced by Dr. Lewis is undertaken by the Court.

The Doctor concludes that the Applicant suffers from two types of headaches i.e. cervogenic and headaches connected with dialysis.

Psychiatric –

The Parties utilized Dr. Micah Hoffman as a Qualified Medical Examiner (QME) in the field of Psychiatry. In his report of June 18, 2023 [Applicant's Exhibit 27 / EAMS DOC ID# 54041666], Dr. Hoffman opines that the Applicant suffered a work-related psychiatric injury and apportions 50% to actual events of employment and 50% to the functional impairment due to hemodialysis. Since Dr. Saghafi has already reported that the dialysis treatment was, in part, caused by the Applicant's use of NSAIDs and PPIs due to her orthopedic injuries and since Defendants have already accepted liability for the knees and low back, the Applicant's psychiatric condition is work related.

Sleep issues –

At page 20 of Dr. Lewis' report of September 29, 2023 [Applicant's Exhibit 22 / EAMS DOC ID# 54041069] the Doctor takes a history of interrupted sleep due to back pain. At page 83 of the report, Dr Lewis re-iterates that the Applicant suffered from interrupted sleep due to low back pain. The legal discussion of whether this constitutes a separate ratable event is not before the Court at this time (only body parts and systems). Since the lumbar spine is an accepted body part in this matter and the sleeplessness is linked to low back pain, the Applicant's sleep issues are deemed to be industrially related.

Excretory System –

A review of the reports offered into evidence does not reveal a finding of injury to the excretory system.

In summary, further development of the record is necessary as it pertains to the right hip, cervical spine and shoulders. The other body parts and systems described above are supported by the medical opinions of the QMEs in this matter.

The parties shall serve the Board with the medical reports and records referenced by Dr. Lewis and discussed above. Additional reporting by Dr. Lewis may be necessary after the Court reviews the records.

DATE: 01/15/2025

John Cyprien
WORKERS' COMPENSATION JUDGE

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION AND NOTICE OF
TRANSMITTAL PURSUANT TO LABOR CODE SECTION 5909

I
INTRODUCTION

The Applicant, SANDRA BUENDIA, suffered an admitted injury on May 13, 2014 to her knees and low back. Defendants disputed the other body parts and systems alleged as injured. The matter proceeded to Trial on October 21, 2024 on the issue of body parts and systems injured with all other issues deferred. The undersigned found additional injury to the Applicant's kidneys/renal systems, left hip, circulatory system in the form of hypertension, internal organs in the form of Gastroesophageal Reflux Disease/Gastritis, sleep disturbance due to low back pain, neurological injury in the form of headaches, and injury to the psyche. No injury to excretory systems was found. The parties were Ordered to develop the record as to injury to the right hip, shoulders, and cervical spine respectively.

Defendants have filed a timely Petition for Reconsideration alleging that the undersigned acted without or in excess of his powers and that the evidence does not justify the Findings of Fact.

It is recommended that the Petition be denied.

II
FACTS

The Applicant suffered an admitted injury to her knees and low back with Defendants disputing all other body parts and systems. The undersigned found additional injury to the Applicant's kidneys/renal systems, left hip, circulatory system in the form of hypertension, internal organs in the form of Gastroesophageal Reflux Disease/Gastritis, sleep disturbance due to low back pain, neurological injury in the form of headaches, and injury to the psyche. The other body parts and systems found to be injured on an industrial basis stem from the use Non-Steroidal Anti-Inflammatory Drugs [NSAIDs]. Defendant/Petitioner asserts that there is no evidence that the NSAIDs were prescribed for the admitted orthopedic injuries (page 3 of the Petition for Reconsideration) and that there is no evidence that such NSAIDs were ever approved by Utilization Review (page 2 of the Petition for Reconsideration).

The renal problems found by QME Saghafi were said to be due to taking NSAIDs.

Dr. Saghafi, QME in Internal Medicine, opines in his report of April 12, 2019 [Applicant's Exhibit 18 EAMS DOC ID# 44129086] at page 99 that:

“Use of non-steroidal anti-inflammatory drugs (NSAIDs) can cause acute renal failure which can then, in some case, progress to chronic renal failure. Use of NSAIDs can also cause progression of already-present renal disease to the point of chronic

renal failure. Ms. Buenida has been prescribed NSAIDs (Ibuprofen and naproxen) chronically for her orthopedic injuries that 3 orthopedic QMEs have opined to be industrially caused.”

“Thus with the information available, there is industrial contribution to the development of her renal failure secondary to use of NSAIDs and PPI medications”

Dr. Saghafi reports in the April 12, 2019 report referenced above, at pages 99-100, that the Applicant’s hypertension has industrial causation due to chronic pain, chronic stress, use of NSAIDs and renal failure. The Doctor also notes that, in this case, the renal failure has contributed to hypertension rather than hypertension causing end stage renal failure. The Doctor notes in his report of March 7, 2024 [Applicants Exhibit 13/supra] that the Applicant “has had an aggravation of hypertension on an industrial basis” (page105).

Dr. Saghafi opines in his report of April 12, 2019, referenced above, at pages 99-100, that the Applicant suffered from gastritis and GERD.

“Ms. Buenida reports developing heartburn, epigastric pain and reflux approximately five months after the onset of her injury and being prescribed naproxen and other NSAIDs. Use of NSAIDs are notoriously associated with injury to the gastrointestinal tract.”

“With reasonable medical probability 100% of the permanent disability related to her upper GI disease should be apportioned to industrial cause (use of NSAIDs) and 0% to non-industrial cause”

The Applicant was evaluated by William Hammesfahr M.D. as a QME in Neurology on May 23, 2023. [Applicant’s Exhibit 29/EAMS DOC ID# 54041386] Dr. Hammesfahr reports that the Applicant has headaches that are brought on by neck pain (page 2). However, the Doctor also notes that the Applicant “gets headaches with dialysis” (page 3).

The Parties utilized Dr. Micah Hoffman as a Qualified Medical Examiner (QME) in the field of Psychiatry. In his report of June 18, 2023 [Applicant’s Exhibit 27/EAMS DOC ID# 54041666], Dr. Hoffman opines that the Applicant suffered a work-related psychiatric injury and apportions 50% to actual events of employment and 50% to the functional impairment due to hemodialysis. Since Dr. Saghafi has already reported that the dialysis treatment was, in part, caused by the Applicant’s use of NSAIDs and PPIs due to her orthopedic injuries and since Defendants have already accepted liability for the knees and low back, the Applicant’s psychiatric condition is work related.

III **DISCUSSION**

The Applicant had an admitted slip and fall at work. The use of NSAIDs for her orthopedic pain led to kidney problems. The kidney problems led to left hip problems, hypertension, gastritis, and, in part, psychiatric problems.

Defendant/Petitioner asserts, in large capital letters and in bold print:

“ARGUMENT: THE JUDGE ACTED WITHOUT OR IN EXCESS OF HIS POWERS IN DETERMINING THAT THE EFFECTS OF THE MEDICATIONS PRESCRIBED WERE INDUSTRIALLY RELATED WHEN THERE WAS NO EVIDENCE THAT THE MEDICATIONS WERE AUTHORIZED BY DEFENDANT OR CERTIFIED BY UTILIZATION REVIEW.”

Defendant/Petitioner appears to completely ignore their own exhibit. Specifically, Defendant’s Exhibit D [UR Certification of naproxen dated March 31, 2015/EAMS DOC ID# 44129070].

The Utilization Review states at page 2:

“Regarding the request for Naproxen, there is evidence supporting anti-inflammatories as first line treatment for pain reduction and functional restoration. Considering the patient's continued pain, ongoing treatment with naproxen is reasonable.”

Page one of the Utilization Review reveals that the prospective request for 60 tablets of Naproxen 550 milligrams is ***certified***. (emphasis added)

In his April 12, 2019 report, Dr. Saghafi confirms that Naproxen is an NSAID.

Thus, Defendant/Petitioner's argument that there is no evidence that the NSAIDs were ever approved by Defendants is baseless.

Title 8; California Code of Regulations section 10945 requires that each Petition for Reconsideration shall ‘fairly state all of the material evidence relative to the point or points at issue... A failure to fairly state all of the material evidence may be a basis for denying the Petition’.

Defendant/Petitioner's do not fairly state all of the material evidence relative to the points at issue as they fail to point to their own evidence which is completely at odds with their position in the Petition for Reconsideration. The undersigned recommends that the Defendant/Petitioner be sanctioned for the filing of a baseless Petition.

IV
RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied and that Defendant/Petitioner be sanctioned for filing a baseless Petition for Reconsideration.

I prepared and transmitted this case to the Recon Unit on February 4, 2025.

Respectfully submitted,

JOHN C. CYPRIEN
Workers' Compensation Judge