WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SOON HEE HWANG, *Applicant*

vs.

KOREAN RED GINSENG COMPANY; OAK RIVER INSURANCE COMPANY, administered by BERKSHIRE HATHWAY HOMESTATE COMPANIES, *Defendants*

Adjudication Number: ADJ15359587
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Lien claimants WestStar Physical Therapy and WSPT Network (lien claimants) seek reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on November 19, 2024, wherein the WCJ found in pertinent part that applicant claims to have sustained injury arising out of and in the course of employment (AOE/COE) to her shoulders, back, wrists, and knees, but found that applicant did not sustain injury to her shoulders, back, wrists, and knees as a result of her employment as an office manager with defendant during the period from October 1, 2010 through September 23, 2021; and that the services provided by lien claimants were not reasonable or/and necessary to cure and/or relieve the effects of an industrial injury. The WCJ disallowed the liens.

Lien claimant contends in its Petition for Reconsideration that based on the opinion of the qualified medical evaluator (QME), applicant sustained injury AOE/COE; and that the WCJ erred when he concluded that the QME's opinion was not substantial evidence because of the error regarding applicant's occupation.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will

grant lien claimant's Petition for Reconsideration, rescind the F&O, and substitute a new F&O that finds that applicant sustained injury AOE/COE and defers the remaining issues on the liens.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed to have sustained injury to her shoulders, back, wrist, and knees while employed by defendant as an office manager, during the period from October 1, 2010 through September 23, 2021.

On November 24, 2021, Mosche Wilker, M.D., was designated as applicant's new Primary Treating Physician (PTP). (Exhibit 10, 11/24/2021.)

On December 1, 2021, defendant Berkshire Hathaway authorized treatment with Dr. Wilker for applicant's back and bilaterial shoulders. (Exhibit 14, 12/1/2021.)

On December 8, 2021, defendant denied benefits for the September 23, 2021 injury to back and shoulders because applicant did not report injuries until after her termination. (Exhibit 21, 12/8/2021.)

On December 17, 2021, Dr. Wilker examined applicant and issued a report on December 22, 2021. The report states,

> Patient is here for initial visit complaining of neck pain, bilaterial shoulder pain, low back pain and left knee pain. She states this injury started due to continuous trauma at work which entails heavy lifting boxes at work and complained September 2021. Pain 8/10. She has had anti-inflammatories but denies getting therapy, injection or surgery.
>
> She states her right shoulder bothers her the most since she cannot elevate it.
>
> Applicant was diagnosed with cervicalgia, bilateral shoulder impingement syndrome, lumbar radiculitis and left knee internal derangement, without review of any medical records.

(Exhibit 7, 12/17/2021.)

On August 8, 2022, William S. Bolling, M.D., conducted an evaluation of applicant as the QME. As relevant here, he opined as follows:

> **JOB DESCRIPTION:**
> Ms. Hwang is a 64-year-old right-hand dominant female who began working as a Store Manager for Korean Red Ginseng Company in September 2010. While there, she worked 8 hours per day, 5 days per week. Her job duties included heavy lifting, organizing, displaying, cleaning, greeting, customers, customer service; ordering merchandise, shipping, and taking online and phone orders, The following

activities were also required by her job duties: Sitting, standing, bending and twisting from the waist, grasping, fine manipulation, reaching above and below shoulder level, walking, bending and twisting from the neck, squatting, kneeling repetitive hand use, power grasping, pushing and pulling, and lifting and carrying up to 40 pounds. Patient states she is no longer working for the company she was injured at. Her last day at work was in September 2021.

HISTORY OF INJURY:

Ms. Hwang states she injured herself when she was lifting a 40 lbs. box to place on an overhead shelf. She states she felt pain in her right shoulder and reported it to her supervisor. She did not finish her shift and later was sent for medical treatment. The patient states she underwent different types of therapy and later an :MRI of her right shoulder. No surgery or injections or recommendations for surgery were perfom1ed. She was then released back to full work duty. The patient states that later her left shoulder began to have pain due to compensation for her right shoulder injury.

The patient also states that during her time of employment she developed neck, back, left shoulder, right wrist, and left knee pain. The patient did not specifically report these injuries and thus did not receive treatment from the company clinic. Later she did obtain legal representation and treatment was started. The patient was also placed on work restrictions although she was no longing [*sic*] working.

***

DISCUSSION:

***

In my opinion, after reviewing her history and evaluating the patient and reviewing the records, it is apparent the injuries she sustained and subsequent symptoms are directly related to her work accident and continuous trauma, except for the left knee. At this time, I feel the patient would benefit from right shoulder surgery and requires further treatment to the left shoulder prior to reaching permanent and stationary status.

CAUSATION:

The injuries and sequelae the patient sustained are the direct result of her employment injuries which occurred during the course of her employment from October 1, 2010- September 23, 2021, as the patient had no previous issues with the injured body parts, except the left knee. . . .

APPORTIONMENT:

The patient's pathology/symptoms are 100% apportioned to the industrial injuries sustained during the course of her employment from October 1, 2010 to September 23, 2021, except for the left knee. Thus, I would apportion 20% of her left knee to this current industrial injury. It appears that there is a specific trauma resulting in

> the right shoulder injury and continuous trauma during the above time period accounting for the other injuries and symptoms. . . .

(Exhibit 12, 8/8/2022, pp. 1-2, 15, 16.)

In his Opinion on Decision, with respect to QME Dr. Bolling's reporting, the WCJ stated that:

> Dr. William Bolling, the Panel Qualified Medical Examiner, provided the opinion that the applicant had an injury to her right shoulder, left shoulder, lumbar spine, cervical spine, right wrist, and left knee. As to causation, Dr. Bolling opined that "[t]he injuries and sequelae the patient sustained are the direct result of her employment injuries which occurred during the course of her employment from October l, 2010 - September 23, 2021." Dr. Bolling identified only a single injury occurring during this period, an undated specific injury to the applicant's right shoulder.
>
> The Court finds that the medical reporting of Dr. Bolling only refers to injuries occurring between October 1, 2010 and September 23, 2021 and does not provide that the applicant's alleged injuries to her shoulders, back, wrists, and knees were the result of her job duties and/or the result of a continuous trauma.
>
> In addition, according to Dr. Bolling, the applicant's job duties included heavy lifting, organizing, displaying, cleaning, greeting customers, customer service, ordering merchandise, shipping, and taking online and phone orders. Her job duties also required the following activities: Sitting, standing, bending and twisting from the waist, grasping, fine manipulation, reaching above and below shoulder level, walking, bending and twisting from the neck, squatting, kneeling repetitive hand use, power grasping, pushing and pulling, and lifting and carrying up to 40 pounds. The parties stipulated at trial that the applicant was an office manager. An office manager has an occupation number of 111, which denotes jobs that have substantial use of keyboards, greater demands for standing and walking and include occupations such as accountant, claims clerk, and reservations agent.
>
> According to the settlement documents, the applicant and defendant stated that the applicant was a store manager. A store manager has an occupational number of 212, which includes primarily Professional and Medical Occupations that predominantly perform frequent fingering, handling, and possibly some keyboard work, which some activities involving the spine and legs.
>
> Both occupations are considered light when it comes to strength requirements.
>
> Based on the above, the Court finds that Dr. Bolling's report is not substantial evidence upon which the Court can rely when making a finding as to the industrial nature of the applicant's alleged injuries.

(Opinion on Decision, pp. 5-6.)

The WCJ then stated that:

> Where a lien claimant is litigating the issue of entitlement to payment for allegedly industrially-related medical treatment, the lien claimant must prove, by a preponderance of the evidence, all of the elements necessary to the establishment of its lien.
>
> The applicant was not called to testify as to her injuries and/or her job duties. As such, there is no evidence upon which to find that the applicant sustained an injury to her shoulders, back, wrists, and knees.

(Opinion on Decision, p. 7.)

DISCUSSION
I.

Former Labor Code 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, Labor Code 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 Labor Code 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 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 December 31, 2024 and 60 days from the date of transmission is Saturday, March, 1, 2025. The next business day that is 60 days from the date of transmission is Monday, March 3, 2025. (See Cal. Code Regs.,

tit. 8, § 10600(b).)[1] This decision is issued by or on Monday, March 3, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 December 31, 2024, and the case was transmitted to the Appeals Board on December 31, 2024. 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 Labor Code 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 December 31, 2024.

II.

To be compensable, an injury must arise out of and occur in the course of employment. (Lab. Code, § 3600.) The employee bears the burden of proving the injury arose out of and in the course of employment (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]; Lab. Code, §§ 3600(a), 3202.5.) Medical evidence that industrial causation was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660].) "That burden manifestly **does not require the applicant to prove causation by scientific certainty**." (*Rosas v. Worker's Comp. Appeals Bd*. (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313], emphasis added.)

---

[1] 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.

When a lien claimant rather than the injured worker is litigating the issue of entitlement to payment for industrially related medical treatment, the lien claimant stands in the shoes of the injured employee and the lien claimant must prove by a preponderance of the evidence the elements necessary to the establishment of its lien. (Lab. Code, §§ 3202.5, 5705; *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588, 1592 (Appeals Board en banc)

Decisions by 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 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's 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.)

In this regard, it has been long established that, in order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. (*McAllister v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal.2d 408, 413, 416-417, 419 [445 P.2d 313, 71 Cal. Rptr. 697] [33 Cal.Comp.Cases 660]; *Travelers Ins. Co. v. Industrial Acc. Com. (Odello)* (1949) 33 Cal.2d 685, 687-688 [203 P.2d 747] [14 Cal.Comp.Cases 54]; *Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1702, 1705 [20 Cal. Rptr. 2d 778] [58 Cal.Comp.Cases 313].)

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. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 [445 P.2d 294, 71 Cal. Rptr. 678] (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd*., *supra*, 68 Cal.2d at pp. 799, 800-801 (an opinion that fails to disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence); see also *People v. Bassett* (1968) 69 Cal.2d 122, 141, 144 [443 P.2d 777, 70 Cal. Rptr. 193] (the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the

conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based). (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

An employee's occupation is one of the component parts for rating permanent disability. The reason for this is that it serves to "aid in determining the relative effects of disability to various parts of the body taking into account the physical requirements of various occupations." (*Holt v. Workers' Comp. Appeals Bd.* (1986) 187 Cal.App.3d 1257, 1261 [51 Cal.Comp.Cases 576].) For injuries occurring on or after January 1, 2013, rating is completed through use of the 2005 Permanent Disability Rating Schedule (PDRS) which contains 45 occupational group numbers (Lab. Code, § 4660.1; 2005 PDRS, pp. 1-8.) Which occupational group number is to be applied in each case is a question of fact to be determined by the trier of fact. (*Dalen v. Workmen's Comp. Appeals Bd.* (1972) 26 Cal.App.3d 497, 503 [37 Cal.Comp.Cases 393].) It is also well established that an "employee is entitled to be rated for the occupation which carries the highest factor in the computation of disability." (*Id.* at pp. 505-506.) However, there must be evidence that the employee in fact performed the duties required of the more arduous occupation. (*Holt*, *supra*, at 1257.) An employee may also be entitled to a higher occupational group number if the activity (or activities) which generates the higher occupational group is an integral part of the occupation. (*National Kinney v. Workers' Comp. Appeals Bd.* (*Casillas*) (1980) 113 Cal.App.3d 203, 215-216 [45 Cal.Comp.Cases 1266].)

Here, it is unclear what the basis was for lien claimant's objection to the admission of applicant's deposition transcript that was offered by defendant. We remind all parties that the WCJ has broad discretion under the Labor Code to admit evidence that may not be admissible in civil proceedings. (Lab. Code, §§ 5708, 5709.)

Next, we disagree with the WCJ's overly technical reliance on stipulated occupation numbers in order to justify making the determination that applicant's job description in the medical reporting was somehow not credible. Dr. Bolling provided a detailed list of applicant's job duties, and Dr. Bolling was aware that applicant was the manager. Even if applicant was a manager, when she performed the more physical duties, she would have been entitled to a higher occupational variant. Thus, we conclude that the medical reporting by the QME Dr. Bolling is substantial medical evidence and sufficient to find AOE/COE.

Accordingly, we grant lien claimants' Petition for Reconsideration, rescind the F&O, and substitute the F&O below, which finds that applicant sustained injury AOE/COE and defers the remaining issues on the liens.

For the foregoing reasons,

IT IS ORDERED that Lien Claimants WestStar Physical Therapy and WSPT Network Petition for Reconsideration of the November 19, 2024 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the November 19, 2024 Findings and Order is **RESCINDED,** and **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant SOON HEE HWANG, born xx xx xxxx, while employed during the period during the period October 1, 2010 through September 23, 2021, as an office manager in Irvine, California, by Korean Red Ginseng Company, sustained injury arising out of and occurring in the course of employment to her neck, wrist, hands, upper extremities, and arms and claimed injury in the form of stress.

2. At the time of injury, the employer's workers' compensation carrier was Oak River Insurance Company, care of Berkshire Hathaway Homestate Companies.

3. The issue of the lien by WSPT Network is deferred.

4. The issue of the lien by WestStar Physical Therapy is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

I DISSENT,

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 3, 2025

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

WESTSTAR PHYSICAL THERAPY
HALLETT, EMERICK, WELLS & SAREEN

DLM/oo

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

DISSENTING OPINION OF COMMISSIONER JOSÉ H. RAZO

I respectfully dissent. I would have denied the Petition for Reconsideration based upon the reasons set forth in the WCJ's Report and Recommendation, which is adopted and incorporated into this dissent. As discussed, the WCJ found the QME report was not substantial evidence because the job duties described in the report did not match the stipulated job titles.

Further, applicant did not testify at the lien trial, and unexplainably lien claimants objected to the admissibility of applicant's deposition at the lien trial which explained applicant's job duties began as a stocker before she became the office manager. This evidence in the form of applicant's testimony would have corroborated the QME's description in his report.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 3, 2025

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

WESTSTAR PHYSICAL THERAPY
HALLETT, EMERICK, WELLS & SAREEN

DLM/oo

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

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION

I.
INTRODUCTION

1. Applicant's occupation : Office Manager
   Applicant's Age : 63
   Date of Injury : October 1, 2010 through September23, 2021
   Parts of Body Injured : shoulders, back, wrists, and knees
   Manner in which it occurred : Continuous trauma

2. Identity of Petitioner : WestStar Physical Therapy and WSPT Network
   Timeliness : Petition is timely
   Verification : Petition is verified

3. Date of Order : November 19, 2024

4. Petitioner contends that the WCJ erred in finding that the applicant did not sustain injury to her shoulders, back, wrists, and knees as a result of her employment as an office manager with Korean Red Ginseng Company during the period October 1, 2010 through September 23, 2021.

II
DISCUSSION

The parties submitted to the Undersigned Judge the issue of injury arising out of and in the course of employment, specifically if the applicant's alleged injuries to her shoulders, back, wrists, and knees were a result of a continuous trauma associated with her employment with Korean Red Ginseng Company between October 1, 2010 through September 23, 2021.

The Undersigned Judge found that the medical reporting of Dr. W. Seth Bolling was not substantial evidence upon which the Court could rely when making a finding as to the industrial nature of the applicant's alleged injuries.

Based on the finding that the medical reporting of Dr. Bolling was not substantial evidence, the Undersigned Judge found that the applicant did not sustain injury to her shoulders, back, wrists, and knees as a result of her employment as an office manager with Korean Red Ginseng Company during the period October 1, 2010 through September 23, 2021.

The Petitioners contend that the Undersigned Judge's opinions are unsupported and that the Undersigned Judge minimized and understated the findings of the PQME.

Cal Lab Code § 3202.5 provides that "[a]ll parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law. "Preponderance of the evidence" means that evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

As such, the lien claimants, WestStar Physical Therapy and WSPT Network had the burden of proof to establish injury arising out of and in the course of employment.

To meet this burden, WestStar Physical Therapy and WSPT Network submitted the medical report of the Qualified Medical Examiner, Dr. W. Seth Bolling.

Dr. Bolling provided the opinion that the applicant had an injury to her right shoulder, left shoulder, lumbar spine, cervical spine, right wrist, and left knee.[1]

Under causation, Dr. Bolling opined that "[t]he injuries and sequelae the patient sustained are the direct result of her employment injuries which occurred during the course of her employment from October l, 2010 - September 23, 2021."[2]

The undersigned Judge noted that Dr. Bolling identified only a single injury occurring during this period, an undated specific injury to the applicant's right shoulder. The undersigned Judge does acknowledge that under discussion, Dr. Bolling states that "it is apparent the injuries she sustained and subsequent symptoms are directly related to her work accident and continuous trauma, except for the left knee."[3]

However, this omission of the Opinion on Decision does not affect the Undersigned Judge's decision as the Undersigned Judge addresses Dr. Bolling's opinions as they relate to the applicant's alleged continuous trauma claim.

Dr. Bolling provided that the applicant's job duties included heavy lifting, organizing, displaying, cleaning, greeting customers, customer service, ordering merchandise, shipping, and taking online and phone orders. Her job duties also required the following activities: Sitting, standing, bending and twisting from the waist, grasping, fine manipulation, reaching above and

[1] LIEN CLAIMANT'S 12: PQME Report of Dr. W. Seth Bolling, dated August 8, 2022, page 15
[2] LIEN CLAIMANT'S 12: PQME Report of Dr. W. Seth Bolling, dated August 8, 2022, page 1
[3] LIEN CLAIMANT'S 12: PQME Report of Dr. W. Seth Bolling, dated August 8, 2022, page 15

below shoulder level, walking, bending and twisting from the neck, squatting, kneeling repetitive hand use, power grasping, pushing and pulling, and lifting and carrying up to 40 pounds.[4]

The Undersigned Judge noted that the parties stipulated at trial that the applicant was an office manager. An office manager has an occupation number of 111, which denotes jobs that have substantial use of keyboards and greater demands for standing and walking. It includes occupations such as accountant, claims clerk, and reservations agent.

The undersigned Judge further noted that according to the settlement documents, the applicant and defendant stated that the applicant was a store manager. A store manager has an occupational number of 212, which includes primarily Professional and Medical Occupations that predominantly perform frequent fingering, handling, and possibly some keyboard work, which involves some activities involving the spine and legs.[5]

Both of these occupations are considered light when it comes to strength requirements.[6] Given the discrepancy between the job duties of the stipulated occupation of the applicant and the job duties identified by Dr. Bolling as the basis for his determination on the causation of the applicant's injuries, an issue arises as to the accuracy of the applicant's history reported to Dr. Bolling.

The considered opinion of a physician, though inconsistent with other medical opinions, can constitute substantial evidence. However, medical reports and opinions are not substantial evidence if they are based on surmise, speculation, or conjecture or if they are known to be erroneous or based on inadequate medical histories and examinations.[7]

Furthermore, when the Board relies upon the opinion of a physician in making its determination, the Board may not isolate a fragmentary portion of his report or testimony and disregard other portions that contradict or nullify the portion relied on.[8]

No documentary evidence was submitted detailing the applicant's job duties.

Furthermore, the applicant did not testify at trial, and the lien claimants objected to the submission of the applicant's deposition transcript.

As such, no evidence was submitted establishing the applicant's job duties.

---

[4] LIEN CLAIMANT'S 12: PQME Report of Dr. W. Seth Bolling, dated August 8, 2022, page 1
[5] SCHEDULE FOR RATING PERMANENT DISABILITIES January 2005 Pages 3-15 and 3-30
[6] SCHEDULE FOR RATING PERMANENT DISABILITIES January 2005 Pages 3-27

The Undersigned Judge notes that the policy of liberal construction for the purpose of extending benefits for the protection of persons injured in the course of their employment is predicated upon there being a person who is "injured in the course of employment," and does not aid in deciding the threshold question of whether the employee was injured in the course of their employment.[9]

As such, the undersigned Judge could not rely on Dr. Bolling's opinions on causation and disregard the discrepancy between the job duties of the stipulated occupation and the reported job duties. This discrepancy brings into question the accuracy of the applicant's reported history.

With an inaccurate history, Dr. Bolling's reporting was not substantial evidence upon which the undersigned Judge could base a finding of industrial causation of the applicant's alleged injuries.

With no evidence of industrial injury, the undersigned Judge was not in error in finding the lien claimants had not met their evidentiary burden and finding that the applicant had not sustained an injury to her shoulders, back, wrists, and knees as a result of her employment as an office manager with Korean Red Ginseng Company during the period October 1, 2010 through September 23, 2021.

As the applicant had not sustained an industrial injury, the Undersigned Judge was not in error in finding that the services provided by WSPT Network and WestStar Physical Therapy were not reasonable or/and necessary to cure and/or relieve the effects of an industrial injury and that the defendant had no liability for the services provided by WSPT Network and WestStar Physical Therapy. if they are based on surmise, speculation, or conjecture or if they are known to be erroneous or based on inadequate medical histories and examinations.[7]

Furthermore, when the Board relies upon the opinion of a physician in making its determination, the Board may not isolate a fragmentary portion of his report or testimony and disregard other portions that contradict or nullify the portion relied on.[8]

No documentary evidence was submitted detailing the applicant's job duties.

Furthermore, the applicant did not testify at trial, and the lien claimants objected to the submission of the applicant's deposition transcript.

As such, no evidence was submitted establishing the applicant's job duties.

---

[7] Rosas v. Workers' Comp. Appeals Bd., 16 Cal. App. 4th 1692, 1702
[8] Rosas v. Workers' Comp. Appeals Bd., 16 Cal. App. 4th 1692, 1702

The Undersigned Judge notes that the policy of liberal construction for the purpose of extending benefits for the protection of persons injured in the course of their employment is predicated upon there being a person who is "injured in the course of employment," and does not aid in deciding the threshold question of whether the employee was injured in the course of their employment.[9]

As such, the undersigned Judge could not rely on Dr. Bolling's opinions on causation and disregard the discrepancy between the job duties of the stipulated occupation and the reported job duties. This discrepancy brings into question the accuracy of the applicant's reported history.

With an inaccurate history, Dr. Bolling's reporting was not substantial evidence upon which the undersigned Judge could base a finding of industrial causation of the applicant's alleged injuries.

With no evidence of industrial injury, the undersigned Judge was not in error in finding the lien claimants had not met their evidentiary burden and finding that the applicant had not sustained an injury to her shoulders, back, wrists, and knees as a result of her employment as an office manager with Korean Red Ginseng Company during the period October 1, 2010 through September 23, 2021.

As the applicant had not sustained an industrial injury, the Undersigned Judge was not in error in finding that the services provided by WSPT Network and WestStar Physical Therapy were not reasonable or/and necessary to cure and/or relieve the effects of an industrial injury and that the defendant had no liability for the services provided by WSPT Network and WestStar Physical Therapy.

III
RECOMMENDATION

For the reasons stated above, it is respectfully recommended that the lien claimants' petition for reconsideration be denied.

Notice is hereby given that this matter was transmitted to the Reconsideration Unit on the below date.

DATE: December 31, 2024

Oliver Cathey
WORKERS' COMPENSATION JUDGE

[9] Lantz v. Workers' Comp. Appeals Bd., 226 Cal. App. 4th 298