

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

**XYZ ADJ10728990, *Applicant***

**vs.**

**STATE OF CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (IHSS), Legally  
Uninsured, Administered by YORK RISK SERVICES GROUP, INC., *Defendant***

**Adjudication Number: ADJ10728990  
Stockton District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

In order to further study the factual and legal issues in this case, we<sup>1</sup> granted applicant's Petition for Reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact and Order of January 2, 2020, wherein it was found that while employed on August 1, 2013 as a caregiver/dialysis technician, applicant did not sustain industrial injury in the form of Acquired Immune Deficiency Syndrome (AIDS). The WCJ thus issued an order that applicant take nothing by way of their claim.

Applicant contends that the WCJ erred in finding no industrial injury and in issuing a take nothing order, arguing that the WCJ should have afforded the applicant more time to develop the evidentiary record. We have not received an answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report.)

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<sup>1</sup> Commissioner Deidra Lowe and Commissioner Marguerite Sweeney, who were on the panel in this case when the Order Granting Reconsideration was issued, no longer serve on the Appeals Board. Chair Katherine A. Zalewski and Commissioner Joseph V. Capurro have been substituted in their place.

For the reasons stated by the WCJ in the Report, which we adopt, incorporate and quote below, we will affirm the WCJ's decision.

**REPORT AND RECOMMENDATION ON  
PETITION FOR RECONSIDERATION**

**I  
INTRODUCTION**

XYZ ADJ10728990 by and through of her attorney of record, filed a timely and verified Petition for Reconsideration challenging the decision issued by WCJ John Durr alleging that the Findings of Fact, Order, and Opinion on Decision were without or in excess of the powers of the workers' compensation judge. For the reasons below. It is recommended that the Petition for Reconsideration be denied.

**II  
FACTS**

APPLICANT, XYZ ADJ10728990, [age 51 on the date of injury], while employed as a caregiver/dialysis technician at San Joaquin County, California by San Joaquin County IHSS Public Authority, claimed to have sustained injury arising out of and in the course of employment to the arms, fingers, chest, and other body systems all as a result of contracting HIV/AIDS. On the claimed date of injury, the employer was legally uninsured with York as a third-party administrator. The applicant began working for San Joaquin County IHSS on November 14, 2010, and her last day of employment was approximately April 15, 2015.

Procedural history in front of the WCAB (from EAMS):

Date:	Type:	Author:	Notes:
1/25/2017	Application for Adjudication	Ainbinder Pratt	
2/10/2017	Petition for change of venue	Hanna Brophy	
2/27/2017	Order changing venue	PWCJ Quiel	
2/23/2017	Answer to application for adjudication	Hanna Brophy	
10/2/2017	Mandatory Settlement Conference	WCJ Weber	The minutes of hearing indicate the applicant was present but her attorney did not appear. Over objection, the matter was continued. This was an

			MSC and discovery closed by Order at the hearing on 10/2/17. The matter was continued and with notice that the claim will be dismissed if applicant or her attorney fail to appear on November 27, 2017
11/27/2017	Pre-Trial Conference Statement	WCJ Weber	The applicant was present as was an attorney making a special appearance on her behalf. The matter was set for trial on March 29, 2018. The sole issue was injury arising out of, in the course of employment. Listed under other issues were statute of limitations, AOE[/COE, applicant wants to reopen discovery to take deposition of QME and PTP. Discovery was reordered, closed the November 22, 2017. The Notice of Deposition of the QME being quashed was attached to the pretrial conference statement with that issue being deferred to trial.
2/15/2018	Dismissal of Attorney	XYZ ADJ10728990	Applicant dismissed her attorney.
3/29/2018	Trial – CONTINUED	WCJ Durr	Applicant represented. She had discussions with attorney and had been told her case would be taken. The trial was continued for at least 90 days to the next available date it was set on August 20, 2018.
3/30/2018	Letter to the applicant	WCJ Durr	The applicant dropped off an envelope addressed to WCJ Durr. The proof of service indicated that it was ex parte communication, it was returned unopened to the applicant with an attached letter than also recommended that she contact the Information & Assistance Officer or retain the services of a private attorney.
8/20/2018	Trial – CONTINUED	WCJ Durr	The matter was continued as the applicant had retained counsel who appeared on the day of trial. The matter was reset to December 6, 2018.

11/15/2018	Substitution of Attorneys	Lira Law Group	The applicant went from being Pr0 Per to being represented by the Lira Group.
12/6/2018	Trial-Ordered off Calendar	WCJ Durr	Discovery was reopened for the limited purpose of deposing the panel QME by the applicant. Applicant may subpoena the records of the involved dialysis patient. Any party had leave to file a Declaration of Readiness to Proceed to bring the matter back on calendar.
3/4/2019	Declaration of Readiness to Proceed	Hanna Brophy	All boxes were checked and the notes indicated that the matter was taken off calendar to allow the applicant's attorney to subpoena records verifying that the patient applicant claims she contracted HIV from did indeed have HIV and to allow the applicant's attorney to then take Dr. Allems QME deposition. Applicant's attorney does not provide defendant with a subpoenas records to date is only just provided a lab test was in the applicant's husband is HIV negative, however, this on its own is not sufficient.
3/22/2019	Objection to the Declaration of Readiness to Proceed	Lira Law Group	Applicant objected to the DOR indicating discovery is outstanding. Requested a continuance to May 15, 2019. The QME's deposition is noticed for April 25, 2019. Defense counsel objects to the deposition going forward because [applicant's attorney] has not provided proof of a specific fact which is a prerequisite to the deposition going forward.
4/17/2019	Minutes of Hearing	WCJ Durr	Deposition of Dr. Allems is set for next week. Defendant felt there was a lack of diligence. However, the deposition should go forward. The matter was ordered off of calendar for that deposition.

4/25/2019	Substitution of Attorneys	XYZ 10728990	Applicant substitutes herself Pro Per as attorney of record.
6/21/2019	Applicant's Letter to the QME	XYZ 10728990	Request of the panel QME Dr. Allems as to whether the medical records of the applicant's former patient would be relevant to his assessment as to whether the injury was industrially caused.
7/3/2019	Minutes of Hearing	WCJ Durr	The applicant appeared accompanied by the Information & Assistance Officer from the Stockton WCAB. At that hearing discovery was left open for an additional 90 days to get medical records that the applicant had requested. The parties were admonished that the matter would be set for trial at the next hearing on October 9, 2019.
10/9/2019	Pre-Trial Conference Statement	WCJ Durr	The matter was set for trial on December 12, 2019. Discovery was ordered and closed. At issue was injury arising out of and in the course of employment as well as nature and extent.
11/21/2019	Substitution of Attorneys	Shatford Law	Shatford Law was substituted in taking the place of the applicant Pro-Per.
12/12/2019	Trial	WCJ Durr	Over the objection of the applicant's attorney the matter went forward.

The Findings of Facts dated January 2, 2020 included:

The applicant claims exposure to the HIV virus resulting in AIDS while acting as a caregiver/dialysis technician for patient "ML" which began on August 1, 2013 and ended with the demise of patient "ML" in December of 2013.

The applicant was diagnosed on May 12, 2015 with HIV as a result of laboratory testing indicating the presence of HIV antibody and a viral load of 863,000 (a chart note said in excess of 10 million, but that was not substantiated).

The applicant was diagnosed on May 12, 2015 with stage 3 AIDS disease as a result of laboratory testing indicating a CD4 level of “non-detect” or <20. The Qualified Medical Evaluator opined that the applicant would have to have contracted the HIV virus at least 8 years prior to the May 12, 2015 diagnosis and the CD4 level indicates a likely time frame of 10 to 11 years subsequent to the contraction of the virus.

The Qualified Medical Evaluator was NOT able to review the medical records of “ML,” however the associated timelines resulted in his medical opinion being that any information contained in the “ML” medical records would be irrelevant.

### **III** **DISCUSSION**

This matter was set for trial while the applicant was being represented by counsel at a Mandatory Settlement Conference on November 27, 2017. Having attempted to give the applicant as much discovery latitude as possible, the trial did not take place for 2 years.

During that intervening 2 years, the applicant changed attorneys twice, represented herself, and while acting in Pro Per wrote to the panel QME for clarification of his opinion.

The applicant appears to be extremely focused on the mechanism of exposure. Dr. Allems, a toxicology, occupational and environmental medicine, and internal medicine specialist who was acting as panel QME following the panel selection process for a represented applicant, opined as to the time lines supported by the applicant's medical testing.

Dr. Allems supported his opinions with a full page of references to the materials that he identified as his references/research to use to evaluate over 1200 pages of the applicant's medical records. Dr. Allems has a lengthy comment and conclusion section referencing the materials he reviewed and concluding with “the stage with [the applicant] was diagnosed with AIDS therefore confirms that she is had the infection for many years. The CDC states: “in the absence of treatment, AIDS usually develops 8 to 10 years after the initial HIV infection.”

Dr. Allems then goes through the Occupational Risk Factors and states that he can find no reference in the worldwide medical literature database that refer to or document HIV transmission from administering perinatal dialysis and handling dialysate. Dr. Allems then talks about where the applicant related two specific incidents, neither of which would have been causative of HIV transmission. At this point. Dr.. Allems indicates it is not clear whether the patient “ML” had HIV disease but makes his analysis as if she did.

Finally, Dr. Allems addresses causation. The applicant's "diagnosis of AIDS in May 2015 was based on an extremely low (nondetectable) CD4 count, a clinical status that is reached about 8-10 years after acquisition of the HIV virus. This fact alone reasonably excludes employment between August and December 2013 from consideration," as the causative factor to diagnosis in May 2015.

In his supplemental report dated August 19, 2019, Dr. Allems offers a 2 paragraph conclusion:

Contamination of Mrs. XYZ lancet-stuck finger with blood from ML on a couple of occasions and intact skin contamination on the arm from a bleeding wound on one occasion and getting splashed with peritoneal dialysate are all low risk transmission scenarios in any event. These scenarios become irrelevant when it is clear that she had her HIV infection long before the 8/1/13 based on her nondetectable CD4 count at the time of her diagnosis of AIDS in May 2015.

I am happy to review any investigative information that Mrs. XYZ has referred to, if available, for the sake of completeness, but the fact remains that the HIV parameters that were discovered at the time of her diagnosis in May 2015 reflected the fact that she had infection for many years. At that time, on the order of a decade (well outside the August-December 2013 window that she cared for Ms. ML). So the HIV status of the person she was caring for would be irrelevant.

Ample opportunities had been availed to the applicant when she was represented and when she was in Pro Per to attempt additional discovery. My recollection of this case is that she encountered problems with both her and her attorney's attempts to subpoena the medical records of the deceased patient ML. Based on the definitive opinion of the panel QME, well-reasoned and well supported by medical records and research, that the HIV/ AIDS status of patients that the applicant was caring for on August 1, 2013 or at any time within the 2 years of her diagnosis of AIDS is irrelevant and would not change the causation determination. Therefore, it felt that there was no need for the WCJ to further develop the record in the face of the medical evidence.

#### **IV RECOMMENDATION**

This is an extremely sympathetic applicant and her circumstances are tragic. However, the applicant was afforded ample due process, multiple extensions of time, reopening of discovery and had the benefit of assistance of counsel at various times while prosecuting her case. The science and the timelines preclude this date of injury or even a cumulative trauma period ending with the demise of patient ML, from being the source of the infection that culminated in a diagnosis

of AIDS in May 2015. Regrettably, I must recommend that the applicant's Petition for Reconsideration be denied.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Order of January 2, 2020 is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSEPH V. CAPURRO, COMMISSIONER

**I CONCUR,**

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**July 25, 2025**

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

**XYZ 10728990  
SHATFORD LAW  
HANNA BROPHY MACLEAN MCALEER & JENSEN**

**DW/oo**

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