

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

EVANGELINA RUIZ, *Applicant*

vs.

CARTER & CARTER, APLC; *Defendant*

Adjudication Number: ADJ9635764
Anaheim District Office

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in this matter to further study the factual and legal issues.¹ This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O) issued on October 7, 2021, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed as a legal assistant during the period of August 22, 2013 through August 22, 2014, by defendant Carter & Carter, uninsured, applicant claims to have sustained injury arising out of and occurring in the course of employment (AOE/COE); and (2) applicant is barred from pursuing her workers' compensation claim based on res judicata.

The WCJ ordered that (1) applicant is barred from pursuing her workers' compensation claim based on res judicata; and (2) defendant's petition for dismissal is granted.

Applicant contends that the WCJ erroneously found her claim barred based on res judicata. Specifically, applicant argues that the finding (1) concerns procedural law and is therefore not properly subject to factual determination; (2) fails to address applicant's orthopedic claims; and (3) misapplies the law of res judicata.

We received an Answer from defendant.

¹ Commissioner Sweeney and Commissioner Lowe no longer serve on the Appeals Board. Commissioner Dodd and Commissioner Capurro have been substituted in their place.

We received applicant's request for leave to file a supplemental pleading accompanied by a (Proposed) Supplemental Pleading. We accept the Supplemental Pleading. (Cal. Code Regs., tit. 8, § 10964.)²

We received a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have reviewed the contents of the Petition, the Answer, the Supplemental Pleading and the Report. Based upon our review of the record, and for the reasons set forth below, as our Decision After Reconsideration, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On April 27, 2015, applicant filed an amended application for adjudication alleging cumulative trauma injury to her head, neck, circulatory system, respiratory system and multiple other body parts due to exposure to mold and black water contamination while employed as a legal assistant during the period of August 22, 2013 through August 22, 2014. (Amended Application for Adjudication, April 27, 2015, pp. 3-4.)

On July 28, 2021, the matter proceeded to trial of the following issue:

Per the Minutes of Hearing it is Defendant's motion to dismiss on the grounds of Res Judicata and collateral Estoppel. [Defendant] was sued in civil court in Riverside county, case Number RIC 1510031. The summary judgment motion determined no liability for any medical injury claimed by [applicant] and found no hazardous or dangerous condition existed at the law firm. Injuries claimed in the civil suit are the same as claimed in the worker's comp case.

(Minutes of Hearing and Summary of Evidence, July 28, 2021, pp. 2:6-10.)

The WCJ admitted an exhibit entitled Judgment on Summary Judgment dated June 16, 2017, into evidence. (Ex. B, Judgment on Summary Judgment, June 16, 2017.) In it, the trial judge in the Superior Court for the County of Riverside, Case Number RIC 1510031 granted (1) defendant's evidentiary objections to the declarations of applicant, third party witnesses Lori Gluck and Duvid Buchanan, and the medical report of Dr. Chan; (2) summary adjudication of applicant's personal injury case against defendant on the grounds that she presented no evidence that she was

² The Supplemental Pleading argues that the WCJ misapplied the Labor Code to require applicant to elect to proceed against defendant in a single forum rather than proceed with a negligence action in superior court as well as the claim herein. Because we will rescind in the F&O on other grounds, we do not address this argument.

exposed to mold or other toxins while working for defendant and thus failed to meet her burden of proof as to causation; and (3) summary adjudication of the personal injury case on the separate ground that applicant's pre-existing medical conditions caused the symptomology giving rise to her complaint and thus could not be directly attributed to her employment with defendant. (*Id.*, pp. 2-3.)

The WCJ admitted an exhibit entitled Appellate Opinion dated April 17, 2019, into evidence. It is a decision of the Court of Appeal, Fourth Appellate District, upholding the superior court's summary judgment of applicant's complaint and opines as follows:

Dr. Chan's report was clearly prepared for the worker's compensation case. There was no declaration authenticating the report. Further, the only references to mold were that she was allergic to mold. Ruiz's own statements that she was exposed to mold at work were inadmissible hearsay. Finally, Dr. Chan made a final diagnosis of mold exposure but provided no explanation as to how he reached that conclusion; the conclusions lacked foundation and were speculative. The trial court stated, "There is no evidence that this was exposure at work. While this report may be sufficient for workers' comp proceedings, they do not meet the evidentiary burden on summary judgment. [¶] The Court finds that [Ruiz] has not proved causation, which is a necessary element."

(Ex. A., Appellate Opinion dated April 17, 2019, p. 15.)

The trial court found that the statements by Ruiz, Gluck and Buchanan-which included that there was mold in the building, that Gluck also got sick when the *Buchanan* file was in the office, and that Christopher destroyed the *Buchanan* file-were not admissible evidence.

...
Ruiz failed to present competent evidence to show there was a triable issue of fact as to whether the preponderance of the evidence established she in fact was injured at work due to mold on the *Buchanan* file.

(*Id.*, p. 21-22.)

...
In Dr. Chan's report, he merely concluded that she was injured at work but provided no explanation how he reached this conclusion other than "Patient's subjective complaints" and "Objective findings."

(*Id.*, p. 25.)

In the Report, the WCJ states:

Evangelina Ruiz was employed during the period of 8/2/2013 to 8/22/2014 as a legal assistant by Carter & Carter. On or around 8/19/2015, Applicant filed a civil lawsuit against the employer for negligence per se, negligence and premise liability. A First Amended Complaint for the same causes of action was filed on around

10/13/2015. Around the same time period, Applicant filed a workers' compensation claim against the employer. Applicant filed a Second Amended Complaint as to premises liability. In the civil complaint, Applicant alleged she suffered physical injury, pain and suffering while working for the defendant. The Riverside Superior Court found Applicant did not meet her burden of proving causation and Defendant's Motion for Summary Judgment was granted. The Appellate Court affirmed the judgment. Applicant continued to pursue her workers' compensation claim.

...

In September of 2011, Defendant was working on a case entitled *Buchanan v. Twin Rock Partners (Buchanan)*. Applicant claimed she became ill because she was exposed to mold while handling documents pertaining to the *Buchanan* case.

...

On April 1, 2016, Applicant filed a Second Amended Complaint raising only the premises liability cause of action. Applicant alleged the civil suit and the workers' compensation claims involved the same facts. She continued to allege defendant was in charge of the location of the law firm, he was negligent in maintaining the office by failing to keep free from the effects of mold and other hazardous material and an unsafe condition existed at the office.

On March 15, 2017, defendant filed a Motion for Summary Judgment. In the motion, defendant asserted Applicant failed to show the existence of any mold or mold spores in the office. She produced no admissible evidence that any mold was on the *Buchanan* documents or that it caused her alleged injuries. Applicant also had admitted in her interrogatories that she possessed no evidence that any hazardous condition or materials existed at defendant's office or that it was the direct cause of her injuries.

The court noted the lawsuit was not really a premises liability case but a negligence theory. The trial court further noted that Applicant alleged she was injured on the job and defendant lacked workers' compensation insurance. The trial court noted that an injured employee can bring an action against an employer for damages in the superior court when the employer does not possess workers' compensation insurance. The Second Amended Complaint was a negligence case and Applicant had the burden of proving the injury occurred during the course of employment. The applicant did not meet her burden of proving causation and the motion for summary judgment was granted. Applicant filed an appeal.

...

In this matter, a final judgement was issued in favor of the defendant because the Applicant could not meet her burden of proof that an injury occurred within the scope of her employment.

(Report, pp. 1-6.)

DISCUSSION

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "... one of 'the rudiments of fair play' assured to every litigant ..." (*Id.* at 158.) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, 82 Cal.App.4th at 157-158; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) Due process requires "a 'hearing appropriate to the nature of the case.'" (*In re James Q.* (2000) 81 Cal.App.4th 255, 265 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 313, 70 S. Ct. 652.) Although due process is "a flexible concept which depends upon the circumstances and a balancing of various factors," it generally requires the right to present relevant evidence. (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817.)

Demurrers, petitions for judgment on the pleadings and petitions for summary judgment are not permitted in the workers' compensation system. (Cal. Code Regs., tit. 8, § 10515.)

Applicant holds the initial burden of proving that she sustained injury AOE/COE and may meet this burden by a preponderance of the evidence, irrespective of the fault of either party. (Cal. Const., art. XIV, § 4; *South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302; Lab. Code §§ 5705, 3202.5; 3600(a)³.) It is sufficient to show that work was a contributing cause of the injury. (See *Clark, supra*, 61 Cal.4th at p. 298; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) Applicant need only show that industrial causation was "not zero" to show sufficient contribution from work exposure for the claim to be compensable. (*Clark, supra*, 61 Cal.4th at p. 303.) The burden of proof "manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].) It has also long been established that "all reasonable doubts as to whether an injury is compensable are to be resolved in favor of the employee." (*Guerra v. Workers' Comp. Appeals Bd.* (2016) 246 Cal.App.4th 1301, 1310 [81 Cal.Comp.Cases 324], citing *Clemons v. Workmen's Comp. Appeals Bd.* (1968) 261 Cal.App.2d 1, 8; § 3202.)

³ Unless otherwise stated, all further statutory references are to the Labor Code.

Once applicant meets her initial burden of proof, the burden of proof shifts to defendant to establish its legal defenses. (§ 5705; see *Lantz v. Workers' Comp. Appeals Bd.* (2014) 226 Cal.App 4th 298, 313 [79 Cal.Comp.Cases 488]; *Hand Rehabilitation Center v. Workers' Comp. Appeals Bd. (Obernier)* (1995) 34 Cal.App.4th 1204 [60 Cal.Comp.Cases 289]; *Bolanos v. Workers' Comp. Appeals Bd.* (2014) 79 Cal.Comp.Cases 1531.)

In this case, applicant filed an application for adjudication alleging cumulative trauma injury during the period of August 22, 2013 through August 22, 2014 to her head, neck, circulatory system, respiratory system and multiple other body parts. (Amended Application for Adjudication, April 27, 2015, pp. 3-4.) Applicant thus held the initial burden of proof and was entitled to a hearing to present evidence supportive of her *prima facie* claim. However, instead of holding a hearing on applicant's claim, the WCJ held trial solely on the petition to dismiss. (Minutes of Hearing and Summary of Evidence, July 28, 2021, pp. 2:6-10.) This proceeding was akin to summary judgment in violation Rule 10515 and served to deny applicant an opportunity to establish her *prima facie* claim. We therefore conclude that the proceeding violated applicant's right of due process.

Accordingly, we will rescind the F&O.

We also note that the denial of an opportunity for applicant to establish her *prima facie* claim resulted in an evidentiary record inadequate for us to determine the applicability of the asserted res judicata/collateral estoppel defense.

For example, since there are no findings of injury as to any of the alleged body parts, there is no record of causation of injury which could serve as a basis for the res judicata/collateral estoppel defense.

More particularly, applicant's injury claim includes injury to the head and neck which could have resulted from a source of cumulative trauma other than mold exposure. Since there are no findings of injury as to these body parts, there is no basis to conclude that res judicata/collateral estoppel offers a complete defense to applicant's claim.

We also note that once applicant establishes her *prima facie* claim, the question of whether the res judicata/collateral estoppel defense applies must be determined by application of their respective criteria.

Res judicata precludes re-litigation of the same cause of action in a subsequent suit between the same parties. By contrast, collateral estoppel precludes re-litigation of the same issue in a subsequent proceeding between the same parties.

Since the prior litigation determined an action in negligence and workers' compensation claims are determined without regard to negligence, it appears that res judicata does not apply. (Report, p. 1; § 3600(a).)

Collateral estoppel bars a party from re-litigating an issue already decided if the following requirements are met: (1) "the issue sought to be precluded from re-litigation must be identical to that decided in a former proceeding;" (2) "this issue must have been actually litigated in the former proceeding;" (3) "it must have been necessarily decided in the former proceeding;" (4) "the decision in the former proceeding must be final and on the merits;" and (5) "the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." *Branson v. Sun-Diamond Growers of California*, 24 Cal.App.4th 327, (1994) (quoting *Lucido v. Superior Court*, 51 Cal.3d 335, 341, (1990), cert. denied, 500 U.S. 920 (1991)).)

Once applicant establishes that she sustained injury to one or more body parts in this case, then, the question becomes whether the injury claim is identical to one that was actually litigated and necessarily decided in the negligence case. On the record before us, it is unclear whether defendant may establish these criteria.

First, the superior court summarily adjudicated applicant's negligence action on the grounds that applicant's witnesses' declarations and medical report constituted inadmissible hearsay, leaving the record without any evidence suggesting that applicant was exposed to mold during her employment. (Ex. B, Judgment on Summary Judgment, June 16, 2017, pp. 2-3.)

But as we have explained, the element of causation in workers' compensation claims requires a mere showing that work was a contributing cause of the injury, with applicant required to show that industrial causation was "not zero" and with all reasonable doubts to be resolved in her favor. (See *Clark, supra*, 61 Cal.4th at pp. 298, 303; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660]; *Guerra v. Workers' Comp. Appeals Bd.* (2016) 246 Cal.App.4th 1301, 1310 [81 Cal.Comp.Cases 324], citing *Clemons v. Workmen's Comp. Appeals Bd.* (1968) 261 Cal.App.2d 1, 8.) Moreover, hearsay evidence is admissible to establish injury when it is best calculated to ascertain the substantial rights of the parties. (See §

5708; see also *London Guarantee and Accident Co., Limited v. IAC (Murray)* (1927) 203 Cal. 12, 14; *Linens N' Things v. WCAB (Wiseman)* (2001) 66 CCC 281 (writ den.).)

Since hearsay evidence is admissible in workers' compensation proceedings and the superior and appellate courts relied directly on the hearsay rule to determine that applicant failed to present evidence to support her medical causation claim, it is unclear that the causation issue in superior court was identical to that in workers' compensation or that causation in workers' compensation was actually litigated and necessarily decided by the superior court.

Second, the superior court summarily adjudicated the negligence action on the separate grounds that applicant's pre-existing medical conditions were the actual cause of the symptomology applicant attributed to defendant. (Ex. B, Judgment on Summary Judgment, June 16, 2017, pp. 2-3.)

But all findings of injury in workers' compensation must be supported by substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence "... a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Since the superior court determined that applicant's pre-existing medical conditions actually caused the symptomology she attributed to defendant without relying on the medical evidence (which was excluded as hearsay) as required for such findings in workers' compensation, it is unclear that the superior court's decision determined an issue identical to medical causation in workers' compensation, or that causation in workers' compensation was actually litigated and necessarily decided by the superior court.

The Appeals Board has the discretionary authority to order development of the record when appropriate to provide due process or fully adjudicate the issues consistent with due process. (See *San Bernardino Community Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121–1122 [63 Cal.Comp.Cases 261, 264–265].)

Because the record is inadequate to determine the application of the collateral estoppel defense, we conclude that the matter should be returned to the trial level for development of the record as to applicant's *prima facie* claim and defendant's defenses thereto. In doing so, we recognize that Dr. Chan's reporting does not address the issue of causation of injury to each alleged injured body part or explain the bases of his opinions.

Pursuant to *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138, the preferred procedure for developing a deficient record is to allow supplementation of the medical record by the physicians who have already reported in the case. However, where that physician is likely unable to cure the deficiencies of previous reporting, the parties should consider selecting an Agreed Medical Evaluator (AME). If the parties cannot agree to an AME, then the WCJ can appoint an evaluator pursuant to section 5701.

In this case, Dr. Chan's previous reporting suggests that he is unable to cure the deficiencies in the record. Therefore, we recommend that the parties select an AME to further develop the medical record as to applicant's *prima facie* claim, and, if the parties are unable to agree, that the WCJ appoint the medical evaluator.

Accordingly, we will return the matter to the trial level to develop the record as to whether applicant sustained injury to the alleged body parts; and, as appropriate, whether defendant may establish its legal defenses.

Accordingly, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued on October 7, 2021 is **RESCINDED** and the matter is **RETURNED** to the trial court for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 8, 2026

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

**EVANGELINA RUIZ
DHOLAKIA & ASSOCIATES
LAW OFFICE OF CHRISTOPHER C. CARTER**

SRO/kl

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