

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

LORENZO REVELES, *Applicant*

vs.

**DAHDOUL TEXTILES, INC. and
REPUBLIC INDEMNITY COMPANY OF AMERICA, *Defendants***

Adjudication Number: ADJ14431348

Van Nuys District Office

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on July 14, 2023, wherein the WCJ found in pertinent part that applicant did not sustain any permanent disability as a result of his December 2, 2020 industrial injury.

Applicant contends that the reports from orthopedic qualified medical examiner (QME) Jerrold M. Sherman, M.D., are not substantial evidence regarding applicant's permanent disability and should not be the basis for the WCJ's decision.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We did not receive an Answer from defendant.

We have considered the allegations in the Petition, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&A, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

Applicant claimed injury to his cervical spine, thoracic spine, lumbar spine, left shoulder, left wrist, left ankle, and left foot, while employed by defendant as a driver/loader/unloader on December 2, 2020.

Applicant initially received treatment from his primary treating physician (PTP) Shahab Mahboubian, D.O., on December 30, 2020¹. The diagnoses included cervical/thoracic/lumbar spine sprain and strain; left shoulder/wrist sprain and strain; left hand strain; left knee sprain; and left foot/ankle sprain. (App. Exh. 1, Shahab Mahboubian, D.O., December 30, 2020, p. 11.) Dr. Mahboubian noted that applicant had "... a prior work injury in 2008 involving the right shoulder. ... The patient fully recovered." (App. Exh. 1, p. 4.) As to prior "related" accidents/injuries, the doctor stated: "The patient denies prior related industrial injuries or accidents. ... Mr. Cuevas denies prior related non-industrial injuries or accidents." (App. Exh. 1, p. 4.) Dr. Mahboubian later noted that, "At the time of this examination, there were no medical records available for my review." (App. Exh. 1, p. 11.)

QME Dr. Sherman evaluated applicant on December 15, 2021. (Def. Exh. B, Jerrold M. Sherman, M.D., December 19, 2021.) Based on his examination of applicant, Dr. Sherman's description of applicant's injury symptoms included:

His present complaints of posterior neck pain consist of constant aching pain ... complaints regarding his left shoulder consist of constant global aching pain (Def. Exh. B, , p. 3.)

At home he is able to do all activities of daily living, including dressing himself, tending to his own toilet and driving. (Def. Exh. B, p. 4.)

Examination of the left shoulder reveals a normal appearance without muscle wasting, instability or tenderness. At various times he abducts and forward flexes the left shoulder from 0-100°, stopping suddenly and complaining of pain, but is seen to abduct and forward flex the left shoulder from 0-180° without pain during the course of the examination. He internally and externally rotates the left shoulder to 90° and extends and adducts the left shoulder to 50°, intermittently complaining of pain during the entire ranges of motion.

(Def. Exh. B, p. 6.)

The diagnoses included: "Complaints of left shoulder pain demonstrating intermittent pain complaints and normal range of motion without neurologic or mechanical deficit." (Def. Exh. B,

¹ We note that in each of his reports Dr. Mahboubian identifies the injured worker as Lorenzo Cuevas, with the case number ADJ13992559. This appears to be a clerical error.

p. 8.) Dr. Sherman then stated, “Mr. Reveles has no objective abnormalities regarding the neck, back, left arm or left leg to support his subjective complaints. He should be awarded 0% Whole Person Impairment.” (Def. Exh. B, p. 9.)

Dr. Sherman’s review of the medical records included a January 26, 2021, left shoulder MRI. The MRI was interpreted by Quazi Z. Al-Tariq, M.D., who stated: “1) There is moderate subscapularis tendinopathy with intrasubstance tearing. Note is also made of supraspinatus and infraspinatus tendinopathy. 2) There is a split tear of the long head of the biceps tendon. Intra-articular portion is incompletely evaluated.” (Def. Exh. B, Review of Medical Records p. 21, [EAMS p. 31].)

On February 21, 2022, PTP Dr. Mahboubian determined that applicant had reached maximum medical improvement/permanent and stationary status. (App. Exh. 3, Shahab Mahboubian, D.O., February 21, 2022, p. 13.) The doctor concluded that applicant had 5% cervical spine whole person impairment (WPI), 5% lumbar spine WPI, 7% left shoulder WPI, 10% left wrist WPI, 3% left ankle/foot WPI, and a 3% pain add-on. (App. Exh. 3, pp. 13 – 16.) Regarding apportionment, Dr. Mahboubian stated, “20% of the patient’s cervical spine, lumbar spine, left shoulder, left wrist and left ankle impairments are apportioned to non-industrial causes and 80% to the injury on 12/02/2020.” (App. Exh. 3, p. 16.) He noted that he had reviewed the January 26, 2021, left shoulder MRI, the April 28, 2021 EMG/NCV [electromyography/nerve conduction study], and the December 15, 2021 report from Dr. Sherman; and he later stated that, “No other medical and/or diagnostic records were available for review at this time.” (App. Exh. 3, pp. 11 – 12.)

QME Dr. Sherman was provided additional medical records to review and, in his March 4, 2022, supplemental report he stated, “After reviewing these forwarded medical records, I see no reason to change my opinions as expressed in my Initial Qualified Medical Evaluation.” (Def. Exh. C, Jerrold M. Sherman, M.D., March 4, 2022, p. 8.)

The parties proceeded to trial on March 29, 2023. They stipulated that applicant sustained an injury arising out of and occurring in the course of employment (AOE/COE) to his cervical spine, thoracic spine, lumbar spine, left shoulder, left wrist, left ankle, and left foot; the trial was continued for further testimony by applicant. (Minutes of Hearing/Summary of Evidence (MOH/SOE), March 29, 2023.) At the June 1, 2023 trial the matter was submitted for decision.

(MOH/SOE, June 1, 2023.) The issues included permanent disability/apportionment. (See MOH/SOE, March 29, 2023, p. 2.)

DISCUSSION

It has long been the law that in order to constitute substantial evidence, a medical opinion must be based on pertinent facts and on an adequate examination and history, and it must set forth the reasoning behind the physician's opinion, not merely his or her conclusions; a mere legal conclusion does not furnish a basis for a finding. (*Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) A medical opinion is not substantial evidence if it is based on inadequate medical histories or examinations. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal. App. 3d 246 [54 Cal.Comp.Cases 349]; *Escobedo v. Marshalls, supra.*)

We first note that in her Opinion on Decision, the WCJ stated that PTP Dr. Mahboubian had not reviewed the medical records pertaining to applicant's prior motor vehicle accidents. (See F&A, Opinion on Decision, p. 2 [EAMS] p. 5.) In that context, it is important to review the following 2016 medical treatment report from Ricardo Garcia D.C.:

Lorenzo Cuevas was involved in an automobile collision on Monday, March 28, 2016 at 1:30:00 AM involving 2 vehicles. The collision occurred while the patient was heading north on Vail in Commerce, CA. The patient states that the other vehicle came out of side street that had a stop sign, striking them on the passenger side. The other driver left the scene but left his vehicle behind. The Sheriff's came to the scene. ¶ ...The patient is experiencing cervical pain radiating to the left upper extremity which bother him constantly meaning it bothers him between 76 and 100% of the time. Lorenzo described his discomfort as dull and tingly. The patient stated that his symptoms appear to be getting worse with time. The patient rated the average intensity of his neck condition as a 7 with 0 being nothing and 10 being the worst he feels it could be. The patient explained that his symptoms have moderately interfered with his work and social activities. Prior to coming in to see me for his condition, Lorenzo did not see another qualified health care provider. The patient stated that he has had his neck problem ever since the aforementioned auto accident. Lorenzo stated that his neck problem is from MVA. ... When questioned as to the severity of his symptoms Lorenzo responded that he believes it is severe. ... ¶ ... He was previously treated in this office for MVA's in 2009 and 2011, injuring his neck and back with condition resolving in both instances. When questioned if there

was anything else I should be aware of, the patient stated that there was nothing pertinent.
(Def. Exh. E, Ricardo Garcia D.C., April 1, 2016, pp. 1- 2 [EAMS pp. 7 - 8].)

Having reviewed the reports from Dr. Mahboubian, we agree with the WCJ, it appears that he was not aware of applicant's prior motor vehicle accidents, and he did not review any medical records addressing the results of those accidents. Therefore, Dr. Mahboubian's opinions are based on an inadequate medical history and do not constitute substantial evidence. (*Place v. Workmen's Comp. Appeals Bd. supra*; *Bracken v. Workers' Comp. Appeals Bd. supra*; *Escobedo v. Marshalls, supra*.)

Regarding the reports from QME Dr. Sherman, as quoted above, Dr. Sherman said applicant complained of constant global left shoulder aching pain, but he then said applicant was able to do all activities of daily living, and that upon examination, applicant's left shoulder looked normal without any instability or tenderness. (Def. Exh. B, p. 6.) However, Dr. Sherman's review of the medical record included the January 26, 2021, left shoulder MRI that showed moderate subscapularis tendinopathy [inflammation of the shoulder tendons and muscles] with intrasubstance tearing [partial-thickness rotator cuff tear] and a split tear of the long head of the biceps tendon [split tendon, torn from the bone]. (Def. Exh. B, Review of Medical Records p. 21, [EAMS p. 31]; see also Webster's New World Medical Dictionary.) Dr. Sherman's statement that applicant's left shoulder "looked normal" appears to be inconsistent with the left shoulder condition identified by the January 26, 2021 MRI. Dr. Sherman did not provide any analysis or reasoning as to his conclusion that applicant's left shoulder "looked normal." After having reviewed the MRI, absent an explanation of the basis for his opinion and its inconsistency with the MRI, Dr. Sherman's report is not substantial evidence regarding applicant's left shoulder condition nor the issue of disability caused by the December 2, 2020 injury.

Any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16]; *Universal City Studios, Inc. v. Workers' Compensation Appeals Bd. (Lewis)* (1979) 99 Cal.App.3d 647 [44 Cal.Comp.Cases 1133].)

The Appeals Board has the discretionary authority to further develop the record where there is insufficient evidence to determine an issue that was submitted for decision. (Lab. Code,

§5701, §5906; *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].) As discussed above, the trial record does not contain substantial evidence on the issue of permanent disability caused by applicant's December 2, 2020 injury. Based thereon, the record must be further developed.

Normally, when the medical record requires further development, the record should first be supplemented by physicians who have already reported in the case. (See *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) However, under the circumstances of this matter, it may be in the parties' interest to have applicant evaluated by an agreed medical examiner or in the alternative, to request that the WCJ appoint a regular physician. (Lab. Code § 5701.)

Accordingly, we grant reconsideration, rescind the F&A, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Award issued by the WCJ on July 14, 2023, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 14, 2023 Findings and Award is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 6, 2023

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

**LORENZO REVELES
GLAUBER BERENSON VEGO
REPUBLIC INDEMNITY COMPANY OF AMERICA**

TLH/mc

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