

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

CECILIA DURAN, *Applicant*

vs.

**COUNTY OF IMPERIAL, permissibly self-insured,
administered by ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ14966902
San Diego District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on July 17, 2023, wherein the WCJ found in pertinent part that applicant's head contusion accelerated her brain cancer, and the cancer constitutes an injury arising out of and occurring in the course of employment (AOE/COE).

Defendant contends that the reports and deposition testimony of applicant's treating physician David Santiago-Dieppa, M.D., are not substantial evidence upon which a decision may be based.

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 applicant.

We have considered the allegations in the Petition, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, which we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed injury in the form of a head contusion, resulting in brain cancer, while she was employed by defendant as an account clerk on November 18, 2020. Applicant underwent a course of treatment from various providers at University of California San Diego (UCSD) Health

including neurosurgeon David Rafael Santiago-Dieppa M.D., (hereafter Dr. Santiago) (See Def. Exh. A, Blake W. Berman, D.O., December 1, 2021, pp. 9 – 21, record review.)

Neurology qualified medical examiner (QME) Blake W. Berman, D.O., evaluated applicant on December 1, 2021. After examining applicant, taking a history, and reviewing the medical record, Dr. Berman diagnosed “Contusion of scalp, initial encounter” and “Neoplasm of uncertain behavior of meninges, unspecified.” (Def. Exh. A, p. 26.) Regarding the cause of applicant’s condition, Dr. Berman said:

Based on the currently available information, including the patient's self-reported history of injury, the patient's symptomatology as well as my findings upon examination, it is my medical opinion that only the patient's current symptoms and objective findings related to left parietal scalp contusion are a direct result of the industrial injury of November 18, 2020. ¶ ... it is my medical opinion that none of the patient's current symptoms and objective findings related to scalp/skull/dural mass (anaplastic meningioma) [cancerous tumors] are a direct result of the industrial injury of November 18, 2020.
(Def. Exh. A, pp. 27 – 28.)

On February 16, 2022, Dr. Santiago requested authorization for a surgical procedure involving the placement of a “right ventriculoperitoneal shunt [tube placed in the brain to drain fluid] with image guidance.” (See App. Exh. 2, Utilization Review Certification, February 22, 2022.) The surgery was approved by defendant’s Utilization Review (Athens Managed Care), and Dr. Santiago performed the cerebral shunt placement.

Dr. Santiago’s deposition was taken on September 13, 2022. Regarding his medical specialty, he testified that:

I am a neurosurgeon. I attended medical school at the Johns Hopkins University School of Medicine in Baltimore, Maryland. I completed my neurosurgery residency at the University of California San Diego that included an [sic] enfolded fellowship in endovascular neurosurgery. My subspecialty training within neurosurgery is vascular, endovascular, and complex cranial issues. (App. Exh. 3, David Rafael Santiago-Dieppa M.D., September 13, 2022, deposition transcript, p. 7.)

His testimony regarding the cause of applicant’s cancer included the following:

Q. Okay. Can head trauma impact the growth of those cells and then [sic] result in a tumor?

A. It has been reported in the medical literature.

Q. So are there cases or a case or research that supports a theory that trauma to the head can accelerate that preexisting growth?

A. That has been reported in the medical literature.

(App. Exh. 3, p. 20.)

Q ... So did the falling of the shelf landing on her head, it didn't cause the tumor, right?

A. It's my opinion that the trauma did not cause the tumor. It's my opinion that the shelf striking her head may have caused the rapid growth and presentation that she presented to my clinic with which is in agreement with what has been described in some cases in the literature.

Q. Would you say that the trauma of the shelf falling on her head accelerated the growth of the meningioma?

A. Based off the patient's history and the case reports in the literature, I would say, that's medically probable.

Q So you can state within reasonable medical probability that the shelf falling and landing on her head at work accelerated the meningioma?

A. That is correct.

Q. Okay. And that acceleration is at least one percent or more; is that accurate?

A. That is accurate.

(App. Exh. 3, pp. 22 – 23)

Q. So when you are reaching this conclusion that the head trauma that she suffered at work, specifically the shelf falling and landing on her head, when you reached the conclusion that that trauma accelerated the meningioma within medical probability, what are you basing your opinion on?

A. Two pieces of evidence. Number one, the patient's history of illness. I found her to be reliable. The patient clearly stated to me that she did not have this lesion prior to the shelf hitting her head and then very soon, within two weeks of the shelf hitting her head, she had rapid and sustained growth. Number two, as has been described in the literature, there are case reports and an association between head trauma and the presentation of these primary extradural meningiomas.

Q. So the mechanism of her injury supports that the tumor's growth was accelerated?

A. That is correct.

(App. Exh. 3, pp. 23 – 24.)

Q. You said something about the tumor ... extending to the --

A. Extending to the vertex, so the top of the skull. So I would say that the tumor, if I were to classify it, was eccentric to the left but included the top of the head as shown by my radiology colleagues.

Q. And so the shelf either impacting more to the top or the left of her head is consistent with your assessment of the growth of the tumor and that that trauma contributed and accelerated the tumor, correct?

A. That is correct.

(App. Exh. 3, p. 33.)

Having reviewed the transcript of Dr. Santiago's deposition, QME Dr. Berman submitted a supplemental report wherein he stated:

I previously commented that the patient was diagnosed with an anaplastic meningioma which is a WHO [World Health Organization] grade 3 intracranial/cranial tumor. This lesion contains anaplastic or essentially pre-malignant cells that can very easily undergo a malignant transformation if not properly treated. The fact that the patient suffered a scalp contusion essentially over the area where the mass had been developing is purely coincidental. The scalp contusion in no way led to this lesion arising or progressing. The fact that the lesion progressed rapidly following the date of injury emphasizes the aggressiveness of this lesion and has virtually nothing to do with the scalp contusion itself. The scalp/skull/dural mass is purely non-industrial. The specific industrial injury suffered by the patient is a scalp contusion which has resolved.
(Def. Exh. B, Blake W. Berman, D.O., October 28, 2022, p. 4.)

The parties proceeded to trial on May 22, 2023. The issues submitted for decision included the parts of body injured, and "Was the applicant's cancer caused or accelerated by the accepted workers' compensation injury, which was a contusion to the scalp." (Minutes of Hearing and Summary of Evidence (MOH/SOE), May 22, 2023, p. 2.)

DISCUSSION

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].) To be substantial evidence a medical opinion must be based on pertinent facts, on an adequate examination, and it must set forth the basis and the reasoning in support of the conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) Medical evidence that industrial injury 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 [33 Cal.Comp.Cases 660].)

As noted by the WCJ in his Report:

Dr. Santiago ... is a neurosurgeon with enfolded fellowship in endovascular neurosurgery and subspecialty training in vascular, endovascular and complex cranial issues. He was the treating and diagnosing physician for the applicant.
(Report, p. 5.)

The WCJ also stated that:

Dr. Santiago ... disagreed with the PQME [sic] Dr. Blake Berman (Def. Ex. A and B) that the head injury was not at the site the tumor presented. He opined definitively that the tumor developed at the site of the head trauma and its growth was accelerated by the head trauma.
(Report, p. 5.)

We agree with the WCJ that by his deposition testimony, Dr. Santiago provided a detailed and well-reasoned explanation for his opinion that the shelf impacting applicant's head was consistent with his assessment of the growth of the tumor, and that the physical trauma of the impact contributed to, and accelerated, the growth of the tumor.

It is well established that the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence and the Appeals Board may rely on the medical opinion of a single physician unless it is "based on surmise, speculation, conjecture, or guess." (*Place v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525]; *Market Basket v. Workers' Comp. Appeals Bd.* (1978) 86 Cal.App.3d 137 [46 Cal.Comp.Cases 913].) Having reviewed the deposition testimony, it is clear that Dr. Santiago's medical opinion is not the result of surmise, speculation, conjecture, or guess. Thus, his opinions, as explained by his testimony, constitute substantial medical evidence and are an appropriate basis for the WCJ's decision that applicant's head contusion accelerated her brain cancer, and based thereon, that the cancer constitutes an injury AOE/COE.

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued by the WCJ on July 17, 2023, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 27, 2023

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

**CECILIA DURAN
GOLPER, SULLIVAN, RIVERA & OSUNA
MULLEN, PLUMMER & CASTIGLIONI, APC**

TLH/mc

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

- | | |
|----------------------------|-------------------------------------|
| 1. Applicant's Occupation: | Account Clerk III; Occ. Code: 111 |
| Applicant's Age: | 47 |
| Dates of Injury: | November 18, 2020 |
| Parts of Body Alleged: | Scalp; Tumor |
| 2. Identity of Petitioner: | Applicant COUNTY OF IMPERIAL |
| 3. Timeliness: | Petition was timely. |
| 4. Verification: | The Petition was verified. |
| 5. Date Findings and Award | July 17, 2023 |
6. **Petitioner's Contention(s):**
- A. That the WCJ erred in finding the deposition transcript of Dr. Santiago-Dieppa was the only substantial medical evidence in the case.

II

FACTUAL/PROCEDURAL HISTORY

The applicant sustained an admitted injury on November 18, 2020 when a shelf fell on her head. This part of the claim was admitted as "head contusion of the scalp". The applicant started feeling a growth on her scalp in the area of the injury along with headaches. The applicant seen by Dr. John Shega, a plastic surgeon who did a biopsy of the lump and diagnosed her with a cancerous tumor at the site of the "contusion". The applicant was referred to a Dr. Mora who then referred the applicant to Dr. Santiago Dieppa, a neurosurgeon with an enrolled fellowship in endovascular neurosurgery and subspecialty training in vascular, endovascular and complex- cranial issues. He was the treating and diagnosing physician for the applicant. (Deposition of Santiago-Dieppa App. Ex. 3 7:10-17; 11:14-18; 12:2-14:1; 12:20-13:14-24; 14-16-15;3; 15:19-16-3; 16:11-25; 18:10-15).

In the course of treating the applicant, Dr. Santiago-Dieppa completed a form at the request of Athens Administrators. Dr. Santiago-Dieppa noted on the form that “While the injury did not cause her cancerous tumor, the inflammatory process following the injury certainly may have expedited its presentation and growth”. (Applicant Ex. 1).

This claim was disputed by the employer. A PQME was selected. This was Dr. Blake Berman (Def. Exhs. A and B). Dr. Berman opined that “none of the patient’s current symptoms and objective findings related to the scalp/skull/dural mass ... are a direct result of the industrial injury of November 18, 2020”.

Dr. Santiago-Dieppa was then deposed (App. Ex. 3). In that deposition he affirmed his opinion that the blow on the head was a causal factor in the rapid growth of the tumor and need for treatment. The defendants disagreed. The case was set for trial on May 22, 2023 before the undersigned. The Findings and Award were issued July 17, 2023 finding the tumor a compensable consequence of the original admitted claim, relying on the deposition of Dr. Santiago-Dieppa. The defendants disagreed with this finding and filed a timely, verified Petition for Reconsideration on August 10, 2023.

III DISCUSSION

AOE/COE BRAIN TUMOR

A. STANDARD FOR INDUSTRIAL CAUSATION

There are two standards controlling this case. The first is what is necessary to find that the applicant's brain cancer was work related. In that regard, we have two California Supreme Court cases that have established the threshold for finding that the employment caused injury. The California Supreme Court in *Maier v. WCAB* (1983) 48 Cal. Comp. Cas. 326, 328 that is sufficient to find injury AOE/COE if the employment is a *contributing cause*. The California Supreme Court confirmed that if the employment is a "contributing cause" it is sufficient to find injury. *Brandon Clark v. Southcoast Framing* (2015) 80 Cal. Comp. Cas. 489. The second standard is with regard to the requirements for substantial medical evidence. *Escobedo v. Marshall's* (2005 *En Banc*) 70 Cal. Comp. Cases 604, presents a thorough discussion of these cases. This is because it is well established that any decision of the WCAB 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].)

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 [33 Cal.Comp.Cases 660]; *Travelers Ins. Co. v. Industrial Acc. Com. (Odello)* (1949) 33 Cal.2d 685, 687-688 [14 Cal.Comp.Cases 54]; *Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal. App.4th 1692, 1700-1702, 1705 [58 Cal.Comp.Cases 313].) Also, a medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525]; *Zemke v. Workmen's Comp. Appeals Bd.*, *supra*, 68 Cal.2d at p. 798.) 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 (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 (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).

B. OPINIONS OF THE DOCTORS

The defendants' main contention was that the WCJ erred in relying on the deposition of Dr. Santiago-Diepa rather than opinions of the PQME Dr. Blake Berman as expressed in his reports (Def. Ex. A and B).

The injury to the applicant's left parietal portion of her head from a falling shelf by way of laceration and contusion is admitted. What is in dispute is the grade II anaplastic meningioma which started noticeably growing within 2 weeks of the original injury (see deposition of David Santiago-Diepa Applicant's Ex. 3 12:10-13:3; 13:15-24; 15:19-16:3; 16:11-25; 18:10-15). Dr. Santiago-Diepa, is a neurosurgeon with enrolled fellowship in endovascular neurosurgery and subspecialty training in vascular, endovascular and complex-cranial issues. He was the treating and diagnosing physician for the applicant. (Deposition of Santiago-Diepa App. Ex. 3 7:10-17; 11:14-18; 12:2-14:1; 12:20-13:14-24; 14-16-15;3; 15:19-16-3; 16:11-25; 18:10-15).

At the start of the deposition of Dr. Santiago-Diepa the applicant attorney gave the doctor instructions on causation in Workers' Compensation Cases consistent with existing cases including *Brandon v. Southcoast Framing*, a Supreme Court decision (citation omitted) to which instructions the attorney for defendant had no objection (Dr. Santiago Diepa deposition App. Ex. 3 8:16-12:5). Thereafter Dr. Santiago-Diepa testified that these types of tumors arise from arachnoid cap cells and head trauma can accelerate pre-existing the growth of pre-existing tumors. He found medical literature of cases that associated head trauma with tumor growth. These case studies were similar to the applicant's case where head trauma to the left parietal scalp with a laceration and a tumor that continued to grow. In his opinion there is correlation between head trauma and growth of the meningioma. The head trauma did not cause the meningioma but accelerated its growth. He based his opinion of causation on the history of

the applicant which is undisputed and the medical literature. Also, he opined that seizures in 2010 did not cause the meningioma but could be a symptom. The applicant did not just suffer a laceration but also had bruising.

Dr. Santiago-Diepa disagreed with the PMQE Dr. Blake Berman (Def. Ex. A and B) that the head injury was not at the site the tumor presented. He opined definitively that the tumor developed at the site of the head trauma and its growth was accelerated by the head trauma. (Dr. Santiago- Diepa Deposition Applicant's Ex. 1 19:21-24; 20:2-25; 21:1-14; 21:21-3; 22:19-23:5; 23:9; 24:2-12;25:3-25; 26:5-27:14; 27:22-28:1; 28:2-6; 28:24-29:22; 30:6-21; 31:11-21; 33:4-24).

In contrast to thorough analysis of Dr. Santiago-Diepa the opinion of the PQME Blake Berman (Def Ex. A) that the head trauma did not cause or accelerate the meningioma consists of a single conclusory paragraph on page 30 of the December 1, 2021 report that states: "Based on the currently available information, including the patient's self-reported history of injury as well as my finding on examination, it is my medical opinion that only the patient's current symptoms and objective findings related to the left parietal scalp contusion is a direct result of the industrial injury of November 18, 2020."

In his October 28, 2022 report (Def. Ex. B page 4) Dr. Berman states after review of Dr. Santiago-Diepa's deposition that "Given the tumor *would have been unaffected by the type and mechanism of injury suffered by this patient*". He further states that "the fact that the lesion progressed rapidly following the date of injury emphasizes the aggressiveness of this lesion and has "...*virtually nothing to do with the scalp contusion itself.*" Virtually nothing is not nothing. It is an incorrect legal standard with no reference to medical case studies, or literature. Dr. Berman repeats the paragraph cited up above under causation, verbatim, in the October 28, 2022 report under causation.

Therefore the court found that the only substantial medical evidence of industrial causation of the tumor was found in the deposition transcript of Dr. Santiago-Diepa (Applicant's Ex. 3). The reliance on the deposition was not an error.

IV

CONCLUSION

Therefore it was appropriately found that the tumor was accelerated by the head injury and thus was a compensable injury.

V

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

DATE: 8/15/23

LINDA F. ATCHERLEY
Workers' Compensation Judge