

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

CAROLINE JACKMAN, *Applicant*

vs.

**STATE OF CALIFORNIA, DEPARTMENT OF GENERAL SERVICES,
legally uninsured; STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ8368911
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate as follows, we will deny reconsideration. We do not adopt and incorporate the last three sentences of the first full paragraph on page two of the report.

The employee bears the burden of proving the injury arose out of and in the course of employment 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.)

Further, a WCJ's decision must be supported by substantial evidence in light of the entire record. (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].) "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 Hosp. v. Workers' Comp. Appeals*

Bd. (Bolton) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

For the reasons stated in the WCJ's Report, the medical reports and testimony of PQME Dr. Wantuch were not substantial evidence to support applicant's claim of industrial injury. Accordingly, we deny applicant's petition for reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 30, 2024

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

**CAROLINE JACKMAN
MCMONAGLE, STEINBERG & HESTER
STATE COMPENSATION INSURANCE FUND
4600 BOEHM**

JMR/ara

*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
ON PETITION FOR RECONSIDERATION

I.
INTRODUCTION

- | | | |
|----|---|---|
| 1. | Order issued: | February 6, 2024 |
| 2. | Identity of Petitioner: | Applicant |
| 3. | Verification: | The petition is verified |
| 4. | Timeliness: | The petition is timely |
| 5. | Date Petition for
Reconsideration filed: | March 1, 2024 |
| 6. | Petitioners alleges: | The Court did not weigh the evidence of Dr.
Wantuch's reporting. |

Applicant alleges an industrial psychiatric injury occurring during the cumulative trauma period ending on August 24, 2011; defendant denied the claim. The matter proceeded to trial on January 2, 2024, and ultimately the Court issued a finding that applicant's injury was not industrially related. Applicant filed her Petition for Reconsideration based on this finding.

Specifically, applicant contends that the undersigned should have re-reviewed Dr. Wantuch's reporting which applicant believes to be substantial medical evidence. Applicant originally proceeded with Dr. Wantuch as the PQME. Dr. Wantuch issued a plethora of reports and sat for deposition three times. (Exhibits 1-11) The case was originally set for trial on November 22, 2021. The WCJ spent considerable time with the parties discussing the Dr. Wantuch's reporting; the discussions concluded with the parties agreeing to forego trial with the WCJ ordering a regular physician (Dr. Bates) as Dr. Wantuch's reporting was not substantial medical evidence. (11/22/2021 MOH EAMS Doc ID#74926256). [...]

After the parties procured reporting from Dr. Bates the matter returned to Trial on November 21, 2023, at which time stipulations and issues were read into the record and exhibits were entered. Trial resumed on January 2, 2024, at which time testimony was taken and the matter submitted. At trial, applicant testified that she had problems with her manager Kelley Westley as well as an incident where she missed an interview for a promotional opportunity.

Dr. Bates provided reporting which included an extensive history of the injury as told by the applicant. (Exhibit A p. 6-8) The report discusses the incident where applicant missed the interview for a promotional opportunity and the effect that this had on applicant's life. Dr. Bates also took an occupational history, past psychiatric history, substance abuse history, past medical history, family psychiatric history, and social history from the applicant and reviewed records. (Exhibit A p.6-11) As noted in the Opinion on Decision, Dr. Bates provided substantial medical evidence and provided a well-reasoned causation analysis. In particular, Dr. Bates opined that applicant's psychiatric injury was due to her pre-existing bipolar disorder.

Petitioner argues that Dr. Wantuch's reporting should have been weighed against Dr. Bates's reporting; it was. It is noted in the Opinion on Decision that Dr. Wantuch's reporting was previously found that it was not substantial medical evidence, and then subsequently found that Dr. Bates did provide substantial medical evidence. Dr. Wantuch originally found applicant's injury to be non-industrial, opining that it was predominantly *apportioned* to applicant's mood disorder and personality disorder (Exhibit 11 p. 26). She then reviews records and determines that the August 24, 2011 injury (applicant is claiming a continuous trauma, not a specific injury) was work related but does not explain why she changed her opinion (it is unclear if she did) and *apportioned* 70% of the injury to "other factors" (Exhibit 5 p. 4-5) She provided a report dated April 22, 2019 wherein she stated that she found applicant's injury to be predominantly work related in her 2017 report and continues stand by that analysis; she specifically states that applicant's injury is 65% work related. (Exhibit 7 p.12). Although she found applicant to be P&S, she did not provide apportionment as she had in her previous reports. In a July 10, 2019 report, Dr. Wantuch states that she cannot apportion permanent disability to applicant's bipolar disorder because applicant was able to perform her job and take care of her cats. (Exhibit 10 p.5) In her next report, Dr. Wantuch notes that she apportioned 35% of applicant's disability to applicant's personality traits. (Exhibit 6 p. 2) In her next report Dr. Wantuch stated that applicant's disability was 100% related to applicant's industrial injury. (Exhibit 9 p.1). In her last report Dr. Wantuch apportions 15% of applicant's injury to personnel actions and 10% to applicant's psychiatric history. (Exhibit 4 p. 3). Dr. Wantuch continually confused apportionment of permanent disability and causation of injury. Dr. Wantuch also provided different levels of apportionment/causation in just about every report without explanation as to why she changed her opinion. As originally discussed with the parties at the November 22, 2021, Trial Dr. Wantuch's reporting is not substantial medical evidence for these reasons.

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied. (Should the original opinion be deemed deficient without the additional explanation above, the parties are advised a detailed report on reconsideration describing the evidence relied on and the reasons for the decision will remedy any defect in the opinion on decision. [Smales v. WCAB (1980) 45 CCC 1026.]

DATE: March 8, 2024

Darcy Kosta
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE