

**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.