

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