

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

[REDACTED]
Applicant,

vs.

[REDACTED], permissibly self-
insured, adjusted by **[REDACTED]**
[REDACTED]

Defendants.

CASE NO: **[REDACTED]**

FINDINGS AND ORDER

The above-entitled matter having been heard by Terry R Menefee, Workers' Compensation Judge, said Judge now Finds and Orders as follows:

FINDINGS OF FACT

1. **[REDACTED]**, born 10/11/50, while employed as a Probation Officer, Occupational Group No. 340, at Fresno, CA, by the COUNTY OF FRESNO, claims to have suffered a cumulative industrial injury through 3/20/00; i.e., an increase in epileptic seizures as the result of on the job stresses she encountered on her job.
2. On the date of injury, the **[REDACTED]** was permissibly self-insured, administered by **[REDACTED]**.
3. Applicant did not sustain a cumulative industrial injury through 3/20/00, and the record is not sufficient to support an award of Temporary or Permanent Disability benefits.

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4. There are no funds awarded from which an award of Attorney Fees can be made.

ORDER

Based on the foregoing FINDINGS OF FACT, IT IS HEREBY ORDERED THAT:

Applicant shall take NOTHING by virtue of her Application for Adjudication.

A PETITION FOR RECONSIDERATION FROM THIS DECISION MUST BE FILED ONLY AT THE FRESNO DISTRICT OFFICE OF THE WORKERS' COMPENSATION APPEALS BOARD.

 Date: April 27, 2006
TERRY R MENELEE
WORKERS COMPENSATION
ADMINISTRATIVE LAW JUDGE

Filed and served on parties as shown on
The Official Address Record.

On: 4/27/06

By: RR Cortez





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WORKERS' COMPENSATION APPEALS BOARD

[REDACTED]

Applicant,

vs.

[REDACTED], permissibly
self-insured, adjusted by [REDACTED]
[REDACTED],

Defendants.

Case No. [REDACTED]

OPINION
ON
DECISION

The above-entitled case having been heard by and submitted for decision to Terry R Menefee, Workers' Compensation Administrative Law Judge, said judge opines as follows:

OPINION ON DECISION

Introduction:

Applicant, [REDACTED], contends that she suffered an increase in the frequency of epileptic seizures as the result of on the job stresses she encountered in her employment by Defendant, [REDACTED], where she was employed as a Deputy Probation Officer.

Defendant disputes that the findings and opinions of the AME, Donald Ansel, MD, constitute substantial medical evidence with regard to industrial causation of the subject injuries; whether the objective/predominate standard (LC 3208.3) provides a defense to an allegation that a non-industrial condition caused perceived stress resulting in a temporary industrial condition, and whether the good faith personnel action defense (LC 3208.3(h)) is a defense to a temporary aggravation of a non-industrial condition.

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Facts:

It is undisputed that Applicant was the subject of an Internal Affairs investigation arising out of a traffic stop by the Clovis Police Department on 2/12/98, when the vehicle being driven by her husband, in which she was a passenger, was stopped, and her husband was cited for driving while smoking a controlled substance. The Internal Affairs investigation included an interview of Applicant that was conducted on 3/6/98. She is claiming periods of TD for the periods from 4/18/94 thru 7/6/95 and from 3/30/98 thru 11/1/98.

Applicant also claims that she suffered on the job stress from the status of her driver's license. As a job requirement, she needed to have such a license, but because of her epileptic history (non-industrial), Applicant reached an informal agreement with her physician that she would not drive, if he did not report her medical condition to DMV. After her husband was stopped on 2/12/98, Applicant drove their vehicle home, which was in contravention with the informal agreement she had with her doctor. Applicant's driver's license was valid on that date. She was not charged with a crime.

Applicant did not report the traffic stop to her employer, and the Internal Affairs interview was conducted to determine what had happened. Applicant's employment was not terminated following completion of the Internal Affairs investigation. (Summary, pg 6; Ex. 5) Applicant was not required to drive while she was assigned to [REDACTED]'s unit during 1999-2000. (Summary, pg 8) Applicant retired from her employment with the [REDACTED] County of [REDACTED], which by agreement was effective retroactively on 5/24/02. (Ex. 6: 40:20-24; 41: 12-42: 6) Her retirement was based on seizure activity. (Id., 40:3-5)

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Issues:

The following issues have been submitted for adjudication:

- Causation (AOE/COE;
- Parts of Body Injured;
- Temporary Disability;
- Permanent and Stationary Date;
- Whether the Objective/Predominant Standard (LC 3208.3) Applies;
- Whether the Affirmative Defense of Good Faith Personnel Action (LC 3208.3(h) Applies;
- Whether the Opinion of the AME Constitutes Substantial Medical Evidence re:
Industrial Contribution;
- Attorney Fees:

Causation (AOE/COE):

Based on the findings and opinions of the AME, Dr. Ansel, as memorialized in his two reports and two depositions, and the trial testimony of Defendants witnesses, [REDACTED], [REDACTED] and [REDACTED], it is found that Applicant did not sustain industrial injury resulting in periods of TD in which industrial stresses were substantial contributing factors.

The parties found it necessary to depose the AME on two separate occasions following the issuance of his report, dated 2/10/03. (Ex B, collectively) In that report, Dr. Ansel stated in pertinent part:

I was asked whether the patient had suffered injury neurologically AOE/COE.

I have no reason to doubt that at times the patient did perceive the stresses at her job were significant and this *might* have led to a temporary increase in her seizure activity

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but I cannot state that the patient's overall level of seizure activity nor the cause of the seizures has been related to her industrial exposure. (pg. 37) (emphasis supplied)

In that same initial AME report, Dr. Ansel goes on to state:

I believe that during the time that she was still employed, it would have been reasonable to regard her as having periods of temporary total disability when she was unable to work because of the seizures but overall, I believe that the seizure disorder and the continuation of the seizure disorder which has resulted in a major flare-up of seizures well after she stopped work, in approximately the summer of 2001 when she was hospitalized for several grand mal seizures, would not be related to her work exposure or to any stress associated with her work. (Id., pgs 37-38)

After discussing whether Applicant could or should return to her former employment, as well as appropriate restrictions on any further employment, Dr. Ansel states:

... It is my very strong suspicion that the patient's current condition, which is that of an uncontrolled seizure diathesis, would be the same had she never been employed by the [REDACTED]. (Id., pg 39)

Dr. Ansel goes on to state:

It is reasonable, however, to believe that when she was on and off work at various times, since her seizures became more prominent, that the temporary loss of time should have been regarded as being periods of temporary partial disability.

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Nevertheless, that would have all come to an end when she finally left the job as of her last day which I assume was sometime in March 2000 if that information from the deposition is accurate. (Id. Pg 40)

A reasonable inference is drawn from the report of Dr. Ansel that in discussing the "periods of temporary partial disability" that the AME found that Applicant was so disabled from performing her usual and customary duties during those times, but he did not intend to indicate that those periods of temporary partial disability were caused by industrial factors.

Dr. Ansel wrote a Supplemental AME report, dated 10/14/03 (Ex B, collectively), consisting of some 21 pages, in which he referenced his initial report and summarized additional medical records and Applicant's deposition transcript that had been submitted for his review and comment. Dr. Ansel restated his initial findings and opinions in pertinent part, as follows:

... It was my impression that during the time that she was still employed, it would have been reasonable to regard her as having had periods of temporary total disability when she as (sic) unable to work because of her seizures, but overall, I felt that her seizure disorder which had resulted in a major flare-up of seizures well after she stopped work in the summer of 2001 when she was hospitalized for several grand mal seizures would not be related to her work exposure or to any stress associated with her work. (Id., pg 7)

Dr. Ansel concluded his supplemental AME report, in part, as follows:

A review of all these records does not cause me to alter my opinions at all as expressed in my report of February 10, 2003. (Id., pg 20)

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The reports summarized above set the stage for 2 subsequent depositions of the AME, the first of which occurred on 2/18/04. When asked whether the TD period from 4/94 thru 7/95 resulted from industrial stresses that were a significant contributing factor, Dr. Ansel testified, as follows, in pertinent part:

I believe that there was some contribution, and I don't know how we can decide whether it was significant or not. I think in my reports I had suggested that during the periods of temporary total disability when she was taken off work by Dr. Calmes, it would be reasonable to consider those as temporary total disability, secondary to her job. And that is just a judgment call, with very little in the way of factual information to back it up. (Ex. C: 13:1-12)

With regard to the claimed TD period from 4/18/94 - 7/6/95, and when stressors at work would have stopped being a contributing factor, Dr. Ansel stated, in part:

I think it would be purely speculative to arrive at a date, so I'll pick the date of 7/6/95, when she was allowed to be reinstated. (Id, 14:13-18)

In his second deposition on 6/23/05, Dr. Ansel testified in part, as follows:

Again, it remains my opinion that the patient's perception of what she was exposed to at work in terms of stress is the major factor that *might* be influencing her frequency and severity of seizure disorder rather than anything that actually occurred at work. (Ex. D, 24: 17-21) (emphasis supplied)

Taking the entirety of the record into consideration, it appears that Applicant is contending



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that her own subjective impressions of the demands being placed on her, including the job requirement that she hold a valid California Driver's License, resulted in increased stress which, in turn, increased the seizure frequency and resulted in periods of compensable TD. No legal authority has been cited for the proposition that any such subjectively perceived stress can support a cause of action for the claimed injuries (increased frequency of epileptic seizures), and even if there was such authority, it reasonably should be subject to an objective reasonableness test as well.

Here, based on the testimony of Defendant's witnesses, [REDACTED] and [REDACTED] Applicant was accommodated by having been assigned to non driving duties. There is no preponderance of evidence in the record that would support an inference that those accommodations were likely to be withdrawn.

Similarly, the record does not include any credible evidence that Applicant's job was in danger because of her history of seizures. [REDACTED] testified that Applicant had taken time off work to stabilize her medications. (Summary, pg 9) That, combined with the findings and opinions of the AME, which are speculative as to industrial causation, mitigate against Applicant's contentions that she sustained an industrial injury and incurred periods of TD that resulted from industrial stresses concerning the status of her driver's license that was a significant contributing factor. It is found that Applicant's claims for periods of TD must be disallowed because she did not suffer an industrial injury AOE/COE.

Parts of Body Injured (Aggravation of Epileptic Seizure Disorder):

The finding of no injury AOE/COE renders this issue moot.

Temporary Disability:

Applicant claims TD benefits for the following periods:

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4/18/94 thru 7/6/95; and,

3/30/98 thru 11/1/98.

For the reasons stated above with regard to **Causation**, which are expressly incorporated by reference as if set forth at length herein, it is found that the record is not sufficient to support an award of Temporary Disability benefits.

Permanent and Stationary Date:

The finding of no injury AOE/COE renders this issue moot.

Whether the Objective/Predominant Standard (LC 3208.3) Applies:

The finding of no injury AOE/COE renders this issue moot. However, if injury AOE/COE had been found, the following analysis would apply.

It has been stipulated that Applicant's claim for psyche injury was dismissed on 3/12/02. (Pre Trial Conference Statement, hereinafter, PTCS, Stipulations, pg 2) The statutory provisions set forth under LC 3208.3 are expressly limited to psychiatric injuries. Therefore, it is found that this standard is inapplicable to the facts at issue here.

Whether the Affirmative Defense of Good Faith Personnel Action (LC 3208.3(h)) Applies:

The finding of no injury AOE/COE and dismissal of Applicant's claims for psyche injury render this issue moot.

Whether the Opinion of the AME Constitutes Substantial Medical Evidence re: Industrial Contribution:

The finding of no injury AOE/COE renders this issue moot. However, based on the same findings, as set forth above, it appears that the opinions of the AME regarding industrial

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causation were speculative in nature, keeping in mind the fact that the medical questions he was asked to address are complex in nature, and giving all due respect to his reputation as a well qualified AME. For those reasons, it is found that the opinions and findings of the AME lack substantial medical evidence with regard to the issue of industrial contribution, insofar as Applicant's seizure activity is concerned.

Attorney Fees:

There are no benefits awarded from which an award of attorney fees can be made.

A PETITION FOR RECONSIDERATION FROM THIS DECISION MUST BE FILED ONLY AT THE FRESNO DISTRICT OFFICE OF THE WORKERS' COMPENSATION APPEALS BOARD.

April 27, 2006


TERRY R MENELEE
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Filed and Served by mail on

4/27/06

On parties as listed on the
Official Address Record.

By: RR Cortez 

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