

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

SALVADOR MENDOZA, *Applicant*

vs.

**SMITH'S BAKERIES;
EMPLOYERS COMPENSATION INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ8051802; ADJ1757644 (BAK0147282)
Van Nuys District Office**

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Defendant Smith's Bakeries, insured by Employers Compensation Insurance Company (Smith's Bakeries), seeks reconsideration of the March 5, 2019 Findings and Order (F&O) wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that lien claimants met their burden of proving that applicant, while employed as a baker's helper from March 1, 2006 to November 30, 2008, sustained industrial injury to the lumbar spine and psyche. The WCJ also determined that compensation was not barred under the one year limitations period of Labor Code 5405, and was not barred as a post-termination claim by Labor Code section 3600(a)(10).¹

Defendant contends the medical record does not support a finding of injury AOE/COE, and that section 5405 bars compensation.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

¹ All further statutory references are to the Labor Code unless otherwise stated.

We have considered the Petition for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the WCJ's decision and substitute new Findings of Fact that lien claimants did not sustain their burden of proving that applicant sustained injury AOE/COE.

FACTS

In Case No. ADJ8051802, applicant claimed injury to his lumbar spine and psyche while employed as a baker's helper by Smith's Bakeries from March 1, 2006 to November 30, 2008. The application was filed on October 31, 2011.

Smith's Bakeries denied the injury arose out of or in the course of employment (AOE/COE), and further asserted the claim was barred by the one year filing limitation of section 5405, and that applicant filed the claim after notice of termination of layoff in violation of section 3600(a)(10). (Ex. B, Denial letters dated December 29, 2011 and March 21, 2012.)

Also relevant to these proceedings is Case No. ADJ1757644 (BAK 147282), wherein applicant claimed injury to the back, lower extremities, nervous system and psyche while employed as a stocker by Esparza Enterprises, Inc., (Esparza) on July 25, 2005.

Roger Sohn, M.D. acted as the orthopedic agreed medical examiner (AME) on the Esparza case, and in his initial report of April 24, 2006, Dr. Sohn noted applicant worked for Esparza from June 16, 2005 through February 2006. (Ex. D, report of AME Roger Sohn, M.D., dated April 24, 2006, at p.1.) Applicant's job duties at Esparza consisted primarily of lifting and carrying boxes and bags of carrots weighing between 50 and 60 pounds, with repetitive use of the bilateral upper extremities. (*Ibid.*) On July 25, 2005, applicant was shaking a bag of carrots to make additional room in the bag when he felt a "pulling sensation in his lumbar spine after twisting his torso rather quickly." (*Id.* at p.2.) Applicant complained of constant pain in the lumbar spine, of varying intensity, that would occasionally extend down the left lower extremity radiating distally towards the foot in the form of numbness and tingling. (*Id.* at p.3.) Dr. Sohn deemed applicant to be Permanent & Stationary, assigned work restrictions of no heavy lifting, and rated the injury at 6% whole person impairment (WPI). Dr. Sohn also authored a supplemental report of August 17, 2006 reviewing records with respect to prior claims involving the right shoulder and cervical spine, but finding no basis for apportionment to the lumbar spine. (Ex. E, report of AME Roger Sohn, M.D., dated August 17, 2006.)

In March 2006, applicant began working for Smith's Bakeries. (Ex. 21, transcript of the deposition of applicant, dated August 24, 2009, at 16:18.) Applicant's job duties involved making baked goods and lifting a maximum of 8 to 10 pounds. (*Id.* at 17:14.) Applicant was not required to lift "20-, 30-, 50-pound bags of flour or other materials." (*Ibid.*) Applicant worked for Smith's Bakeries until November 2008. (*Id.* at 16:23.)

On April 18, 2007, applicant's case against Esparza (ADJ1757644 (BAK 147282)) proceeded to trial on issues including injury AOE/COE. On May 3, 2007, the WCJ issued a decision finding injury AOE/COE to the low back, ten percent permanent disability, and the need for future medical treatment to cure or relieve from the effects of the injury. (Findings and Award, dated May 3, 2007, Findings of Fact No. 1.)

On November 25, 2008, Smith's Bakeries prepared a memorandum in response to a claim for unemployment benefits that detailed the circumstances leading up to applicant's termination. The memorandum indicates Smith's Bakeries terminated applicant's employment after applicant engaged in a verbal altercation with his supervisor. (Ex. C, letter from employer, November 25, 2008.)

On May 28, 2010, applicant filed a Petition to Reopen his case against Esparza (ADJ1757644 (BAK 147282)), alleging additional temporary and permanent disability, as well as additional body parts and need for further treatment. (Petition to Reopen, dated February 6, 2009, filed May 28, 2010.)

On July 21, 2010, applicant began treating with Edwin Haronian, M.D., whose initial report notes a history of injury while working for Esparza, and requests authorization for medication and a series of lumbar epidural injections. (Ex. 14, report of Edwin Haronian, M.D., dated July 21, 2010, p.9.) Applicant was referred to pain management physician Dr. Kohan, whose August 3, 2010 report recounts the history of injury at Esparza, but also applicant's report that while working for Smith's Bakeries, his "back condition worsened with light duty in the sense that the pain increased and occurred with more frequency and intensity." (Ex. 16, report of Jonathan F. Kohan, M.D., dated August 3, 2010, at p.2.) Dr. Kohan requested authorization for a series of epidural injections.

On October 28, 2010, AME Dr. Sohn re-evaluated applicant, noting applicant had received the first of a series of epidural injections, and recommending the patient proceed with additional injections. (Ex. 7, Report of AME Roger Sohn, M.D. dated October 28, 2010, p. 5.)

Dr. Sohn re-evaluated applicant on February 1, 2011. (Ex. 6, Report of Roger Sohn, M.D. dated February 1, 2011.) The AME reviewed the reporting of treating physicians Dr. Haronian, Dr. Kohan and Dr. Lawrence, as well as an EMG study of July 9, 2010 and a lumbar spine MRI of July 8, 2010. (*Id.* at p.6.) Dr. Sohn diagnosed disc disease with radiculopathy, and declared applicant permanent and stationary. (*Id.* at p.7.) Dr. Sohn assessed whole person impairment at 12% under a DRE approach, and 27% under an *Almaraz/Guzman* analysis. (*Ibid.*; *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp.Cases 1084 (Appeals Board en banc opinion).) In his apportionment analysis, Dr. Sohn stated:

Applicant's injury is 40% related to his employment at Esparza Enterprises. However, the disc injury with radiculopathy appears to have occurred during his subsequent employment at Smith's Bakery, when he returned to work in 2006. Sixty percent (60%) of the patient's condition is therefore apportioned to his work at Smith's Bakery. (*Id.* at p.9.)

On May 2, 2011, treating physicians David Kauss, Ph.D. and Clare Baum, Ph.D. evaluated applicant in psychology. (Ex. 8, Report from Southern California Mental Health Associates, dated May 2, 2011.) The report notes applicant's July 25, 2005 injury at Esparza in the medical history, as well as applicant's subsequent employment with Smith's Bakeries:

In 2006, Mr. Mendoza was hired as a cookie-cutter for Smith Bakery. He was able to perform his duties in spite of persistent orthopedic pain. He enjoyed this employment, and experienced some improvement in his mood. (*Id.* at p.3.)

The report of Dr. Kauss further noted applicant's worsening physical condition in 2009 and 2010, and the requests for surgical intervention by his treating physicians, as well as nonindustrial considerations that contraindicated surgery. (*Id.* at pp.4-5.) Applicant was deemed temporarily totally disabled and in need of further psychological treatment. (*Id.* at p.18.)

Dr. Kauss reevaluated applicant on September 19, 2011, and declared him to have reached maximum medical improvement. (Ex. 9, Report from Southern California Mental Health Associates, dated September 19, 2011, p.11.) Applicant was noted to have sustained industrial psychological injury AOE/COE. (*Id.* at p.9.) Dr. Kauss ascribed causation of the injury wholly to applicant's July 25, 2005 orthopedic injury, stating, "[b]ut for the industrial injuries [applicant] sustained on July 25, 2005, I do not believe there would be any ratable psychiatric disability at this time." (*Id.* at p.16.)

On January 25, 2012, AME Dr. Sohn issued a supplemental report opining that per *Benson v. W.C.A.B.* (2009) 170 Cal.App.4th 1535 [74 Cal.Comp.Cases 113], “[a]ny increase in [applicant’s] disability after my 2006 report, would be relative to his work at Smith’s Bakery.” (Ex. 5, Report of AME Roger Sohn, M.D., dated January 25, 2012, p.1.)

On March 1, 2012, QME Afsaneh Matloob, Psy.D., evaluated applicant’s claim of psychiatric injury arising out of his employment with Smith’s Bakeries. (Ex. 1, report of QME Afsaneh Matloob, Psy.D., dated March 1, 2012.) Dr. Matloob provided a history from applicant of physically demanding job duties at Esparza:

Mr. Mendoza said that his light duty job was washing machine, which he had to lift, and carry, and push the hose, sprays the machine with the water. He said he also he had to [sic] climb on the top of the machine. He said that climbing on the top of the machine was hard for him and injured him more. He said after 2 months (another time he said 6 months) he stopped because he couldn’t perform the job. He said he felt that he is becoming worse and he quit the job (another time he said that he was laid off because Esparza didn’t have light duty job). (*Id.* at p.3.)

Additionally, applicant provided a history of interpersonal conflict with his supervisor at Smith’s Bakeries:

“Everything started when the new supervisor came and that's why I knew that I had to stop working. I felt I was not appreciated. That made me depressed and my depression became chronic...I was sad all the time.” He said he “felt useless,” he felt upset and angry. Now the new supervisor asked him to do heavy-lifting jobs. Mr. Mendoza said that he couldn't do the job. He told to his new supervisor and he had an argument with her but the new supervisor didn’t believe him. When Mr. Mendoza brought the doctor's report to show it to his supervisor, the supervisor said “... If you can't do it maybe you should go home.” He said he felt sad. He used to be able to do the job. Mr. Mendoza said that the new supervisor didn't like him. (*Ibid.*)

Dr. Matloob diagnosed Depressive Disorder and Sexual Dysfunction, related solely to applicant’s work for Smith’s Bakeries, and assigned a GAF score of 70. (*Id.* at p.10.)

On August 6, 2012, treating psychologist Dr. Kauss issued a report after reviewing the reporting of QME Dr. Matloob. (Ex. 10, Report from Southern California Mental Health Associates, dated August 6, 2012.) Dr. Kauss reviewed the history of injury as described in the Dr. Matloob reporting, which described injury as arising solely out of interpersonal conflict at Smith’s

Bakeries, but offered no other analysis other than to note a difference in opinion regarding applicant's GAF score.

On August 13, 2012, panel QME Keyvan Yousefi, M.D. evaluated applicant in internal medicine, but found no industrial injury. (Ex. 12, Report of Panel QME Keyvan Yousefi, M.D., dated August 13, 2012.)

On September 19, 2012, Esparza filed a Petition for Reimbursement from Smith's Bakeries and its insurer Employers' Compensation Insurance Company, alleging all medical treatment after April 24, 2006 arose out of applicant's injury at Smith's Bakeries. (Petition for Reimbursement, dated September 19, 2012, at pp. 1-2.)

On May 21, 2013, Guy H. Gottschalk, M.D. issued a report entitled "Primary Treating Physician's Initial Complex Medical/Orthopaedic Evaluation, Record Review #1 and Report/Request for Authorization and Treatment." (Ex. 20, report of Guy H. Gottschalk, M.D., dated May 21, 2013.) Dr. Gottschalk reviewed no medical records. The doctor made a diagnosis of strain/sprain to the thoracolumbosacral spine and disc disease with depression secondary to chronic pain. (*Id.* at p. 6.) Dr. Gottschalk requested copies of the reporting of AME Dr. Sohn, and authorization for diagnostic studies. He also declared applicant to have reached maximum medical improvement, and assessed causation in line with the applicant's report of the assessment of Dr. Sohn, with 40% attributed to applicant's injury at Esparza Enterprises, and 60% to applicant's cumulative trauma at Smith's Bakeries. (*Id.* at p.7.) An assessment of permanent disability was deferred pending receipt of the AME Dr. Sohn reporting.

On June 5, 2014, applicant settled his claim against Esparza, including the Petition to Reopen, by way of Compromise and Release. Esparza reserved its rights to seek contribution or reimbursement from Smith's Bakeries. (Compromise and Release, signed April 15, 2014, approved June 5, 2014, p.7, para. 9.)

Orthopedic QME Paul Tsou, M.D. evaluated applicant's claimed injury at Smith's Bakeries. Dr. Tsou issued a report of July 7, 2014 wherein he noted applicant's report of developing back pain "sometime in 2007," and to the progressive worsening of his back and leg pain. (Ex. 4, Report of Panel QME Paul Tsou, M.D., dated July 7, 2014, at p.2.) Applicant reported to Dr. Tsou a history of prior injuries at Esparza, as well as injuries with his employer prior to Esparza, Precision Resources. However, Dr. Tsou noted that none of these records were made available to him. (*Id.*, at p.9.) Dr. Tsou attributed causation of the injury to applicant's work for

Smith's Bakeries, to his work for Esparza, and to "non-work related disc degenerative." (*Id.* at p.11.) The QME apportioned 10% to of the permanent disability to injury at Smith's Bakeries, and 90% to "factors outside of Smiths' employment." (*Ibid.*)

On December 5, 2014, primary treating physician Dr. Gottschalk issued a Supplemental Permanent & Stationary report after reviewing the February 1, 2011 reporting of AME Dr. Sohn and an MRI dated June 17, 2013. (Ex. 19, report of Guy H. Gottschalk, M.D., dated December 5, 2014.) Dr. Gottschalk reiterated his prior opinions that applicant remained permanent and stationary, with attribution of applicant's injury to his work at Smith's Bakeries. Apportionment was "based on the AME report of Dr. Sohn," and remained unchanged at 60% to Smith's Bakeries, 40% to employment with Esparza. Dr. Gottschalk did not provide apportionment to nonindustrial or degenerative factors. (*Id.*, at p.5.)

On June 19, 2015, counsel for Esparza Enterprises (ADJ1757644/BAK 147282) petitioned to consolidate the Esparza claim with two Smith's Bakeries claims, ADJ8051802 and ADJ8936081, alleging overlapping body parts and medical treatment. (Petition for Consolidation, dated June 19, 2015, at 2:5.)

On August 7, 2015, Smiths' Bakeries (ADJ8051802) filed its opposition to the petition for consolidation.

On February 2, 2016, the parties resolved the claim against Smith's Bakeries in ADJ8051802 by way of Compromise and Release. In paragraph 9 of the agreement, defendant maintained its denial of injury AOE/COE, and further asserted that the statute of limitations barred compensation. (Compromise and Release, dated February 2, 2016, p.7, para. 9.)

On January 5, 2017, Smith's Bakeries (ADJ8051802) filed a petition seeking reimbursement from Esparza Enterprises (ADJ1757644/BAK 147828) for medical treatment alleged to have arisen out of applicant's July 25, 2005 injury at Esparza.

On March 6, 2017, counsel for Esparza (ADJ1757644/ BAK 147828) filed a letter with the court requesting that the lien conferences on both the Esparza and Smith's Bakeries cases (ADJ8051802) be heard simultaneously based on potentially overlapping issues.

On May 8, 2017, Smith's Bakeries filed a consolidation petition seeking to have the Smith's Bakeries and Esparza claims linked and consolidated and the lien conferences for both cases be heard simultaneously. The May 31, 2017 Minutes of Hearing indicates that the WCJ administratively linked both cases, but did not consolidate them.

Counsel for both Esparza and Smith's Bakeries appeared at multiple lien hearings between November 1, 2017 and November 13, 2018. (Minutes of Hearing, dated November 1, 2017; June 20, 2018; August 27, 2018; and November 13, 2018.)

On February 6, 2019, counsel for both Esparza and Smith's Bakeries appeared for lien trial, along with multiple lien claimants. The WCJ ordered the Esparza matter off calendar (ADJ1757644/BAK 147828), and ordered the Smith's Bakeries case (ADJ8051802) to proceed. The record reflects no objection from Esparza. (Minutes of Hearing, dated February 6, 2019.)

The lien trial of February 6, 2019 thus involved defendant Smith's Bakeries and lien claimants Edwin Haronian, M.D., Jonathan Kohan, M.D., Pacific Anesthesia Group, VQ OrthoCare, Meridian Medical Products, and Southern California Mental Health Associates. The parties raised issues of whether "the injury [arose] out of and in the course of employment, with the defendant claiming post termination and statute of limitations." (February 6, 2019 Minutes of Hearing (Minutes), at 2:9.) The parties submitted the matter for decision without testimony.

The WCJ issued the F&O on March 5, 2019, finding that applicant sustained injury AOE/COE while employed by Smith's Bakeries, based on the February 1, 2011 report of AME Dr. Sohn, and on the March 1, 2012 report of Dr. Matloob. (F&O, Finding of Fact No.1; Opinion on Decision at p.2.) The WCJ further determined that section 5405 did not bar the claim because defendant did not deny the claim until December 29, 2011. (F&O, Finding of Fact No.3; Opinion on Decision at p.1.) The WCJ also determined that the claim was not barred by section 3600(a)(10), because the date of injury pursuant to section 5412 occurred after the date of notice of termination or layoff. (Labor Code § 3600(a)(10)(D); F&O, Finding of Fact No. 4; Opinion on Decision at p.2.)

DISCUSSION

Defendant Smith's Bakeries contends that the reports of AME Dr. Sohn and that of QME Dr. Matloob are not substantial medical evidence upon which to find injury AOE/COE, and that the WCJ's analysis of the one year limitations period of section 5405 is incomplete.

Initially, we observe that it is the lien claimants that carry the burden of proving injury AOE/COE. In *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588, 1592 (WCAB en banc), we held that when a lien claimant litigates the issue of entitlement to payment for industrially related medical treatment, the lien claimant stands in the shoes of the injured

employee and the lien claimant must prove by preponderance of the evidence all of the elements necessary to the establishment of its lien. In *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, (WCAB en banc), we held that in an AOE/COE denied case, lien claimant has the burden of proving injury arising out of and in the course of employment, as a prerequisite to recovery. (Lab. Code §§ 3202.5; 5705.)

Here, the F&O found that lien claimants carried their burden of establishing injury AOE/COE, based on the WCJ's determination that the reporting of AME Dr. Sohn and the reports of QME Dr. Matloob constituted substantial medical evidence.

In order for a report to be substantial medical evidence, the opinion "must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Bd. en banc).) Additionally, a medical report is not substantial evidence where it is "based on facts no longer germane, on inadequate medical histories and examinations." (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *Escobedo, supra*, at 621.) Insofar as the reporting addresses issues of causation and apportionment, the medical opinion must disclose the reporting physician's familiarity with the concepts of apportionment and must delineate the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors. (*Acme Steel v. Workers' Comp. Appeals Bd. (Borman)* (2013) 218 Cal.App.4th 1137 [78 Cal.Comp.Cases 751]; *Escobedo, supra*, at 621.) Also, the physician must explain the nature of the other factors, how and why those factors are causing permanent disability at the time of the evaluation, and how and why those factors are responsible for the percentage of disability assigned by the physician. (*Escobedo, supra*, at 621.)

Here, AME Dr. Sohn issued multiple reports after applicant stopped working for Esparza in February 2006, and had begun working Smith's Bakeries in March 2006. (Ex. 21, transcript of the deposition of applicant, dated August 24, 2009, at 16:18.) Dr. Sohn's initial report of April 24, 2006 noted that applicant's job duties at Esparza involved repetitive lifting and carrying boxes and bags of carrots weighing between 50 and 60 pounds. In contrast, applicant's work at Smith's Bakeries involved no heavy lifting. (Ex. D, report of AME Roger Sohn, M.D., dated April 24,

2006, p.1.) Applicant was deemed Permanent & Stationary, with sole causation attributed to the July 25, 2005 injury at Esparza. There is no discussion of applicant's work at Smith's Bakeries as contributing to applicant's injury. Dr. Sohn's August 17, 2006 report reviews additional medical records, but finds no basis for apportionment or change to his prior opinions. (Ex. E, report of AME Roger Sohn, M.D., dated August 17, 2006.) Applicant stopped worked for Smith's Bakeries in November, 2008. (Ex. 21, transcript of the deposition of applicant, dated August 24, 2009, at 16:25.) Dr. Sohn reevaluated applicant on October 28, 2010 and noted applicant's ongoing series of epidural injections, recommending they be continued and applicant reevaluated at a later date. Dr. Sohn offered no changes to his prior opinions regarding causation or apportionment. There is no discussion of applicant's employment at Smith's Bakeries, or any relationship to applicant's injury. (Ex. 7, Report of AME Roger Sohn, M.D. dated October 28, 2010, at p. 5.)

However, in his report of February 1, 2011, Dr. Sohn significantly revised his assessment of causation, stating that only 40% of applicant's injury was related to his employment at Esparza, and the remaining 60% of the patient's condition attributable to his employment with Smith's Bakeries. (Ex. 6, Report of Roger Sohn, M.D. dated February 1, 2011, at p. 9.) Dr. Sohn provides no substantive description of applicant's job duties while working for Smith's Bakeries, and no explanation for why those job duties would have resulted in injury to applicant. Dr. Sohn does not describe what specific evidence he relied upon in revising his previously stated opinions that injury arose solely from applicant's employment with Esparza. The report offers percentages of causation as between Esparza and Smith's Bakeries, but does not detail how the AME arrived at those percentages. The entirety of the AME's apportionment analysis is contained in a two sentence paragraph, which does not adequately set forth reasoning in support of the AME's conclusions. (*Ibid.*; *Escobedo v. Marshalls*, *supra*, 70 Cal.Comp.Cases 604, 620-621.)

In a supplemental report dated January 25, 2012, Dr. Sohn opined that after returning to work at Smith's Bakeries, applicant developed increasing back pain. (Ex. 5, Report of AME Roger Sohn, M.D., dated January 25, 2012, at p.1.) However, the AME does not reconcile this conclusion with applicant's reporting in the April 24, 2006 report that he performed no heavy lifting for Smith's Bakeries, or explain what job duties at Smith's were injurious. (Ex. D, report of AME Roger Sohn, M.D., dated April 24, 2006, at p.1). In the absence of a clear understanding of applicant's job duties at Smith's Bakeries, the conclusion that any new disability would be attributable to applicant's employment at Smith's is not based on an adequate medical history. The

significant and unexplained revisions to Dr. Sohn's opinions on causation, coupled with an incomplete medical and vocational history, along with the conclusory apportionment analysis, all render the AME reporting not substantial.

The reporting of psychology QME Dr. Matloob is similarly unsubstantiated. The sole report from the QME reflects no record review. Thus, the conclusions reached in the QME reporting regarding causation, nature, and extent of the injury are predicated on applicant's self-reporting at the examination. (Ex. 1, Report by Panel QME Afsaneh Matloob, Psy.D., dated March 1, 2012.) The lack of a record review impairs the QME's ability to assess the relationship between the injuries claimed at Esparza and at Smith's Bakeries. The significant discrepancies regarding the reported events of employment giving rise to the alleged psychiatric injury illustrate the necessity of a complete record review. Applicant provided to Dr. Matloob a history of injury arising from his interactions with his supervisor at Smith's. (*Id.* at p.11.) However, in the nearly contemporaneous medical history given to Dr. Kauss regarding the injury sustained at Esparza, applicant offered *no mention* of injury at Smith's Bakeries, and no discussion of negative interactions with his supervisor. (Ex. 9, Report from Southern California Mental Health Associates, dated September 19, 2011, at p.16.) The reports of applicant's treating psychologist Dr. Kauss thus attribute the entirety of applicant's psychiatric injury to the July 25, 2005 injury at Esparza. A contemporaneous psychiatric report that describes a wholly different mechanism of injury is highly relevant to the question of causation of the alleged injury while working at Smith's Bakeries. The lack of a record review, including records describing differing mechanisms of claimed injuries, renders the reporting of Dr. Matloob not substantial medical evidence. (*Heggin v. Workmen's Comp. Appeals Bd.*, *supra*, 4 Cal.3d 162, 169.)

The reporting of orthopedic QME Paul Tsou, M.D. is also based on an inadequate record. (Ex. 4, Report of Panel QME Paul Tsou, M.D., dated July 7, 2014.) Dr. Tsou notes he was not provided with relevant records, including diagnostic studies (x-rays and MRI studies), electrodiagnostic studies, the initial evaluation by primary treating physician Dr. Akmakjian, and records regarding applicant's claimed injuries while working for prior employers Esparza and Precision Resources. (*Id.* at p.9.) The report notes the opinion of treating physician Dr. Gottschalk, that if "the condition is chronic exacerbation, the original causation [] probably dates back to his anatomic injury while working for Esparza Enterprise and possibly to [prior employer] Precision Resources." (*Ibid.*) Nonetheless, after noting the missing records, and the opinions of the

applicant's treating physician, Dr. Tsou goes on to opine that applicant's injury is "10% due to working at Smiths Bakeries, 90% due to factors outside of Smiths' employment." Again, there is no substantive discussion of the basis for this determination, no detailed analysis of applicant's job duties at Smith's, or their relationship to his claimed injuries. The report is based on an inadequate medical history, and does not constitute substantial medical evidence.

For the above reasons, none of the reporting of AME Dr. Sohn, QME Dr. Matloob, or QME Dr. Tsou constitutes substantial medical evidence. Consequently, we find that lien claimants have not met their burden of proving applicant sustained injury arising out of and in the course of employment at Smith's Bakeries. (*Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113, (WCAB en banc).) Because there is no substantial medical evidence in support of injury AOE/COE, we need not reach the issue of whether compensation is barred by the one year limitations period of section 5405.

Accordingly, and in view of the lack of substantial evidence to support a finding of injury AOE/COE, we will rescind the March 5, 2019 F&O, and substitute findings of fact that lien claimants did not sustain their burden of proving that applicant sustained injury arising out of and in the course of employment.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 5, 2019 Findings and Order is **RESCINDED**, and that the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant Salvador Mendoza, while employed during the period March 1, 2006 to November 30, 2008, as a baker's helper, at Bakersfield, California, by Smith's Bakeries, claimed injury arising out of and in the course of employment to his lumbar spine and psyche.
2. Lien claimants have not met the burden of proving injury arising out of and in the course of employment.

ORDER

- a. The liens of by Edwin Haronian, M.D., Jonathan Kohan, M.D., Pacific Anesthesia Group, VQ OrthoCare, Meridian Medical Products, and Southern California Mental Health Associates, are **DISALLOWED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

CRAIG SNELLINGS, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 27, 2022

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

**LAW OFFICE OF TOBIN LUCKS
LAW OFFICE OF BRIAN COLLINS
EDWIN HARONIAN, M.D.
JONATHAN KOHAN, M.D.
PACIFIC ANESTHESIA GROUP
VQ ORTHOCARE
MERIDIAN MEDICAL PRODUCTS
SOUTHERN CALIFORNIA MENTAL HEALTH ASSOCIATES**

SAR/abs

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