

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

SHEILA MURPHY, Applicant

vs.

**COUNTY OF SONOMA/REGIONAL PARKS DEPARTMENT, Permissibly Self Insured,
administered by INTERCARE HOLDINGS INSURANCE SERVICES, INC., Defendants**

**Adjudication Number: ADJ13607768
Santa Rosa District Office**

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of an August 9, 2022 Findings and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) wherein the WCJ found that applicant, while working as a park aide for defendant, "did not contract Lyme disease as a result of a tick bite on January 20, 2019." The WCJ's decision was based upon the findings of the panel Qualified Medical Evaluator (QME), Dr. Thomas Leonard.

Applicant contends that the reporting of the QME was not substantial medical evidence and that the QME relied on bias and speculation.

We have received an Answer from the defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration (Petition), the Report, and have reviewed the record in this matter. Based upon our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we affirm the WCJ's August 9, 2022 F&O.

As expressed in *Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647], a report may be considered substantial medical evidence when it is well-reasoned, not speculative, based upon an adequate history and examination, and sets forth the reasoning behind the physician's opinion rather than mere conclusions. (See also *McAllister v.*

Workmen's Comp. Appeals Bd. (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc.)

In the instant case, as reported by the WCJ, there was a “difference in opinion between the applicant’s initial treating doctors, affiliated with Kaiser, and the applicant’s subsequent treating doctor, Dr. Gitlin. The Kaiser doctors felt that applicant did not contract Lyme disease and Dr. Gitlin believed that she did.” (Opinion on Decision, August 9, 2022, p. 2.) Given this divide, the parties retained Dr. Leonard as the panel QME. Dr. Leonard reviewed literature concerning diagnosis of Lyme disease and found that there was a two-step process which consisted of an ELISA test, which, if positive for findings of Lyme disease, required completion of a second test, called the Western Blot test. (Exhibit C, QME report of Dr. Leonard, February 8, 2021, p. 31.) “[W]ith a negative ELISA” it was understood that “further testing is not necessary.” (*Ibid.*)

Applicant’s Kaiser physicians performed the ELISA test and applicant tested negative for Lyme disease. Notwithstanding these findings, the Western Blot test was requested by Dr. Gitlin and performed. The result of that testing, however, “also support[ed] the conclusion that applicant did not contract Lyme disease.” (Opinion on Decision, *supra*, at 3.) Applicant therefore tested negative on both counts.

Based upon the above referenced test results, an evaluation of the applicant, and a review of the complete medical record, the QME found no injury AOE/COE. (QME Report of Dr. Leonard, February 8, 2021, p. 29.) Within his reports and during his deposition, the QME explained the basis for his opinions and explained his reasoning for the findings. The QME ultimately issued a total of three reports.

Having reviewed the trial record we see no evidence which is inconsistent with the QME’s opinions, and we see no support for applicant’s argument that the QME reports are not substantial evidence. We also see no evidence of bias, speculation, or inexperience on the part of the QME, as asserted by applicant. We therefore agree with the WCJ that the reports from QME are substantial medical evidence.

The law is well-established that the burden of proof rests upon the party holding the affirmative of the issue. (Lab. Code, § 5705.) To prove his or her claim, the burden therefore rests with the applicant (or lien claimant, who steps into the shoes of the applicant). Once this burden has been met, the burden then shifts to the defendant to provide rebuttal evidence. The rules of liberal construction established under Labor Code section 3202 do not relieve an applicant of

meeting the evidentiary burden of proof. Generally, substantial medical evidence is used to establish industrial causation and the applicant must establish industrial causation by a “reasonable probability.” That burden manifestly does not require the applicant to prove causation by “scientific certainty.” (*Rosas v. Workers’ Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1701 [58 Cal.Comp.Cases 313].) Unfortunately, that has not been done here.

For the foregoing reasons,

IT IS ORDERED that as the Decision After Reconsideration of the Workers’ Compensation Appeals Board, the August 9, 2022 Findings and Order is **AFFIRMED**.

WORKERS’ COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 24, 2024

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

**SHEILA MURPHY
FERCHLAND LAW
MULLEN & FILIPPI**

RL/cs

I certify that I affixed the official seal of the Workers’ Compensation Appeals Board to this original decision on this date.
CS

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

I

INTRODUCTION

1. Applicant's occupation: Park aide
2. Age at time of alleged injury: 38 years
3. Part of body alleged injured: Various as a result of Lyme Disease
4. Manner of alleged injury: Tick bite
5. Identity of Petitioner: Applicant.

The applicant filed a timely and properly verified Petition for Reconsideration seeking reconsideration of the court's August 9, 2022 Finding and Order that the applicant did not contract Lyme Disease as a result of a tick bite on January 20, 2019. Specifically, the applicant alleges that the court erred in finding the reporting of Panel Qualified Medical Evaluator Dr. Leonard persuasive, and alleges that Dr. Leonard's reporting is not substantial evidence.

II

FACTS

Applicant was employed by the County of Sonoma on January 20, 2019. On that day she was hiking through tall grass while checking trail cameras. That evening she found a tick embedded on her right hip. (Minutes of Hearing and Summary of Evidence May 16, 2022 ("MOH") at pg. 6: 15). She later developed a rash and became concerned that she might have contracted Lyme Disease, and so presented at Kaiser in Santa Rosa where her primary care physician prescribed antibiotics. On March 19, 2019 she visited Kaiser Occupational Medicine department. (See Applicant's Exhibit 36, DFR of Dr. Yee dated March 19, 2019). At that time, it was the opinion of the Dr. Yee that it was unlikely that she had Lyme Disease. (Id. at pg. 2, section 23).

Nevertheless, it appears that an antibody test, referred to as the "Elisa" test by Dr. Leonard, was performed. (See Applicants Exhibit 10/Defense Exhibit D, deposition transcript of Dr. Leonard dated August 9, 2021 at pg. 30).¹ The result of that test was negative. According to both

¹ The court apologizes that several exhibits, particularly the reports of PQME Dr. Leonard, were entered as both defense and applicant's exhibits.

Dr. Leonard (See Id.) and the Centers for Disease Control and Prevention (See Applicant's Exhibit 33, printout of <https://www.cdc.gov/lyme/diagnostesting/index.html>) indicate that a two-step process is required to confirm a diagnosis of Lyme Disease. First a preliminary test, the Elisa test, is performed and, if positive, and "Western Blot" test is used to confirm the diagnosis. In the event the Elisa test is negative, the Western Blot test is not necessary.

III

DISCUSSION

Applicant makes several arguments. First, applicant argues that Dr. Leonard does not have the requisite experience to be considered an expert on the diagnosis of Lyme Disease. The court disagrees. Although the doctor states that he has seen only 10 cases in his career, the undersigned has never seen a Lyme Disease case in 22 years of workers comp practice and on the bench. By contrast the undersigned has worked on a half-dozen or more Valley Fever cases. Ten cases seems like a significant number, enough to establish sufficient expertise for a Qualified Medical Evaluator. Second, the applicant argues that Dr. Leonard took an inadequate history, however, he states that he reviewed all of the treating doctor's reports available to him as well as the applicant's deposition transcript. This combined with the fact that he reviewed the results of the crucial Elisa test establishes that the history taken was adequate. Third, the applicant complains that the doctor was biased, and notes that he has not seen a documented case of Lyme Disease as a medical-legal evaluator. This in and of itself does not, in the view of the undersigned, establish bias. It would appear to the court that incidences of industrially caused Lyme disease are extremely rare.

Finally, the applicant notes that "Dr. Leonard and the trial judge placed considerable weight on the two tests applicant took for Lyme disease, the ELISA and the Western Blot, both of which were negative for Lyme disease." (Petition for Reconsideration at pg. 4). The reason for this considerable weight is that Lyme Disease is caused by bacteria, which, if it is present in the body, elicits an immune response. The presence of the bacteria causes human body to manufacture antibodies which are detectable in the blood. If the bacteria are present, antibodies will appear. If the antibodies do not appear, the bacteria is not present, and the individual does not have Lyme Disease.

Although applicant argues, apparently based on statements made by her treating doctor, Dr. Gitlin, that Lyme Disease can be diagnosed by symptomology alone, despite a negative antibody test, there does not appear to be any evidence of this in the record. Moreover, none of Dr.

Gitlin's reports are consistent with Board Rule 10682. The court admits that it is conceivable that there might be some strain of Lyme Disease bacteria that is undetectable through the usual tests and might manifest an array of symptoms. But the workers' compensation system is ill equipped to address unusual, even ground breaking, medical situations. The workers' compensation system deals with "reasonable medical probability" and evidence based peer reviewed medical consensus. In the present case, this means looking at the generally accepted methods of diagnosing Lyme Disease. In this case that compels a finding that the applicant does not have Lyme Disease.

IV

RECOMMENDATION

The court recommends that the applicant's Petition for Reconsideration be denied.

JASON E. SCHAUMBERG

Workers' Compensation Judge