

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

Case No.

Applicant,

vs.

WALNUT CREEK;

Defendants.

**FINDINGS AND ORDER
AND OPINION ON DECISION**

The above entitled matter having been heard and regularly submitted, the Honorable
Workers' Compensation Administrative Law Judge, now decides as follows:

FINDINGS OF FACT

1. The September 24, 2018 report of
constitutes substantial medical evidence.
2. As of September 24, 2018, applicant was not in need of
further medical treatment as a result of her March 14,
2018 injury to her head.
3. As of September 24, 2018, applicant had not sustained
any permanent disability as a result of her March 14,
2018 injury to her head.
4. As no award of permanent disability can be made at this
time, no award of attorney's fees can issue.

///

///

///

///

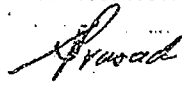
ORDER

IT IS ORDERED that applicant's Exhibits 1 through 7 are admitted into evidence.

DATE: 3/12/2019

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served by mail on all parties listed on the
Official Address record on the above date.

BY: 

DIETZ GILMOR SAN FRANCISCO, US Mail
Mail
WALNUT CREEK, US Mail

OPINION ON DECISION

FACTUAL AND PROCEDURAL BACKGROUND

Applicant worked for _____ as a handler, when she sustained an admitted industrial injury to her head on March 14, 2018. (Minutes of Hearing and Summary of Evidence (MOH), January 15, 2019, p. 2, lines 5-9.) Applicant was hit in the head with a piece of rolled carpet _____ (Id. at p. 4, line 41.) Applicant has been fully compensated for all periods of temporary disability and all medical treatment has been provided to date. (Id. at p. 2, line 19, lines 27-28.)

Applicant was evaluated by qualified medical evaluator, _____, M.D., who issued one report. (Defendant's Exhibit A, Report of _____, M.D., September 24, 2018.) Dr. _____ performed a complete neurological examination of applicant, which included a CT scan of the head. (Id. at pp. 6-7.) Applicant's examination was normal and the CT scan was normal. (Ibid.) Dr. _____ did not find any permanent disability or need for further medical treatment on a neurological basis. (Ibid.) He did note that applicant was complaining of stress and psychological problems, which were unrelated to the industrial injury. (Ibid.)

At trial, applicant began her testimony by admitting that she was nervous and under a lot of pressure, which could affect her testimony. (MOH, *supra* at p. 4, lines 10-12.) On direct exam, applicant testified that she is presently undergoing treatment with a _____ (Id. at p. 8, lines 1-4.) On cross exam, applicant testified that Dr. _____ is actually seeing applicant for psychiatric complaints. (Id. at p. 9, line 10.) However, applicant has a referral for _____ (Id. at p. 9, lines 12-13.)

Applicant testified as to having problems with slurred speech. (Id. at p. 8, lines 15-16.) The court did not notice any issue with slurred speech during applicant's testimony.

Applicant provided multiple exhibits indicating that she is presently precluded from returning to work. (See i.e., Exhibits 4, 5, 6, and 7.) However, applicant clarified that she is off work due to complaints to her back. (MOH, *supra* at p. 9, lines 11-12.)

DISCUSSION

To constitute substantial evidence “. . . a medical 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, 621 (Appeals Board en banc).)

Here, the report of Dr. _____ was based upon an adequate examination and history and upon an adequate review of applicant's records relating to the neurological injury. To the extent that applicant testified to a multitude of complaints regarding the evaluation procedure, these complaints were not corroborated by any other evidence and I did not find applicant's testimony credible. Accordingly, I issued findings of fact based upon Dr. _____ reporting, which as of September 24, 2018, indicated no level of permanent disability and no need for further medical treatment.

Applicant indicated in her testimony that she is proceeding privately with a neurological evaluation in the near future. Should future evidence be presented to indicate a change in applicant's neurologic condition as relates to the March 14, 2018 industrial injury, applicant may file a petition to reopen her claim on or before March 14, 2023.

In determining whether to admit evidence, I am governed by the principles of Labor Code section 5908, which states that the appeals board "shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division." The right to present evidence implicates the right to due process. (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 175 [36 Cal.Comp.Cases 93, 102]; *Pence v. Industrial Acci. Com.* (1965) 63 Cal.2d 48, 51 [30 Cal.Comp.Cases 207, 209].)

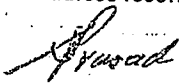
The facts of this case indicate that the admissibility of applicant's proffered evidence is questionable. That is, none of the proffered exhibits were listed on the pre-trial conference statement or served upon defendant prior to the morning of trial. No good cause was presented to allow the admission of the evidence. However, as detailed above, the substance of the proffered evidence does not alter the decision. In such cases, the better course is to admit the evidence into the record and decide the case on the merits. Admitting the evidence will remove any doubt as to applicant's right to due process and further reinforces the integrity of the court's decision. Accordingly, I have ordered that applicant's exhibits 1 through 7 be admitted into evidence.

DATE: 3/12/2019

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served by mail on all parties listed on the
Official Address record on the above date.

BY:



DIETZ GILMOR SAN FRANCISCO, US Mail
Mail
WALNUT CREEK, US Mail