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WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

Case No. POM 178351

BRENT SASSE,

Applicant,

vs.

CITY OF CHINO;
Permissibly Self-Insured,

Defendant(s).

OPINION AND DECISION
AFTER RECONSIDERATION

The Workers' Compensation Appeals Board (Board) concluded that applicant Brent Sasse's Petition for Reconsideration should be granted for further study of the facts and the applicable law in order to give the Board a complete understanding of the record and to enable it to make a just and reasoned decision. The Board has completed its study and the following is our Decision After Reconsideration.

Applicant sought reconsideration of the Findings and Award issued June 4, 1992, in which a workers' compensation judge (WCJ) found that applicant, a police officer born September 15, 1959, while employed by the City of Chino, during the period 1985 through April 5 1991, sustained injury arising out of and in the course of his employment to his psyche. The WCJ further found that the injury cause temporary disability from April 5, 1991 to July 1, 1991, but resulted in no permanent disability.

Applicant contended (1) that the WCJ erred in finding that his psychiatric injury resulted in no permanent disability, asserting that the December 6, 1991 report of Daniel C. Minton, M.D., and Bruce Leckart, Ph.D., upon which the WCJ relied to arrive at his decision, does not constitute substantial evidence; and (2) that the WCJ erred in finding that his injury caused temporary disability from April 5, 1991 to July 1, 1991, asserting that the record justifies a finding that applicant is entitled to benefits

1 during the period July 1, 1991 to May 21, 1992, pursuant to Labor Code section 4850.

2 After independently reviewing the record, we will affirm the Findings and
3 Award. We take this action for the following reasons.

4 Applicant, born September 15, 1959, filed an Application for Adjudication of
5 Claim on November 6, 1991, alleging that he sustained industrial trauma to his
6 psyche and internal system as a result of "repetitive stress and strain," while
7 employed as a police officer by defendant, during the period January, 1985 through
8 April 5, 1991. Applicant's case was set for a Mandatory Settlement Conference (MSC)
9 on December 5, 1991. Because the parties were unable to settle applicant's claim, the
10 matter was set for trial on March 25, 1992. At the March 25, 1992 trial, stipulations
11 were framed, the issues were raised, and evidence was admitted into the record,
12 including the psychiatric reports of Daniel C. Minton, M.D., and Bruce Leckart, Ph.D.,
13 reporting on behalf of the defendant, and the psychological report of Dennis
14 Greenberger, Ph.D., reporting on behalf of the applicant. The Findings and Award
15 issued June 4, 1992, wherein the WCJ found that applicant sustained cumulative
16 industrial injury causing temporary disability from April 5, 1991 to July 1, 1991, but
17 resulting in no permanent disability.

18 Applicant essentially contended that the reports of Daniel C. Minton, M.D., and
19 Bruce Leckart, Ph.D., do not constitute substantial evidence to justify the findings that
20 applicant's injury caused no temporary disability beyond July 1, 1991, and resulted in
21 no permanent disability. It is from this decision that applicant sought
22 reconsideration.

23 Applicant was originally examined by Drs. Minton and Leckart on July 23, 1991.
24 In their July 23, 1991 report, Drs. Minton and Leckart opined that applicant sustained
25 cumulative industrial trauma to his psyche, but that the injury resolved resulting in
26 no permanent disability, and causing no temporary disability beyond July 1, 1991. The
27 report states, in pertinent part, as follows:

1 "The results of this psychiatric examination indicate that
2 Mr. Brent Allen Sasse has had an Adjustment Disorder
3 with depressed mood (309.00) as a result of his industrial
4 experiences with the City of Chino between April 5, 1991
5 and July 1, 1991. It is the impression of this examination
6 that Mr. Sasse's industrially related adjustment disorder has
7 resolved as of July 1, 1991 and that he has not been
8 psychologically disabled since that time. All of the data
9 from Mr. Sasse's mental status examination, clinical
10 presentation, psychiatric history, and psychological testing
11 and medical records are consistent with this conclusion.

12 "....

13 "In our opinion, Mr. Sasse's industrially-related adjustment
14 disorder apparently extended from April 5, 1991 to July 1,
15 1991. During that time, Mr. Sasse appeared to be at first
16 partially and then totally and temporarily disabled on an
17 industrially-related psychiatric basis and required
18 psychological treatment as well as anti-depressant
19 medication. It is also our impression that Mr. Sasse's
20 adjustment disorder resolved itself by July 1, 1991. Since
21 that date, Mr. Sasse has had no temporary or permanent
22 psychiatric disability in that he appeared entirely normal
23 and non-depressed. ... At this time, Mr. Sasse does not
24 appear to have any further need for psychiatric treatment
25 and he does not appear to be psychiatrically disabled at this
26 time in his ability to do his job as a police officer. Mr. Sasse
27 can return to his normal and customary job whenever he
desires. (See report of July 23, 1991, at pp. 16, 19.)

18 Drs. Minton and Leckart re-examined the applicant on a psychiatric basis on
19 December 6, 1991. In that report, they indicated that the results of their psychiatric re-
20 evaluation clearly indicated that applicant psychiatric condition resolved in July, 1991
21 despite applicant's history of continued subjective complaints. They further indicated
22 that applicant's "current complaints since July, 1991 appear to be questionable in that
23 he is clearly simulating on psychological testing." Accordingly, their opinion as
24 expressed in the report of July 23, 1991 was not changed. (See report of December 6,
25 1991, at p. 12.)

26 In his report of January 9, 1992, Dr. Greenberger, Ph.D., opined that applicant's
27 psychiatric condition is a direct result of his employment as a police officer, and that

1 the injury resulted in permanent disability (see, report at pp. 15-18). Dr. Greenberger
2 further finds applicant's condition to be permanent and stationary on January 9, 1992
3 (see, report at p. 15, ¶ 3).

4 The relevant and considered opinion of one physician, though inconsistent
5 with other medical opinions, may constitute substantial evidence. (LeVesque v.
6 Workers' Comp. Appeals Bd. (1970) 1 Cal.3d 627, 639 [35 Cal.Comp.Cases 16, 22-23];
7 Smith v. Workers' Comp. Appeals Bd. (1969) 71 Cal.2d 588 [34 Cal.Comp.Cases 424]).

8 A WCJ has the power choose among conflicting medical reports and rely on that
9 which it is deemed most persuasive. (Liberty Mutual Insurance Company v. Ind. Acc.
10 Comm. (Serafin) (1948) 33 Cal.2d 89 [13 Cal.Comp.Cases 267]).

11 In order to constitute substantial evidence upon which a WCJ may rest a
12 decision, a medical opinion may not be based on surmise, speculation, conjecture or
13 guess, and it is not substantial evidence if it is known to be erroneous, based on facts
14 no longer germane, based on incorrect legal theory, or based on inadequate medical
15 history or examination. (Hegglin v. Workers' Comp. Appeals Bd. (1970) 4 Cal.3d 162
16 [36 Cal.Comp.Cases 93]; Place v. Workers' Comp. Appeals Bd. (1970) 3 Cal.3d 372 [35
17 Cal.Comp.Cases 525].)

18 In the present matter, we conclude that the WCJ was justified in relying on the
19 reports of Drs. Minton and Leckart to find that applicant's injury neither resulted in
20 permanent disability nor in temporary disability beyond July 1, 1991. We believe that
21 the reports of Drs. Minton and Leckart constitute substantial evidence. Their reports
22 are not based on surmise, speculation, conjecture, or guess, and they are not
23 erroneous, based on facts no longer germane, based on incorrect legal theory, or based
24 on inadequate medical history and examination. Drs. Minton and Leckart had the
25 benefit to review the entire record in this matter as well as examining and testing the
26 applicant. Their opinions in their reports are well-reasoned and persuasive.
27 Therefore, they are substantial evidence, and the Board relies on them to affirm the

1 finding that applicant's injury resulted in neither permanent disability nor temporary
2 disability beyond July 1, 1991. Accordingly we will affirm the Findings and Award
3 issued June 4, 1992.

4 For the foregoing reasons,

5 IT IS ORDERED that it is the Board's Decision After Reconsideration that the
6 Findings and Award issued June 4, 1992, be, and the same hereby is, AFFIRMED.

7 WORKERS' COMPENSATION APPEALS BOARD

8 Alexander N. Heath

9
10 I CONCUR,

11 Diana Marshall

12 PARTICIPATING, BUT NOT SIGNING

13 J. S. Wiegand



14
15
16 DATED AND FILED IN SAN FRANCISCO, CALIFORNIA

17 AUG 3 1 1994

18 SERVICE BY MAIL ON SAID DATE TO ALL PARTIES
19 LISTED ON THE OFFICIAL ADDRESS RECORD EXCEPT
20 LIEN CLAIMANTS.

21 VP Diana Douglas

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. POM 0178351

BRENT SASSE,

Applicant

vs.

FINDINGS AND AWARD

CITY OF CHINO,
Permissibly self-insured,

Defendants.

SILVER, GOLDWASSER & SHAEFFER
By: Steven E. Kaye
Attorney for Applicant

KEGEL, TOBIN & TRUCE
By: Sandra Grajeda
Attorney for Defendant

Application having been filed herein, all parties having appeared, and the matter having been regularly submitted, the Honorable THOMAS E. HARVEY, JUDGE, now finds and awards as follows:

1. Brent Sasse, born September 15, 1959, while employed as a police officer (Group 54), during the period of 1985 to April 5, 1991, by the City of Chino, permissibly self-insured, sustained injury arising out of and in the course of employment to his psyche.

2. Applicant's probable weekly earnings produce a compensation rate of \$863.08 per week.

3. This injury caused temporary total disability beginning April 5, 1991, through July 1, 1991, for which indemnity is payable \$863.08 per week, pursuant to Labor Code Section 4850, less credit for amounts paid.

4. This injury caused no permanent disability.

5. There is no basis for apportionment.

6. Further medical treatment is required to cure or relieve from the effects of this injury.

7. Applicant actually, reasonably and necessarily incurred medical-legal costs in an amount to be adjusted by the parties, with jurisdiction reserved to the Board to determine the reasonable value thereof if the parties are unable to adjust the same.

8. Defendants failed to furnish necessary medical treatment to cure or relieve applicant from the effects of the injury herein after they received notice of the need thereof, and applicant procured said treatment at his expense in an amount to be adjusted by the parties, with jurisdiction reserved to the Board to determine the reasonable value thereof, if the parties are unable to adjust the same.

9. There are no funds from which to award attorneys fees.

AWARD

AWARD IS MADE in favor of BRENT SASSE and against the CITY OF CHINO of:

(a) Temporary disability indemnity of \$863.08 per week, beginning April 5, 1991, through July 1, 1991, pursuant to Labor Code Section 4850, less credit for amounts paid;


(b) together with further medical treatment as set forth in Finding No. 6;

(c) together with reimbursement for the expense of medical-legal costs as set forth in Finding No. 7;

BRENT SASSE

POM 0178351

(d) together with reimbursement for the expense of self-procured medical treatment as set forth in Finding No. 8.


THOMAS E. HARVEY, JUDGE
WORKERS' COMPENSATION APPEALS BOARD

DATED AT POMONA, CALIFORNIA

JUN 4 1992

SERVED BY MAIL ON PERSONS SHOWN
ON THE OFFICIAL ADDRESS RECORD
ON THE ABOVE DATE.

BY:


L. Caro

STATE OF CALIFORNIA
WORKER'S COMPENSATION APPEALS BOARD

CASE NO. POM 0178351

BRENT SASSE

vs. CITY OF CHINO,
Permissibly self-insured

WORKERS' COMPENSATION JUDGE:
THOMAS E. HARVEY

DATED: JUN 6 1991

OPINION ON DECISION

Applicant claims to have sustained injury to his psyche while working as a police officer (Group 54), during the period of 1985 to April 5, 1991, for the City of Chino in Chino, California.

INJURY AOE/ COE

Relying on the testimony of the applicant and on the entire medical file, the applicant did sustain injury to his psyche while working as a police officer for the City of Chino. The applicant did endure considerable stress during his difficulty with management and the chief of police at Chino, California.

PARTS OF BODY INJURED

Since psyche was the limited part of the body alleged to have been injured at the time of trial, no other body parts are found to have been injured.

TEMPORARY DISABILITY

Relying on the December 6, 1991, report of Dr. Minton and Dr. Leckart, and on applicant's testimony, the applicant was temporarily totally disabled from April 5, 1991, to July 1, 1991.

The applicant was not disabled temporarily or permanently during any other period of time as a result of the injury he sustained while working as a police officer at the City of Chino. Since July of 1991, the applicant has been working in construction to generate income. He worked construction before, during, and after his job at the City of Chino as a police officer. It is his decision not to return to work for the City of Chino in any capacity.

PERMANENT DISABILITY
and APPORTIONMENT

Relying on the December 6, 1991, report of Dr. Minton and Dr. Leckart, applicant did not sustain permanent disability from his injury at the City of Chino.

The applicant testified that he is currently working construction and that his symptoms are much better than they were in 1991. He worked construction before, during, and after his

employment at the City of Chino and does not indicate that he is disabled. The applicant testified that he does not feel that he can return to work due to the conflict he had with the City of Chino. This does not mean that he is disabled, only that he refuses to work any further for the City of Chino. The applicant may have considerable anger, but he does not appear to have actual disability resulting from his injury.

There is no evidentiary basis to apportion to any pre-existing or nonindustrial factors of disability.

FUTURE MEDICAL TREATMENT

In the December 6, 1991, report of Dr. Minton and Dr. Leckart, it is not indicated the applicant is no longer in need of medical treatment. The July 23, 1991, report of Dr. Minton and Dr. Leckart indicates the applicant at that time did not appear to have any further need for psychiatric treatment. However, applicant has had flare-ups of symptoms since those reports have been written and should be provided with further medical treatment as the need arises.

Accordingly, relying on the entire medical record, award will also be made for such further medical treatment as may be required in the future to relieve from the effects of the injury to applicant's psyche.

LIEN CLAIMS

Lien claims of record shall be adjusted by the parties with jurisdiction reserved to the court for unresolved lien claims.

ATTORNEYS FEES

There are no funds from which to award attorneys fees.

Thomas E. Harvey
THOMAS E. HARVEY
WORKERS' COMPENSATION JUDGE

TEH:lrc