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

[redacted]

Applicant,

vs.

[redacted]

Defendants.

Case No. ADJ12473312
ADJ15812360

FINDINGS AND ORDER

The above-entitled matter having been heard and regularly submitted, Christopher Miller, Workers' Compensation Judge, now makes his decision as follows:

FINDINGS OF FACT

'(1) [redacted], born March 27, 1977, while employed on August 9, 2019, in Santa Rosa, California, as a carpenter, by [redacted], insured for workers' compensation by [redacted], its claims administered by [redacted], sustained an injury arising out of and in the course of employment to his right knee. (Case number ADJ15812360) That injury did not include his back or lead to his paralysis.

(2) Applicant did not sustain cumulative injury during the period of employment ending August 9, 2019. (Case number ADJ12473312)

(3) There is no need for medical treatment to cure or relieve from the effects of said injury.

(4) Said injury did not cause permanent disability.

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ORDER

No compensation is payable in this matter.

Date: April 23, 2022

Christopher Miller
Workers' Compensation Judge

Served on: 04/25/2022

Served by: NFL

Service:
[redacted]
COLANTONI COLLINS SAN FRANCISCO, Email
[redacted]

OPINION ON DECISION

This case arises out of an admitted injury, on August 9, 2019,[1] to the right knee of a carpenter who claims, as well, to have injured other body parts, either at that time or as a result of the knee injury. Applicant has also alleged a cumulative injury. Chief among the issues to be decided is whether, under the strictures of the Labor Code and cases interpreting it, [redacted] paralysis has resulted from his employment.

FACTS

The background begins with applicant's specific injury in 2019. He was holding a piece of wood and it slipped from his grasp and fell, striking his right knee. (This is from [redacted] trial testimony. Other versions appear in reporting over the years, including a joist dropped by coworkers. In any event, his knee was struck by falling wood.) Applicant reported the injury, either including the onset of mid-back pain or not, but was not immediately directed to a medical facility. He finished his shift and reported to work the following day, and the day after that.[2] Eventually, on August 13, 2019, he was taken to an industrial clinic, where an x-ray of the right knee was negative; the report of that visit, if accurately summarized later,[3] makes no mention of back pain.

Two days later, [redacted] was taken to the emergency department at Kaiser in Vallejo, reporting urinary retention and numbness in the right lower extremity and was admitted. There, he underwent MRIs of the brain, cervical, thoracic (times two, it appears) and lumbar spine, CT scan of the lumbar spine, and various x-rays. In the thoracic spine, the MRI revealed a cystic lesion at T7, with adjacent edema of the spinal cord. He was transferred to Kaiser in Vacaville for consideration of neurosurgery. (That was not undertaken.) Applicant's paralysis soon progressed to his left lower extremity and has not since abated.

Certain of the treatment reports submitted by applicant ascribe the paralysis to [redacted] work injury, by way of history.

The parties engaged two agreed medical evaluators (AMEs), [redacted] in orthopedics and [redacted] in neurology. Of course, by the time he saw [redacted], on December 18, 2019, applicant was unable to walk or, for that matter, to feel his right knee, so that AME found no residual impairment involving the knee. [redacted], in his several reports, describes considerable impairment, owing to the paralysis, but arguably no industrial causation of that condition. That being the crux of the matter, this AME's conclusions will be examined a bit more closely.

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[1] In their pretrial conference statement, the parties stated that the injury took place on August 8, 2019. However, as defendant pointed out at trial, the medical records place the date of injury as August 9, 2019. (Both dates appear.) Because of the frequency with which the August 9, 2019, date appears in the medical records and reports, particularly those most contemporaneous with the event, I have used that date.

[2] August 8, 2019, was a Thursday; August 9 was a Friday. On many counts, applicant's memory of specifics was sketchy after 32 months. He testified that he did not work that weekend.

[3] Report of [redacted], June 9, 2020, pg. 22.

In his report of June 9, 2020, [redacted] records the history, as provided by [redacted], as including sudden pain in the neck as he lifted the heavy wood from his knee. (I have not found another source of this information.) However, it is the thoracic spine where the paralyzing lesion occurred, and the cause of that rupture is where the AME spends his attention. The confluence of acute symptoms and a work-related injury being the starting point, [redacted] understandably hunts for a connection supported by science. He first rules out the possibility that the knee injury itself somehow caused the vascular malformation that hemorrhaged to damage applicant's spinal cord. The AME then explores the possibility that [redacted] had spinal stenosis such that the discs or other structures rubbed against the soon-to-rupture blood vessel and a sudden movement, at the time of the injury, caused that rupture. (Applicant did testify that he twisted his back somewhat when it occurred, though this history is not reported contemporaneously.) [redacted] considers the possibility that a neck strain accompanied the knee injury, but the imaging on August 15, 2019, did not show spinal damage, as distinct from damage to the spinal cord (though in the thoracic region). Acknowledging the connection drawn by treating physicians seeing [redacted] in the emergency room and around that time between the work injury and the development of paralysis, the AME hunts for that connection. He posits various other possible causes, including a relationship to preëxisting trauma at an adjacent level of the spine (perhaps lit up by the work injury), a sudden increase in blood pressure, a sudden movement of the spine at the time of the injury, that there was strenuous (injurious) lifting involved in the injury, that he was jostled on his way to the doctor for his injury, that applicant bruised easily and was thus vulnerable to hemorrhage or was taking blood-thinning anti-inflammatories such as ibuprofen that increased such vulnerability. Following an exhaustive analysis of a wide variety of potential links between applicant's work-related injury and the development of his paralysis, the doctor is "not able to find industrial causation for the spinal cord hemorrhage."

One of the possibilities raised in [redacted] deposition testimony on December 7, 2020, was that a repeat MRI might show, when compared with the imaging performed shortly after the symptoms arose, a change that might point to a cause, and particularly a causal connection to [redacted] knee injury. In response to a series of hypothetical questions, the AME acknowledged in that testimony that he had reasonable doubt about how the cyst or lesion in applicant's spine came to rupture. He also agreed that cumulative trauma in the course of his work in construction may have played a part in the hemorrhage, depending on the result of additional research, although he had no evidence pointing to such an injury or contribution.

In a supplemental report dated January 17, 2021, [redacted] provides specific information and questions for the benefit of the radiologist charged with assessing the follow-up thoracic-spine MRI and comparing it with the first such study.

In his report of October 11, 2021, the AME reviews the MRI results. Going back over his previous discussions of possible causes of applicant's spinal hemorrhage, he eliminates each theory linking it to the original knee injury, adding to that analysis his

own assessment of whether there are signs of cumulative (work) trauma, which he finds lacking. "But," he writes, "I am still troubled by the timing." Later, "I am struggling to find that link, and I believe it should be there." And, "I am left with a gut impression with no support." His final paragraph: "At present, then, I am not able to make the affirmative industrial connection, despite my suspicions. And I find this unsettling."

Finally, [redacted] was deposed a second time, on January 18, 2022. There, he was taken through the same hypothetical sequences as in his earlier testimony, all based on applicant's interpretation of section 3202[4] and court decisions that will be addressed below. The doctor acknowledged that, while the cause of applicant's paralysis was clear – it was the rupture – and the fact of his injury had been established, [redacted] had reasonable doubt as to the cause of that rupture. Further, he could not conclude that that cause was wholly spontaneous – that is, that it was entirely unrelated to employment, although he stated that medical literature supports that most such ruptures generally do occur ideopathically. Nonetheless, he had not been able to draw a connection between work and hemorrhage, and could not state that such connection was more likely than not.

Any finding of industrial cumulative trauma would depend on application of the hypothetical standard of causation posed by applicant.

DISCUSSION

It bears stating at the outset that both parties to this litigation have been very well represented. While the extent of detail, and perhaps repetition, throughout the evidentiary record can result in some rather difficult reading, that is understandable, given the importance of the issue. A good deal is at stake. Moreover, [redacted], in particular, has struggled mightily with the causation question that is at the heart of the matter, and has obviously done his level best to answer that question, against considerable scientific uncertainty.

It is the employee's burden to prove, by a preponderance of the evidence, that he or she was injured in the course of employment. Section 3202.5, *Lundberg v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 436 [33 Cal.Comp.Cases 656]. Nonetheless, employment need not be more than one causative factor, as long as it contributes to the injury. See, e.g., *Amico v. Workmen's Comp. Appeals Bd.* (1974) 43 Cal.App.3d 592 [39 Cal.Comp.Cases 845]. More generally, the burden of proof "rests upon the party or lien claimant holding the affirmative of the issue." Section 5705.

The cases cited by applicant are three; there are others. The first is *McAllister v. Wkrs. Comp. Appeals Bd.* (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660] (*McAllister*), where the Supreme Court addressed a case involving a long-term firefighter, also a smoker, who died of lung cancer. In reversing a lower court's decision that applicant

[4] "This division and Division 5 (commencing with Section 6300) shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." All statutory references not otherwise identified are to the Labor Code.

(survivor of the firefighter) had failed to prove that inhalation of smoke while fighting fires had led to the employee's cancer and his death, the court concluded that "the exact mechanism of industrial causation need not be shown." Thus, the fact that applicant "did not produce a more detailed account of the alleged industrial causation, the exact amount of each type of smoke inhaled, and the precise danger to decedent from such inhalation" was not necessary to prove compensability. Rather, the court held, "we require applicants to establish no more than that industrial causation is reasonably probable."

Similarly, in *Reeves v. Diamond Match Co.* (1918) 5 I.A.C. 236 (*Reeves*), as summarized in *McAllister,* "the evidence did not establish with certainty whether the [skin] disease arose from chemicals or from chemical fumes or from working in dust." The court concluded, "We do not understand that the burden of proof resting upon applicant to make good his claim requires that he account scientifically for the source of contagion or the cause of the disease, but only that he establish by a preponderance of likelihood the fact that his disability arose out of and happened in the course of employment."

Finally, in *Allied Signal, Inc. v. Wkrs. Comp. Appeals Bd. (Briggs)* (2001) 66 Cal.Comp.Cases 1333 (writ denied) (*Briggs*), the appeals board reversed a trial decision that the employee's back injury, sustained when he turned from the urinal at his place of employment was not compensable because it resulted from a normal bodily movement. Although this citation is to a summary denial of defendant's petition for writ of review, it contains a lengthy quotation from the appeals board's decision, and cites the extensive case law supporting compensability under such circumstances. "If a disability is precipitated by a movement incidental to the employment, the injury is compensable even though the movement is normal. If, on the other hand, the injury is wholly spontaneous, it is not compensable just because it occurs on the job. Thus, from an evidentiary standpoint the causal connection will be deemed established when the injury occurs in the course of employment while the employee is performing normal bodily movements, unless there is a positive showing that the sole cause of the injury is an inherent defect of the employee." (Citations omitted)

From these principles applicant derived the hypothetical questions posed to the AME to elicit the candid response that he could not conclude that [redacted] paralysis was wholly caused by an inherent defect, that, rather, reasonable doubt remained as to its cause. Resting as it does on correct application of the legal authorities quoted above, I must assess such application.

Most generally, the existence of genuine doubt as to precise causation, in the face of considerable scientific uncertainty, does not shift the burden of proof to the defendant. Instead, it eases that burden, to an extent.

In my reading of the case law, I believe the authorities upon which applicant relies stand for the following principles.

First, if an employee is unable to establish which among several work-related factors caused her injury, that is not fatal to her claim. She must only prove that *some* work-related cause is more likely than not responsible. Thus, the precise element or elements of smoke in *McAllister*, or which of the harmful exposures in *Reeves*, need not be demonstrated, as they *all* stem from work.

Second, if an injury definitely took place on the job, as in *Briggs,* that satisfies applicant's initial burden. It then falls to the defendant to show that its cause was entirely unrelated to work – that is, that it arose "wholly spontaneously" from an "inherent defect" in the employee.

It is not difficult to see how the facts presented in the case under study can be distinguished from those in the above cases. [redacted] hemorrhage, as distinct from his knee injury, did not itself take place at work, but rather several days after that injury and away from the workplace. And its cause cannot be firmly attributed to some undetermined but undeniably work-related factor: Try as he might, the AME could not isolate that cause.

I share [redacted] unease with the coincidence of applicant's paralysis occurring just days after his work-related injury. I agree that it makes sense that there should be a way to connect those events. Of course, I do not share his expertise, which I believe is considerable. I do believe that expertise has been fully plumbed and the result does not support industrial causation.

Date: April 23, 2022

Christopher Miller
Workers' Compensation Judge