

1 the Workers' Compensation Appeals Board, and shall not be e-filed in the Electronic Adjudication
2 Management System (EAMS). Any documents relating to the petition for reconsideration lodged in
3 violation of this order shall neither be accepted for filing nor deemed filed.

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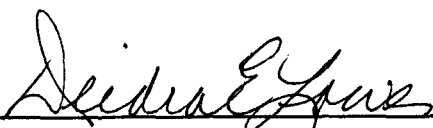
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1 All trial level documents not related to the petition for reconsideration shall continue to be e-filed
2 through EAMS or, to the extent permitted by the Rules of the Administrative Director, filed in paper
3 form.¹ If, however, a proposed settlement is being filed, the petitioner for reconsideration should
4 promptly notify the Appeals Board because a WCJ cannot act on a settlement while a case is pending
5 before the Appeals Board on a grant of reconsideration. (Cal. Code Regs., tit. 8, § 10859.)
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7 **WORKERS' COMPENSATION APPEALS BOARD**

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10 **MARGUERITE SWEENEY**

11 **I CONCUR,**

12 

13 **DEIDRA E. LOWE**

14 **CONCURRING, BUT NOT SIGNING**
15 **KATHERINE ZALEWSKI**



16
17 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

18 **JUL 01 2015**

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

21 **WILLIAMS ABREGO**
22 **WILLIAM W. GREEN**
23 **OFFICE OF THE DIRECTOR – LEGAL UNIT**
24 **AMANDA GUERRA**
25 **CARLOS ILDEFONSO**

26 **JTL/bea**

27 ¹ Such trial level documents include, but are not limited to, declarations of readiness, lien claims, trial level petitions (e.g., petitions for penalties, deposition attorney's fees), stipulations with request for award, compromise and release agreements, etc.)

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **CARLOS IVAN RODAS (DECEASED),**
5 **AMANDA GUERRA & CARLOS**
6 **ILDEFONSO,**

7 *Applicants,*

8 **vs.**

9 **PORCINI, INCORPORATED dba GUIDO'S**
10 **RESTAURANT; TRUCK INSURANCE**
11 **EXCHANGE,**

12 *Defendants.*

Case No. ADJ8899793
(Anaheim District Office)

OPINION AND DECISION
AFTER RECONSIDERATION

13 On July 1, 2015, the Appeals Board granted reconsideration to further study the factual and legal
14 issues. This is our Decision After Reconsideration.

15 In the Findings of Fact of April 24, 2015, the workers' compensation judge (WCJ) found that the
16 decedent, Carlos Rodas, while employed on March 8, 2012 as a dishwasher by Porcini, Incorporated,
17 doing business as Guido's Restaurant, sustained injury arising out of and occurring in the course of
18 employment to his lungs, resulting in death.

19 Defendant filed a petition for reconsideration of the WCJ's decision. Defendant contended, in
20 substance, that the WCJ erred in relying upon the medical opinion of Dr. Ronald Zlotolow because it is
21 not substantial evidence.

22 The applicants, Amanda Guerra and Carlos Ildefonso, filed an answer.

23 The WCJ submitted a Report and Recommendation.

24 Based on our review of the record and applicable law, we find merit in defendant's contention
25 that Dr. Zlotolow's medical opinion is not substantial evidence. Therefore, we will rescind the WCJ's
26 decision and substitute our finding that the decedent did not sustain industrial injury to his lungs,
27 resulting in death.

1 **BACKGROUND**

2 At the time of his death on March 8, 2012, Carlos Rodas had worked as a fulltime dishwasher for
3 two years. His job duties included cleaning the floor and kitchen and bathrooms, as well as taking out
4 the trash. Mr. Rodas was found dead in the restaurant's parking lot, where he had gone to take a trashcan
5 out to the restaurant's dumpster. The trashcan was on a dolly but had not been emptied into the
6 dumpster. The immediate cause of death was hemorrhaging of Mr. Rodas's lungs, which had been
7 weakened by tuberculosis and fungal infection. These diseases had no apparent source at home or in the
8 restaurant. The decedent's parents filed a workers' compensation claim for death benefits, and they
9 obtained a comprehensive medical-legal evaluation in internal medicine from Dr. Ronald Zlotolow.

10 The claim proceeded to trial on February 18, 2015. Dr. Zlotolow's medical report of November
11 14, 2014 was admitted in evidence as applicants' exhibit 1, along with an autopsy and investigative
12 report done by the Los Angeles County Coroner's office, admitted as defense exhibit A. Mr. Rodas's
13 mother testified that her son lived with her during the last seven years of his life, and that he complained
14 about exposure to strong smells and chemicals at work. However, she did not know what chemicals were
15 used for cleaning. She also testified that her son was not exposed to strong smells or chemicals at home,
16 and that his job sometimes required heavy lifting.

17 The Los Angeles County Coroner's autopsy report dated March 12, 2012 found that the cause of
18 death was "hemorrhage from invasive pulmonary aspergillosis [a type of fungus] due to, or as a
19 consequence of sequelae of cavitary tuberculosis (treated)." (Exhibit A, p. 00002.) The autopsy report
20 also noted that "[b]leeding from lungs caused extensive hemoptysis, blood aspiration and ingestion."
21 (Exhibit A, p. 00006.) The synopsis within the case report, which is part of the autopsy report, stated:

22 According to the reported information, on 3/18/2012 [sic] at
23 approximately 2036 hours the decedent was found unresponsive and
24 bloodied in the parking lot of the restaurant where he works as a
25 dishwasher. He went to take out the trash and did not return. LACOFD
26 Engine 88 pronounced death on scene 2045 hours. No obvious signs of
27 trauma were found. Approximate 300' trail of projectile bloody emesis/
coagulated blood/bloody foam leading from the dumpster to the decedent.
Decedent had significant cough a few days leading up to his death.
Decedent's grandfather had tuberculosis and the family was exposed.

1 Conflicting statements regarding origin of the grandfather's tuberculosis
2 (see Form 3 for details). No history of ulcer or bloody emesis.

3 (Exhibit A, p. 00023.)

4 An "Investigator's Narrative" also was contained within the autopsy report. The narrative
5 included the following "Scene Description:"

6 The scene is Guido's parking lot located in front of/north of Guido's. The
7 decedent is approximately 18' north of Guido's entrance. A folded table
8 cloth is on the ground approximately 2' west of the decedent's shoulders.
9 A dumpster is located approximately 300' northwest of the decedent.
10 Approximately 1' north of dumpster is a large rubber trashcan resting on a
11 flat dolly. This is the trashcan the decedent took outside to dump. The
12 trash inside the large rubber trashcan is overflowing. On the trash itself is
13 a large amount of blood spatter with red foam. On the ground
14 approximately 3' west of the large rubber trashcan is coagulated blood and
15 high velocity blood spatter. On the ground approximately 3" northeast of
16 the large rubber trashcan is coagulated blood with high velocity blood
17 spatter. From the large rubber trashcan to the decedent are approximately
18 13 separate sections where it appears the decedent stopped to projectile
19 vomit blood. Each section has several large high velocity blood
20 drops/spatters. Some sections have coagulated blood, some have bloody
21 foam.

22 (Exhibit A, p. 00025.)

23 In the "Body Examination" section of the same narrative, it was noted that "[t]he decedent's face
24 is covered in coagulated blood that appears to have come from his mouth. There is red foam in his
25 mouth. There is blood on the decedent's hands. Blood is on the front and back of the tank top, the front
26 of his pants, and on the top of his shoes. No scars, tattoos, or obvious signs of trauma were seen."

27 (Exhibit A, p. 00025.)

28 In his report dated November 14, 2014, Dr. Zlotolow provided the following "History of Injury
29 on the Job:"

30 In interviewing Mr. Rodas' mother, the mother said her son worked at a
31 restaurant. He did everything there. Mr. Rodas was diagnosed with
32 tuberculosis while he was working for the company. He was treated for
33 six months. He was told it was okay to work. She was not told that he
34 had a hole in his lung until after he passed away. His mother states he had
35 to cook, clean and do everything at the restaurant. He told his mom that
36 the cleaning chemicals were very strong. He never told her that there was

1 water damage or mold. He never complained to his mother that there was
2 water damage or a moldy smell at the restaurant. The patient lived with
3 his mother. She states that there was no mold or water damage where they
lived.

4 On 3/18/2012 [sic], Mr. Rodas went out into the parking lot to take out the
5 trash as he was cleaning up. He did not return for a while. He was found
6 on the ground with a blood trail from the trash bin to where he was found.
7 The ambulance came. He passed away. The cause of death was
8 hemorrhage from invasive pulmonary aspergillosis from a sequelae of the
9 cavity caused by his tuberculosis. His mother believes the chemicals he
10 used on the job caused him to bleed and die. Mr. Rodas did not smoke.
11 The mother states he was working and did have a chronic cough.
12 Sometimes when he was exposed to the chemicals, he would cough. She
13 does recall he was coughing a few days and she told him to see a doctor.
14 She believed he had the flu. When he was working, he was always
15 exposed to chemicals.

16 Based on the above history, as well as his review of the coroner's autopsy and investigative
17 report, Dr. Zlotolow offered the following opinion on the cause of Mr. Rodas's death:

18 Thank you very much for allowing me to take part in this case. We have a
19 tragic case of a 32-year-old male who died from a pulmonary hemorrhage.
20 If you look at the medical records, the patient was clearly found to have
21 cavities, meaning holes in his lungs from the tuberculosis. The patient
22 acquired it from his grandfather. This was clearly pre-existing and had
23 nothing to do with work. In his autopsy, he was found to have aspergillus,
24 which is a fungus, inside the cavities. In my medical opinion, he acquired
25 this aspergillosis on a personal, non-industrial basis as it does not appear
26 that he was exposed to any mold on the job. The question that needs to be
27 asked and answered is, did the process of him taking out the trash play a
substantial factor in his death? If you look at the police reports, the report
basically states the patient went to the trash bin when, all of a sudden, he
started coughing up blood. He was walking away from the trash bin and
coughing up blood the whole way. Eventually, he collapsed on the ground
and basically suffocated from the blood in his lungs.

From what I gather from the patient's medical records, the patient started
having his pulmonary hemorrhage at the trash bin. According to the
medical records, he was having a chronic cough a few days before. I think
there are two possible factors that contributed to the death, both of which
would be related to work. First, the trash bin was full. When the patient
opened up the trash bin, he could have been exposed to substantial amount
of fumes and odors, which could have caused him to develop a deep
cough. When someone has a deep cough, it causes an increased
intrathoracic pressure, which can play a substantial factor in causing an

1 artery in the lung to hemorrhage and bleed. A second factor that could
2 have contributed to the patient's death is the patient performing heavy
3 lifting while taking out the trash, which can also increase the intrathoracic
4 pressure and cause the artery to bleed. In my medical opinion, the reason
5 why the arteries were prone to bleed was due to his non-industrial cavitory
6 lesions brought on by the tuberculosis. I opine with reasonable medical
7 probability that the cause of his bleed[ing] had to do with him taking the
8 trash out, either due to the exposure to garbage waste and/or in
9 combination with him performing heavy isometric lifting while taking out
10 the trash, which both could have played substantial factors in causing the
11 hemorrhage in his lung. The coroner's report stated that the patient was in
12 front of the trash bin when he started bleeding. The patient was
13 predisposed to bleeding due to the lack of natural protection from the
14 cavitory lesions, however in my medical opinion, the exposure to trash
15 fumes and/or the heavy lifting from taking out the trash played substantial
16 factors [in] the hemorrhage in his lungs, which was the cause of death.
17 Therefore at this point in time, I can state with reasonable medical
18 probability that the patient's death is industrial.

12 DISCUSSION

13 It is beyond dispute that for purposes of the causation requirement in workers' compensation, it is
14 sufficient if the connection between work and the injury is a contributing cause of the injury, and this
15 standard is no more stringent for death claims than for disability claims. (*South Coast Framing, Inc. v.*
16 *Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 298 [80 Cal.Comp.Cases --].)

17 However, the foregoing standard is not a license for us to assume that just because Mr. Rodas
18 died on his employer's premises, his work must have contributed to his death. On that question, medical
19 expertise is required. (See *Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838-
20 839 [30 Cal.Comp.Cases 188]: "Where an issue is exclusively a matter of scientific medical knowledge,
21 expert evidence is essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a
22 finding does not measure up to the standard of substantial evidence. Expert testimony is necessary where
23 the truth is occult and can be found only by resorting to the sciences.")

24 Furthermore, it is well-settled that "not all expert medical opinion constitutes substantial evidence
25 upon which the Board may rest its decision. Medical reports and opinions are not substantial evidence if
26 they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical
27 histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the

1 Board's findings if it is based on surmise, speculation, conjecture, or guess." (*Hegglin v. Workers'*
2 *Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93], citing *Place v. Workmen's*
3 *Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].)

4 In this case, we conclude that because Dr. Zlotolow's medical opinion is based on surmise,
5 speculation, conjecture, or guess, it is not substantial evidence that Mr. Rodas's work as a restaurant
6 laborer was a contributing cause of his pulmonary injury and death.

7 We note that although Dr. Zlotolow stated "with reasonable medical probability...the patient's
8 death is industrial[,]" this statement is a conclusion based on the doctor's speculation that Mr. Rodas
9 "could have been exposed to a substantial amount of fumes and odors, which *could* have caused him to
10 develop a deep cough[,]" and that a "second factor that *could* have contributed to the patient's death is
11 the patient performing heavy lifting while taking out the trash, which can also increase the intrathoracic
12 pressure and cause the artery to bleed."

13 However, Dr. Zlotolow's speculation has no basis in fact because there is no evidence that Mr.
14 Rodas had been "exposed to a substantial amount of fumes and odors" or that he had been "performing
15 heavy lifting while taking out the trash."

16 In discussing trash fumes as a possible factor in Mr. Rodas's sudden pulmonary hemorrhaging,
17 the doctor assumed that "the trash bin was full" and that Mr. Rodas "opened up the trash bin." Although
18 there is evidence the trash *can* was overflowing, there is no evidence the trash *bin* was full and there is no
19 evidence that Mr. Rodas opened up the trash bin. According to the "investigator's narrative," the trash
20 can was resting on a dolly and it was overflowing; not the trash bin, i.e., dumpster. Similarly, it is
21 unknown whether the lid on the dumpster, if any, was opened or closed. Thus, to the extent Dr.
22 Zlotolow's conclusion of industrial causation is based on Mr. Rodas's exposure to fumes from the "trash
23 bin," it is unfounded. We further note that since the "trashcan" was still full at the time of Mr. Rodas's
24 death, he had not lifted it up and he had not emptied it into the "trash bin." Therefore, heavy lifting
25 probably was *not* involved when Mr. Rodas started coughing up blood on top of the trashcan. Moreover,
26 the trashcan was resting on a dolly, so there is a reasonable inference that instead of lifting and carrying
27 an overflowing trash can for some 300 feet from the restaurant entrance to the "trash bin," Mr. Rodas had

1 rolled it there on the dolly, requiring far less exertion. Even if it is possible to draw an inference that the
2 trashcan and/or dumpster had a terrible smell, there is simply no evidence that the “waste” or “fumes” or
3 “odors” mentioned by Dr. Zlotolow were extreme or concentrated enough to trigger projectile coughing
4 of blood and fatal pulmonary hemorrhaging.

5 In short, Dr. Zlotolow’s medical opinion is not substantial evidence because it is based on
6 speculation and unfounded assumptions. Therefore, the doctor’s opinion is incapable of satisfying the
7 “contributing cause” standard laid out by the Supreme Court in *Clark*. In any event, that case is factually
8 distinguishable from this one. In *Clark*, the Supreme Court found that Dr. Bruff’s medical opinion was
9 substantial evidence because the doctor concluded that industrially-related drugs that tested positive in
10 the injured worker’s bloodstream were part of the “causation pie” in his fatal overdose. Here, Dr.
11 Zlotolow offered the conclusion that the exposure to trash fumes and/or heavy lifting from taking out the
12 trash played substantial factors in the injured worker’s pulmonary hemorrhaging, but there is nothing to
13 support the doctor’s conclusion because there is no evidence to corroborate that at the time of his death
14 Mr. Rodas had been exposed to trash fumes or had been engaged in heavy lifting. Accordingly, Dr.
15 Zlotolow’s medical opinion is not substantial evidence that Mr. Rodas’s work was a contributing cause
16 of his pulmonary hemorrhaging and death.

17 For the foregoing reasons,

18 **IT IS ORDERED**, as the Decision After Reconsideration of the Workers’ Compensation
19 Appeals Board, that the Finding of Fact of April 24, 2015 is **RESCINDED**, and the following Finding
20 and Order is **SUBSTITUTED** in its place:

21 **FINDING**

22 Amanda Guerra and Carlos Ildefonso for Carlos Rodas, while employed
23 on 3/08/2012, the date of death, as a dishwasher, Occupational Group No.
24 322, at Malibu, California, by Porcini, Incorporated doing business as
25 Guido’s Restaurant, whose workers’ compensation insurance carrier was
Truck Insurance Exchange, did not sustain injury arising out of and
occurring in the course of employment to his lungs resulting in death.

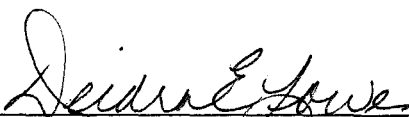
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1 **ORDER**

2 It is ordered that Amanda Guerra and Carlos Ildefonso shall take nothing
3 by reason of their claim for workers' compensation death benefits herein.

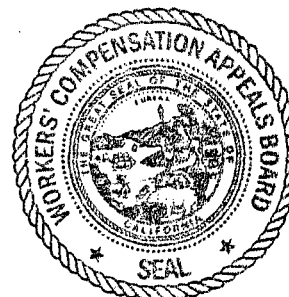
4 **WORKERS' COMPENSATION APPEALS BOARD**

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6 _____
7 **DEIDRA E. LOWE**

8 **I CONCUR,**

9 
10 _____
11 **KATHERINE ZALEWSKI**

12 **I DISSENT. (See Attached Dissenting Opinion)**




13
14 _____
15 **MARGUERITE SWEENEY**

16
17 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

18 **JUL 23 2015**

19 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
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26 **JTL/bead** 

1 **DISSENTING OPINION OF COMMISSIONER SWEENEY**

2 I dissent. In finding industrial causation of the injured worker’s death, the WCJ properly applied
3 the “contributing cause” standard of *South Coast Framing, Inc. v. Workers’ Comp. Appeals Bd. (Clark)*
4 (2015) 61 Cal.4th 291 [80 Cal.Comp.Cases --]. The instant case also falls under the corollary rule that an
5 employer takes the employee as he finds him at the time of the employment, and an employee may not be
6 denied compensation merely because his physical condition was such that he sustained a disability which
7 a person of stronger constitution or in better health would not have suffered. (*Clark, supra*, 61 Cal.4th at
8 p. 300, internal quotations and citations omitted.) Accordingly, I would affirm the WCJ’s decision based
9 on her Report and Recommendation, which I adopt and incorporate.

10 In addition, based upon the rule that the Board may draw reasonable inferences from the evidence
11 (*Phoenix Indemn. Co. v. Ind. Acc. Com.* (1948) 31 Cal.2d 856, 859; *Coborn v. Industrial Acc. Com.*
12 (1948) 31 Cal.2d 713, 716), it is unreasonable to assume from the circumstances that Mr. Rodas’s work
13 as a restaurant laborer, which no doubt required heavy lifting and exposed him to awful trash fumes,
14 played *no* role in triggering his sudden pulmonary hemorrhaging.

15 To the contrary, it is reasonable to infer from the scene of death that Mr. Rodas breathed in and
16 was overcome by noxious fumes wafting from the overflowing trashcan. It is also reasonable to infer
17 that moments before the pulmonary hemorrhaging began, Mr. Rodas had dragged the overflowing
18 trashcan on the dolly for a distance approximating the length of a football field. Although there is no
19 way of knowing for certain whether Mr. Rodas had attempted to lift the trashcan into the dumpster just
20 before he was overcome by trash fumes, it may be reasonably inferred from the nature of his job and
21 from the spatters of blood found on the pavement that transporting the large, overflowing (probably
22 heavy) trashcan across the parking lot required a good deal of physical exertion.

23 Therefore, based on the circumstances in evidence on account of the coroner’s report, I believe
24 Dr. Zlotolow was eminently reasonable in concluding that the exposure to trash fumes and/or the heavy
25 lifting from taking out the trash were contributing causes of the fatal hemorrhaging of Mr. Rodas’s lungs.
26 Dr. Zlotolow’s medical opinion is substantial evidence because the specific detailed evidence rises to the
27 level of strong medical probability that there was an industrial causal factor. Mr. Rodas was in the

1 normal course of his duties when he was overcome by sudden, massive pulmonary bleeding. In the
2 absence of any other plausible explanation, it is not medically probable that this event was entirely
3 unrelated to his work. I agree with the WCJ that Dr. Zlotolow's medical report of November 14, 2014 is
4 substantial medical evidence that Mr. Rodas's work as a restaurant laborer was a contributing cause of
5 his pulmonary hemorrhaging and death. As the Board's Decision After Reconsideration, I would affirm
6 the WCJ's decision.

7
8 **WORKERS' COMPENSATION APPEALS BOARD**

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10 
11 **MARGUERITE SWEENEY, Commissioner**

12 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

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