

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

Case No. ADJ10575875

DANA BROUSSARD,

*Applicant,*

vs.

CALIFORNIA STATE PRISON  
LANCASTER;  
SCIF STATE EMPLOYEES RIVERSIDE;

*Defendants.*

**FINDINGS AND AWARD AFTER  
RECONSIDERATION**

**COUNSEL - ASVAR LAW**  
By: Christopher A. Asvar & Jonathan J. Perez  
Attorney for Applicant

**STATE COMPENSATION INSURANCE FUND**  
By: Lars K. Henriksen  
Attorney for Defendant

**RAWLINGS & ASSOCIATES, PLLC**  
By: Teresa S. Kenyon  
Attorneys for Kaiser Permanente Health Foundation

Applications having been filed herein; all parties having appeared, exhibits entered, and the above entitled matter having been submitted, the **Honorable ROBERT F. SPOERI**, Workers' Compensation Administrative Law Judge ("WCALJ"), finds as follows:

**STIPULATED FINDINGS OF FACT**

1. Dana Broussard, [REDACTED] while employed on April 24, 2016, as an office technician, Occupational Group Number 111, at Lancaster, claims to have sustained injury arising out of and in the course of employment to her spine through neurological injury secondary to a Hepatitis B ("Hep B") vaccination.

2. At the time of the injury, the employer was legally uninsured and State Compensation Insurance Fund was the adjusting agency.

3. At the time of the injury, the employee's earnings were [REDACTED] per week, warranting an indemnity rate of [REDACTED] for temporary disability, and for permanent disability, the rate is deferred.

4. The carrier/employer has paid no compensation.

5. The employer has furnished no medical treatment.

6. No attorney's fees have been paid and no attorney fee arrangements have been made.

7. Defendant timely denied this case on December 19, 2016.

8. Applicant attended a communicable-disease prevention class as part of her job orientation for the defendant on September 29, 2015; [REDACTED] was the nurse/instructor of that class on September 29, 2015.

9. There is no objection to the lien of Kaiser Health Plan being bifurcated.

#### FINDINGS OF FACT

1. It is found based on the medical reporting of [REDACTED] as set out in Applicant's Exhibits 12 and 13, that there is a causal link between the applicant having Hepatitis B vaccinations in connection with her employment with the State of California and the applicant developing transverse myelitis, and that the applicant sustained injury arising out of and in the course of employment to her spine through neurological injury secondary to a Hepatitis B vaccination.

2. (Already addressed).

3. (Already addressed).

4. (Already addressed).

5. (Already addressed).

6. (Already addressed).

7. Based on some or all of the above findings, it is found that the applicant sustained injury arising out of and in the course of employment to her spine through neurological injury secondary to a Hepatitis B vaccination.

8. It is found that applicant is in need of further medical treatment to cure or relieve from the effects of the injury herein.

### AWARD

**AWARD IS MADE** in favor of the applicant DANA BROUSSARD and against the Defendant STATE OF CALIFORNIA, CALIFORNIA STATE PRISON LANCASTER, legally uninsured, STATE COMPENSATION INSURANCE FUND, STATE CONTRACTS SERVICES, as follows:

- a. For injured body parts as set out in finding numbers one through seven.
- b. For medical treatment as set out in finding number eight.

DATED: April 24, 2019

*Robert F. Spoeri*

**Robert F. Spoeri**  
WORKERS' COMPENSATION JUDGE

**SERVED ON PARTIES LISTED BELOW:**

ASVAR LAW LOS ANGELES, US Mail  
DANA BROUSSARD, US Mail  
GORDON EDELSTEIN LOS ANGELES, Email  
SCIF STATE EMPLOYEES LEGAL GLENDALE, US Mail  
SCIF STATE EMPLOYEES RIVERSIDE, US Mail  
THE RAWLINGS COMPANY LAGRANGE, Email

ON: April 24, 2019

BY: *E. Morales*

E. Morales

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

CASE NUMBER: ADJ10575875

DANA BROUSSARD

-vs.-

STATE OF CALIFORNIA,  
CALIFORNIA STATE  
PRISON LANCASTER,  
legally uninsured, STATE  
COMPENSATION  
INSURANCE FUND, STATE  
CONTRACT SERVICE

WORKERS' COMPENSATION JUDGE:

ROBERT F. SPOERI

DATE OF INJURY:

Specific of 04/24/2016

OPINION ON DECISION AFTER RECONSIDERATION

INJURY AOE/COE:

This matter was previously tried. The defendant filed a Petition for Reconsideration, which was partially granted. The WCJ will not disturb the unchallenged findings set forth in the original Findings and Award of 11-21-2017 or the Opinion and Decision after Reconsideration of the Workers' Compensation Appeals Board dated 12-14-2018. The WCJ was ordered to develop the record under the McDuffie case because the reports of [REDACTED] did not constitute substantial evidence on the issue of whether there was a causal link between the applicant having a Hepatitis B vaccination and applicant developing transverse myelitis.

The WCJ ordered that relevant diagnostic testing be performed and the results sent to [REDACTED]. This was done. The WCJ ordered that the warning label/insert for the Hepatitis B vaccine, known as Engerix-B, be sent to [REDACTED]. The WCJ ordered a legible copy be made and further ordered an enlarged copy be made for [REDACTED] so he could read the insert. The warning label/insert is set out not only in Applicant's Exhibit 4,

but the enhanced copies are set out in Applicant's Exhibits 14 and 15. The relevant portions read as follows. "In addition to reports in clinical trials, worldwide voluntary reports of adverse events received for Engerix-B since market introduction (1990) are listed below. This includes serious adverse events or events which have a suspected causal connection to components of Engerix-B.... Nervous System Disorders: Encephalitis.... paralysis, seizures, syncope, transverse myelitis."

\* Thus, the vaccine company itself had transverse myelitis on its radar screen as a potential hazard for people taking the vaccine. Pursuant to the order of the WCJ, [REDACTED] re-evaluated the applicant on 02-14-2019 and prepared a new PQME report in Neurology/Neurosurgery dated 03-08-2019. Pursuant to the order of the WCJ, [REDACTED] was deposed on 03-11-2019. There were no unanswered questions in his deposition.

In his post-trial brief, defense attorney pointed out applicant's burden of proof to establish industrial causation, pursuant to LC 3202.5. He also cited Rosas v. WCAB, 16 Cal App. 4th 1692 at 1701. This case indicates that when there is medical testimony saying causation was "reasonable" or "probable," meaning it was more than merely possible, such was sufficient to meet the standard for the burden of proof. Defense attorney has argued on page three of his post-trial brief that under the Rosas, supra, standard, the reporting of [REDACTED] is still not substantial evidence and does not allow applicant to meet the burden of proof. The WCJ respects defense attorney's argument but disagrees.

In the deposition of [REDACTED] dated 03-11-2019, as set out in Applicant's Exhibit 13, on page 15, lines 5-10, [REDACTED] acknowledged that he understood the standard for proof was "in terms of medical probability" or "51 percent." One must assume that all of [REDACTED] opinions are based on medical probability. However, the following quotation is helpful in clarifying matters on page 21, line 20 of his deposition through page 22 line 8. This is still Applicant's Exhibit 13. [REDACTED] said "A. Based on my review of records and my recollection of seeing the patient -- and the review as much as I could on the literature, regardless of the cause, even though if you were not attorneys and she was not in Workers' Compensation situation, but if one gets these injections, this type of an injection, and

for some reason she develops this situation, it's probably related to that unless somebody proves to me it was something else, like a trauma or -- Q. Or if she fell off the roof? A. Well, or a bullet or somebody hit her with a bat in the back or something. But I don't think that happened to her."

Please note the phrase PROBABLY RELATED in the above statement on causation by [REDACTED]. This completely undercuts defendant's arguments.

Defendant has argued [REDACTED] did not "rule out" such causes measles, lupus or HIV as an absolute certainty on causation. Firstly, there has been no evidence that applicant ever had measles, lupus or HIV. Secondly, [REDACTED] does not need to "rule out" these types of diseases with absolute certainty as a causative factor. He only needs to express his opinion on causation for "medical probability" not absolute certainty. Defendant offered no countervailing evidence or argument on causation. The Rosas standard, supra, was not only met, it was exceeded.

Defendant argued that [REDACTED] was not completely sure about whether the medical articles he researched on transverse myelitis had been peer reviewed. Defense attorney quoted part of the doctor's deposition, suggesting the doctor was unsure about the peer review status of the articles he researched. [REDACTED] also stated on page 35, lines 22-23 of Applicant's Exhibit 13 "Most medical journals will not accept for publication something that is not peer reviewed." [REDACTED] had found the articles in medical journals.

[REDACTED] made every effort to be fair to both sides in the deposition. On page 26, he stated his opinion as a medical probability, between lines 12 and 20. [REDACTED] said the following. "Well, I can never be certain with a case like this 100 percent. But in my opinion, based on the history and the chronology, of the facts, the vaccination, and her findings, and the radiographic changes in the spinal cord and the lack of very strong evidence that there was another cause other than the relation to the vaccinations, I believe that this is a result of the Hepatitis B vaccination and caused transverse myelitis."

It is found based on the medical reporting of [REDACTED] as set out in Applicant's Exhibits 12 and 13 that there is a medical causal link between the applicant having Hepatitis B

vaccinations in connection with her employment with the State of California and the applicant developing transverse myelitis and that applicant sustained injury arising out of and in the course of employment to her spine through neurological injury secondary to a Hepatitis B vaccination.

**NEED FOR FURTHER MEDICAL TREATMENT:**

This finding is based upon the medical report of [REDACTED] dated 07-14-2017, as set out in Applicant's Exhibit 2, and his reporting as set out in Applicant's Exhibits 12 and 13. It is found that applicant is in need of further medical treatment to cure or relieve from the effects of the injury herein.

DATED: April 24, 2019

*Robert F. Spoeri*

**Robert F. Spoeri**  
WORKERS' COMPENSATION JUDGE

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

Case No. **ADJ10575875**  
(Marina del Rey District Office)

**DANA BROUSSARD,**

*Applicant,*

vs.

**STATE OF CALIFORNIA, LANCASTER  
STATE PRISON, legally uninsured,  
administered by STATE COMPENSATION  
INSURANCE FUND, STATE CONTRACT  
SERVICES,**

*Defendants.*

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award After Reconsideration (F&A) issued by the workers' compensation administrative law judge (WCJ) on April 24, 2019, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and in the course of employment (AOE/COE) to her spine through neurological injury in the form of transverse myelitis as a result of receiving a Hepatitis B (Hep B) vaccination.

Defendant contends that neurology qualified medical examiner (QME) [REDACTED] M.D.'s opinion that there is a causal link between applicant having a Hep B vaccination and applicant developing transverse myelitis is not substantial evidence.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from applicant.

We have considered the allegations in the Petition and the Answer and the contents of the Report. Based upon our review of the record, and for the reasons set forth below, we will grant reconsideration, rescind the F&A, and substitute a new Findings of Fact and Award to clarify the decision and conform to proper formatting.<sup>1</sup>

<sup>1</sup> We note that we are not altering the WCJ's decision by rescinding the F&A. We are substituting the new Findings of Fact and Award to clarify the decision and to assure that it is properly formatted.



1 **BACKGROUND**

2 Applicant claimed injury to her spine on April 24, 2016, as a result of a neurological injury  
3 secondary to receiving Hep B vaccinations while employed by defendant as an office technician.

4 Applicant attended a communicable-disease prevention class as part of her job orientation for  
5 defendant on September 29, 2015; [REDACTED] was the nurse/instructor of that class. Applicant  
6 received Hep B vaccinations on October 25, 2015, November 22, 2015, and April 24, 2016. (App. Exh.  
7 5, Immunization Record, Kaiser Permanente.)

8 On May 6, 2016, applicant began experiencing low back pain. On May 7, 2016, she developed  
9 tenderness in her legs. On May 8, 2016, she was admitted to Kaiser Permanente Hospital. (App. Exh. 1,  
10 [REDACTED] 12/1/2016, p. 36.) She was discharged and transferred to "acute rehabilitation" on  
11 May 31, 2016. (App. Exh. 1, p. 32, review of medical records.) Applicant underwent a Wheelchair Clinic  
12 Evaluation on July 21, 2016, and the report stated that she had "onset of paralysis from transverse  
13 myelitis." (App. Exh. 1, p. 35, review of medical records.)

14 On November 7, 2016, applicant was evaluated by QME [REDACTED] (App. Exh. 1.) The  
15 doctor took a history, reviewed the medical record, but was only able to perform a limited physical  
16 examination because applicant was paraplegic. (App. Exh. 1, p. 42.) [REDACTED] stated that in  
17 order for him to fully evaluate applicant and be able to recommend a comprehensive treatment plan, it  
18 was necessary for her to undergo the following diagnostic tests:

- 19 A formal neurocognitive evaluation
- 20 A functional capacity evaluation
- 21 EMG/NCV studies of her upper extremities
- 22 Referral to genitourinary specialist
- 23 A 3.0 Tesla MRI of her wrists, and her cervical, thoracic, and lumbar spine, and
- 24 A comprehensive rehab program (because she is wheelchair bound).

25 He then stated:

26 I request the parties to obtain prior medical records including spinal tap  
27 results and records from Kaiser for my review and consideration. (¶) Once  
the results of the necessary diagnostic studies as well as medical records

1 have been obtained, the patient will return to clinic and, at that time, I will  
2 complete this PQME report. (App. Exh. 1, p. 42.)

3 Regarding the cause applicant's transverse myelitis, the doctor stated:

4 After reviewing this patient's medical history, medical records, and my  
5 physical examination, it is my current opinion that the issue of medical  
6 causation is related to the injury of April 24, 2016. I spent three hours  
7 researching the relationship between transverse myelitis and hepatitis B  
(please see research section below). I am requesting additional records and  
8 diagnostic tests to include report of spinal tap, genitourinary consultation,  
9 cognitive report, and functional capacity evaluation. (App. Exh. 1, p. 43.)

9 In his supplemental report, [REDACTED] indicated that he had received some of the  
10 diagnostic test results and the medical records that he had requested, but he stated that he was "awaiting"  
11 further reports and diagnostics. (App. Exh. 2, [REDACTED], 7/14/2017, pp. 3 - 4.)

12 The parties proceeded to trial on October 30, 2017. (Minutes of Hearing and Summary of  
13 Evidence (MOH/SOE), 10/30/2017.) The WCJ's summary of applicant's testimony included the  
14 following:

15 She worked at the correctional facility/prison in a trailer called the Triple  
16 Wide. ¶ Inmates came into the Triple Wide to clean bathrooms. She also  
17 saw inmates working at the medical facility. Medical records and  
18 mailboxes were at the medical facility. She was exposed to inmates when  
19 she went to get medical records or to pick up mail. Some of the inmates she  
20 saw when she went to the medical facility were restrained and some were  
21 cleaning the medical facility. ... ¶ ... When she attended class with [REDACTED]  
22 [REDACTED] in September of 2015 there were other classifications of  
23 employees who were present at the class, including nurses and correctional  
24 officers. When she left [REDACTED] class on September 29, 2015, it was  
25 her understanding that she should get the hepatitis B vaccine shot. ... ¶ ...  
26 During her job orientation at the correctional facility/prison people who  
27 worked at the correctional facility told her about how to get a hepatitis B  
vaccine. The person who informed her about how to get a hepatitis B  
vaccine was Nurse [REDACTED] ¶ She had inmate contact also in the  
administration building. ... ¶ ... Inmates were not supposed to touch the  
employees, but an inmate could touch an employee if the inmate violated  
the rules. (MOH/SOE, pp. 8 - 10.)

26 The trial was concluded and the issues submitted for decision included injury AOE/COE.  
27 Defendant sought reconsideration of the November 21, 2017 F&A and we granted reconsideration to

1 further study the factual and legal issues. In our Opinion and Decision After Reconsideration we affirmed  
2 the F&A, except that we amended it to defer the issue of whether applicant's transverse myelitis/spine  
3 injury constituted injury AOE/COE, and we returned the matter to the WCJ.

4 [REDACTED] re-evaluated applicant on February 14, 2019. (App. Exh. 12, [REDACTED]  
5 3/8/2019.) He examined applicant, took an interim history, and reviewed additional medical records as  
6 previously requested. (See App. Exh. 12, pp. 3 – 10.) Regarding the cause of applicant's transverse  
7 myelitis/spine injury, and the disability applicant has as a result of the injury, the doctor stated:

8 Absent evidence to the contrary and based on the information available to  
9 me at this time, it is my opinion from the neurological point of view that  
10 the patient's symptoms are all industrial and directly related to the  
11 industrial injury on April 24, 2016. ... (¶) ... In my opinion, the patient's  
12 impairment from neurological point of view should be apportioned as  
13 100% to the industrial injuries on April 24, 2016.  
14 (App. Exh. 12, p. 16.)

15 [REDACTED] deposition was taken on March 11, 2019. (App. Exh. 13, [REDACTED]  
16 3/11/2019, deposition transcript.) During the deposition, the doctor explained the basis for his opinion  
17 that applicant's transverse myelitis/spine injury was the result of her Hep B vaccination, as follows:

18 Well, I can never be certain with a case like this 100 percent. But in my  
19 opinion, based on the history and chronology, of the facts, the vaccination,  
20 and her findings and the radiographic change in the spinal cord and the lack  
21 of very strong evidence that this was another cause other than the relation  
22 to the vaccinations, I believe that this is a result of the Hepatitis B  
23 vaccination and caused transverse myelitis. (p. 26) As I said before, my  
24 opinion on this case is a direct relationship in the history and the findings  
25 between the injections, the hepatitis vaccination, and the development of  
26 her symptomatology. And that is including the radiological which was  
27 swelling of the spinal cord. And now it appears normal, but the function is  
not normal. (p. 28) The history, in my mind, is a normal lady that gets three  
injections, three vaccinations, and then develops symptoms. She never had  
any other reason to develop these symptoms. Then she develops the  
symptoms. The radiographical, as I mentioned before initially, is with  
severe inflammation, edema on the spinal cord, and now is normal MRI of  
the spinal cord with a good machine, with 3T machine, high resolution. (p.  
32) Because she was asymptomatic, as I said before, essentially all her life  
and she was working. Then she had the three vaccinations, and then she  
couldn't work anymore. She developed a paraplegia of the lower  
extremities with an abnormal sensation with no sphincter control, and she's

1 wheelchair bound, and she cannot work. (p. 40.) (App. Exh. 13, pp. 26, 28,  
2 32, and 40.)

3 The parties proceeded to trial on April 11, 2019, and the matter was submitted for decision as of  
4 April 22, 2019. (MOH/SOE, 4/11/2019.)

### 5 DISCUSSION

6 Defendant argues that because [REDACTED] was not able to “rule out” MS (multiple  
7 sclerosis), systemic lupus, HIV infection, or measles as “possible” causes of applicant’s transverse  
8 myelitis, that his opinion is not substantial evidence to support a finding of injury AOE/COE.

9 As noted above, we previously affirmed the F&A, except that we deferred the issue of whether  
10 applicant’s transverse myelitis/spine injury constituted injury AOE/COE, so that [REDACTED] would  
11 have the opportunity to review the medical records he had requested. Having re-examined applicant and  
12 reviewed the diagnostic medical records, the doctor explained in his subsequent report and deposition  
13 testimony that he was able to say with a reasonable degree of medical probability that the transverse  
14 myelitis arose from the Hep B vaccination. (App. Exh. 13, pp. 39 – 40.)

15 Medical evidence that industrial causation was reasonably probable, although not certain,  
16 constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workmen’s Comp.*  
17 *Appeals Bd.* (1968) 69 Cal.2d 408, [33 Cal.Comp.Cases 660].) “The applicant in a workers’  
18 compensation proceeding has the burden of proving industrial causation by a ‘reasonable probability.’  
19 (citation) That burden manifestly does not require the applicant to prove causation by scientific  
20 certainty.” (*Rosas v. Worker’s Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1701 [58  
21 Cal.Comp.Cases 313].)

22 Here, [REDACTED] explained that although he could not be “100 percent” sure that the Hep  
23 B vaccination caused applicant’s injury, he was able to conclude with a reasonable degree of medical  
24 probability that the transverse myelitis arose from the Hepatitis B vaccination. It is also important to note  
25 that defendant did not submit any evidence that applicant sustained MS, systemic lupus, HIV infection,  
26 measles, or any other of the conditions that it asserts might have been a cause of applicant’s transverse  
27 myelitis. It is well established that the relevant and considered opinion of one physician, though

1 inconsistent with other medical opinions, may constitute substantial evidence (See *Place v. Workers'*  
2 *Comp. Appeals Bd.* (1970) 3 Cal.3d 372, [35 Cal.Comp.Cases 525].) The trial record in this matter  
3 contains no medical opinions or other evidence that is inconsistent with the opinions stated by [REDACTED]  
4 [REDACTED] To be substantial evidence a medical opinion must be framed in terms of reasonable  
5 medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate  
6 examination and history, and it must set forth reasoning in support of its conclusions. (*Escobedo v.*  
7 *Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

8 [REDACTED] March 8, 2019 report and his March 11, 2019 deposition testimony constitute  
9 substantial evidence that applicant sustained injury AOE/COE and based thereon we will affirm the  
10 WCJ's finding of injury AOE/COE.

11 Accordingly, we grant reconsideration, rescind the F&A, and substitute a new Findings of Fact  
12 and Award to clarify the decision and conform to proper formatting. In doing so we do not intend to  
13 make any substantive changes to the WCJ's decision.

14 For the foregoing reasons,

15 **IT IS ORDERED** that defendant's Petition for Reconsideration of the Findings and Award After  
16 Reconsideration issued by the WCJ on April 24, 2019, is **GRANTED**.

17 **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers'  
18 Compensation Appeals Board, that the April 24, 2019 Findings and Award After Reconsideration, is  
19 **RESCINDED** and the following is **SUBSTITUTED** therefor:

20 **FINDINGS OF FACT**

- 21 1. Dana Broussard, while employed by the State of California, Lancaster  
22 State Prison, at Lancaster California, on April 24, 2016, as an office  
23 technician, Occupational Group Number 111, sustained a neurological  
24 injury her spine, arising out of and occurring in the course of her  
25 employment, in the form of transverse myelitis as a result of receiving a  
26 Hepatitis B vaccination.
- 27 2. At the time of the injury, the employer was legally uninsured, with  
claims administered by State Compensation Insurance Fund, State Contract  
Services.

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**AWARD**

**AWARD IS MADE** in favor of applicant **DANA BROUSSARD** and against defendant **STATE OF CALIFORNIA, CALIFORNIA STATE PRISON LANCASTER**, as follows:

a. All further medical treatment reasonably required to cure or relieve from the effects of the injury herein.

**WORKERS' COMPENSATION APPEALS BOARD**

*Deidra E. Lowe*

DEIDRA E. LOWE

**I CONCUR,**

*[Signature]*

DEPUTY

PATRICIA A. GARCIA

*[Signature]*

CHAIR

KATHERINE ZALEWSKI



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

**JUL 12 2019**

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

**ASVAR LAW  
DANA BROUSSARD  
THE RAWLINGS COMPANY**

**TLH/pc**

**BROUSSARD, Dana**