

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

**CARLOS LOPEZ, *Applicant***

**vs.**

**PORTERVILLE SHELTERED WORKSHOP;  
MANUFACTURERS ALLIANCE INSURANCE COMPANY,  
administered by AMERICAN CLAIMS MGMT.;  
TREE & SIERRA MGMT. dba SIERRA MGMT.; CIGA  
by its servicing facility, INTERCARE HOLDINGS for  
ULLICO CASUALTY COMPANY, in liquidation, *Defendants***

**Adjudication Numbers: ADJ10870145, ADJ8277957  
Fresno District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report and Opinion on Decision, which are both adopted and incorporated herein, we will deny reconsideration.

We observe, moreover, it is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].)

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**January 30, 2023**

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

**CARLOS LOPEZ  
BOSQUEZ & SIEMENS  
HANNA BROPHY  
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK  
EMPLOYMENT DEVELOPMENT DEPARTMENT**

**PAG/abs**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

**REPORT AND RECOMMENDATION ON  
PETITION FOR RECONSIDERATION**

**INTRODUCTION**

1. Applicant's Occupation	Driver
2. Age at Injury	36
3. Date of injury	7/14/09-6/18/10 (ADJ10870145) 10/29/09 (ADJ8277957)
4. Parts of Body	See below
5. Status of Claims	CT end 6/18/10 denied; Sp 10/29/09 Acc
6. Order Date	11/7/2022
7. Petitioner	Def. Manufacturers Alliance
8. Timeliness	Timely
9. Verification	Verified
10. Answer Filed	No

Parts of Body (ADJ8277957) DOI 10/29/09

Upper digestive tract, colon, psyche, left arm, left wrist, left hand, right arm, right hand, right wrist and claims injury to his back, bilateral legs, knees and bilateral shoulders.

Parts of Body (ADJ10870145) DOI 7/14/09-6/18/10

Upper digestive tract, colon, psyche, left arm, left wrist, left hand, right arm, right wrist, right hand, bilateral legs, knees and back.

**BACKGROUND/FACTS**

Applicant herein sustained a specific injury to multiple body parts while employed as a driver by Sierra Management, then insured by Ullico Casualty company. Ullico was liquidated and CIGA took over handling of the claim. After some investigation, CIGA filed a CT application against Porterville Sheltered Workshop, as applicant had concurrent employment with it and Sierra Management. Porterville Sheltered Workshop was insured by Manufacturers Alliance.

The key issue on this matter pertains to whether or not the applicant sustained cumulative injury while employed by both Sierra Management and Porterville Sheltered Workshop. Dr. Bernhard opined that applicant did sustain cumulative injury as claimed by CIGA. Dr. Sonu opined that he did not.

The undersigned found that applicant did sustain cumulative injury based upon the opinions of Dr. Bernhard. Petitioner, Manufacturers Alliance filed the instant petition as it is aggrieved by the finding of cumulative trauma.

### DISCUSSION

Petitioner raises a number of contentions to attempt to demonstrate that the decision herein was erroneous. For example, Petitioner notes that the undersigned did not explain how or why applicant sustained cumulative injury while working for both employers. See Petition for Reconsideration, item B, page 5. Such is not a question that the Court can address. This requires an expert medical opinion, which was convincingly given by Dr. Bernhard, the physician who opined that applicant did sustain cumulative trauma while employed by both employers.

The same is true with regards to contention D, page 7 of the petition, The court could have addressed the applicant's relative job duties with both employers, but, again, a determination of whether or not there is a cumulative trauma requires an expert opinion and discussing the job duties when the physicians involved were already informed about the duties would be pointless. It is within the realm of medicine, not law, that the question of cumulative trauma must be addressed. The legal opinion comes in when the trier of fact must determine which physician's opinion is more convincing. The undersigned found that the opinions of Dr. Bernhard were more convincing as to the existence of cumulative trauma.

Petitioner seems to claim that the Findings of Fact are not justified as Dr. Sonu opined that there was no cumulative trauma involving Porterville Sheltered Workshop. See Item C of Petition, page 5. The fact of the matter is that such is the reason trials exist. Defendant CIGA could have raised the same contention had it been found that there was no cumulative trauma related to the Porterville Sheltered Workshop employment, The two doctors herein simply disagree. Dr. Sonu finding no CT involving Porterville Sheltered Workshop, and Dr. Bernhard opining there was a CT. Merely because one expert's opinion differed from that of another expert does not render Findings of Fact invalid.

Petitioner claims that the application of Labor Code § 3202 is misplaced; see Petition, item A, page 3. It claims that as a result of the application of *Benson* the applicant will actually receive a lesser monetary compensation. While the decision herein mentions Labor Code § 3202 in passing, a finding of injury regardless of how many concurrent injuries an applicant has had is favored if the facts so dictate. There may well exist a conflict between *Benson* and Labor Code § 3202 in situations such as this one. It is not for this Court to determine how to resolve such conflict.

Petitioner claims that Dr. Bernhard did not stand by his opinions as noted in the decision herein. See Petition, item E, page 9. While it is true that initially Dr. Bernhard did not note the

existence of cumulative trauma, when provided with additional facts, he showed a willingness to modify his opinion.

As noted by petitioner on Page 10 of the Petition, he did modify his apportionment opinions when presented with different facts, but never wavered from the finding of cumulative trauma after his original report. The mere fact that the doctor was willing to modify his opinions based on new or different facts presented to him only showed his flexibility and willingness to listen to the parties and modify his opinions accordingly. That alone provides more credence to his opinions.

### **RECOMMENDATION**

For the reasons stated herein above, it is respectfully recommended that the instant Petition for Reconsideration be DENIED.

Respectfully submitted,

**DATE:** December 16, 2022

Javier A. Alabart  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

## **OPINION ON DECISION**

### **BACKGROUND**

This case presents a dispute among defendants. Applicant sustained specific compensable injury occurring on 10/29/09 while employed by Sierra Management, then insured by Ullico Casualty Company, now in liquidation. As such, California Insurance Guarantee Association (CIGA) is now the real party in interest in this case.

Applicant was also employed by Porterville Sheltered Workshop, then insured by Manufacturers Alliance Company (Manufactures) during the claimed period of cumulative trauma.

Due to particular defenses afforded to CIGA, CIGA attempts to establish that the cumulative trauma claim also includes the employment by Porterville Sheltered Workshop. For the reasons stated herein below, the Court finds that applicant did sustain compensable injury while concurrently employed by both, Sierra Management and Porterville Sheltered Workshop.

### **DISCUSSION**

The decision on these cases hinge on the following medical reports:

Between applicant and CIGA,

Dr. Berhard, orthopedics

Dr. Grails, psychiatry

Dr. Woolf, internal

Between applicant and Manufactures,

Dr. Sonu, orthopedics

Dr. Bernhardt originally opined that applicant's residuals were as a result of the specific injury (CIGA). Eventually, when provided with additional information, he opined that applicant's residuals stemmed in part from non-industrial conditions but that he did suffer cumulative trauma while employed by both Sierra (CIGA) and Porterville SW, (Manufacturers).

Dr. Woolf also apportioned to cumulative trauma as did Dr. Grails, based upon derivative injuries from the orthopedic standpoint (compensable consequence).

In turn, Dr. Sonu opined that applicant's residuals all stemmed from the specific industrial injury and non-industrial conditions.

The undersigned has reviewed the excellent briefs filed by both defense counsel and the medical reports and depositions in question.

The Court finds that all reports constitute substantial medical evidence, even though the opinions differ.

The deposition of Dr. Berhard was taken and the parties had the opportunity to question the doctor, in detail, regarding his opinions. The Dr. stood by his opinions.

Labor Code §3202 does mandate liberal construction of the code, generally tending to favor the injured worker. Applicant, however, still has the burden of proving his claim per LC§ 3202.5.

In this case, the Court finds that applicant has met the burden of proof, and for that reason, finds that the cumulative trauma claim filed by applicant is compensable.