

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

**STEVEN TROJANOWSKI, *Applicant***

**vs.**

**CITY OF FAIRFIELD POLICE DEPARTMENT;  
permissibly self-insured, *Defendant***

**Adjudication Numbers: ADJ11299465; ADJ11299606  
Sacramento District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report 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, which we adopt and incorporate, we will deny reconsideration.

Furthermore, although our decision to deny reconsideration is based upon the merits, we additionally note that the Petition fails to state the grounds upon which it is based, as required by Labor Code section 5903. (Lab. Code, § 5903 ["any person aggrieved thereby may petition for reconsideration *upon one or more of the following grounds and no other. . .*"] (emphasis added).)

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/ MARGUERITE SWEENEY, COMMISSIONER**



**KATHERINE WILLIAMS DODD, COMMISSIONER**  
**CONCURRING NOT SIGNING**

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

**August 1, 2022**

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

**STEVEN TROJANOWSKI  
STOCKWELL HARRIS WOOLVERTON & HELPHREY  
WALTERS & ZINN**

**AW/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**

Sarah L. Lopez, Workers' Compensation Judge, hereby submits her Report and Recommendation on the Petition for Reconsideration filed herein.

### **INTRODUCTION**

On June 3, 2022, defendant ("petitioner") through its counsel filed a Petition for Reconsideration of Findings and Award, which issued on May 9, 2022. The Petition for Reconsideration was timely filed and verified.

Petitioner seems to assert the evidence does not justify the findings of fact. (Petition for Reconsideration at p. 4:4-5.) Specifically, petitioner disputes the validity of the PQME, Ramon Terrazas, MD's, assignment of whole person impairment and applicant's credibility.

Applicant has answered the petition.

Applicant's industrial injuries to hernia/groin and low back are medically accepted and presumptively accepted. (MOH 11/08/2021 at pp. 2:4-6; 2:15; 2:19-22; 3:6.) Based on the evidence and discussion that follows, it is recommended that the Petition for Reconsideration be denied.

### **DISCUSSION**

Ramon Terrazas, MD, served as global medical legal expert in these matters. On July 27, 2018, Dr. Terrazas found applicant to be permanent and stationary or MMI for his lumbar spine and issued a final, ratable report in regard to the lumbar spine. (Exhibit AA.) On September 27, 2019, Dr. Terrazas found applicant to be permanent and stationary or MMI for his hernia/groin and issued a final, ratable report in regard to the hernia/groin. (Exhibit BB.)

Initially, Dr. Terrazas noted that the applicant was a reliable and credible historian. (Exhibit BB at pp. 9-10.) After reviewing applicant's deposition transcript and sub rosa footage of applicant, Dr. Terrazas stated: "I have to base my opinions on the available medical evidence, which in this case stands incontrovertible as to industrial and statutory correctness." (Exhibit CC at p. 15.) Then, after concluding applicant exaggerated his reported impairment (*Id.* at p. 16) Dr. Terrazas decreased the assigned impairment accordingly.

#### **ADJ11299465 Hernia/Groin**

The purpose of utilizing the AMA Guides is to remove the extreme variances in the reporting of physicians. The guides are utilized in order to provide independent assessment of the whole person impairment based on objective findings so that the whole person impairment could be verified and repeated by different physicians regardless of who sought the evaluation without bias for or against any party. According to the appeals board, the language of Labor Code § 4660(c) provides that "the schedule ... shall be prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by the schedule." The appeals board went on to state that the language of Labor Code § 4660( d) provides that the schedule shall promote consistency, uniformity, and objectivity.

There are certain limited instances where a strict application of the AMA Guides does not accurately reflect the level of disability. In *Milpitas Unified School District v. Workers' Comp. Appeals Bd (Guzman)* (2010) 75 Cal.Comp.Cases 837, otherwise known as the Guzman rebuttal case, the 6th DCA affirmed the use of a rebuttal rating when use of the strict rating of the AMA Guides is not an accurate reflection of the level of applicant's injury.

In the case at hand, defendant disputes the validity of Dr. Terrazas' Almaraz/Guzman analysis. Dr. Terrazas issued a final, ratable report on April 1, 2021. (Exhibit CC.) In order for applicant to successfully rebut the strict rating and prevail under an Almaraz/Guzman analysis, this evidence must address the following:

1. The evidence must provide the strict AMA Guides rating.
2. If the strict rating is not accurate, the evidence must explain why the strict rating is not accurate.
3. The evidence must explain why the alternative rating is more accurate.
4. Lastly, the opinions must otherwise constitute substantial evidence.

First, for a strict AMA Guides rating of the hernia/groin, Dr. Terrazas determined there is no whole person impairment. (*Id.* at p. 21.)

Second, Dr. Terrazas stated the strict rating is not accurate because of the applicant's residual impairment. (*Id.* at p. 21.) Specifically: Tissue injury as a direct result of the forces that tore the inguinal wall producing the hernia and as a result of additional tissue damage from the inguinal hernia repair, combined with tissue reaction from the mesh placed in the inguinal area at the time of surgery within reasonable medical probability incited a tissue response resulting in inguinodynia. (*Id.* at p. 21.)

Third, Dr. Terrazas explained why the alternative rating is more accurate. Specifically, it is a more accurate description of applicant's impairment than the strict rating of 0%. (*Id.* at p. 14.) Applicant's activities of daily living are impacted by the hernia/groin industrial injury as follows:

Left groin pain with bending to don/doff and tie his shoes. Left groin pain with prolonged standing and walking requiring shifting in his position or a change in position. Left groin pain with prolonged sitting. Climbing stairs avoided because of resulting in left groin pain. Left groin pain getting in and out of bed or a chair. Left groin pain with performing housework. Yard work avoided because of resulting left groin pain. Left groin ( and low back pain) with heavy lifting. Left groin pain causing applicant to shifted in his seat while riding as a passenger. Left groin pain causing him to limit his driving to half an hour at a time. Left groin pain preventing participation in regular sexual activity. Sleep onset delayed. Left groin pain causing frequent awakenings. (Exhibit BB at pp. 5-6.)

Lastly, Dr. Terrazas's report must constitute substantial evidence by meeting the following criteria: The reporting must be based on the correct legal theory; the reporting cannot be based on surmise, speculation, conjecture, or guess; the reporting must state reasoning for its conclusions;

and the reporting must be made on reasonable medical probability. Dr. Terrazas's reporting is based on the correct legal theories. The reporting is not based on surmise, speculation, conjecture, or guess. Dr. Terrazas gave reasoning for his conclusions and the reporting was made on reasonable medical probability.

Initially, Dr. Terrazas found the tissue injury to be residual pathology producing a significant limitation in the activities of daily living. (*Id.* at p. 13.) Subsequently, after he reviewed applicant's deposition transcript and sub rosa footage, Dr. Terrazas updated this determination to the tissue injury does not preclude from most activities of daily living and assigned applicant 9% whole person impairment. (Exhibit CC at p. 21.)

Based on Dr. Terrazas assignment of whole person impairment of 9% for the hernia itself and the unchanged 2% for the left ilioinguinal nerve transection, applicant's permanent disability is as follows:

06.05.00.00-9-[1.4.]-13-490H-17-18%;

13.12.03.99-2[1.4]-3-490H-5-5%;

18%+5%=22%

Dr. Terrazas assigned no apportionment. (*Id.* at 22.) Therefore, in ADJI 1299465, based upon the substantial medical evidence of Dr. Terrazas, applicant is entitled to a permanent disability award of 22%. This is equivalent to 85.5 weeks of indemnity payable at the rate of \$290.00 per week, in the total sum of \$24,795.00.

### **ADJ11299606/Low Back**

Initially, under the AMA Guides, on July 27, 2018, Dr. Terrazas assigned applicant 8% whole person impairment for the lumbar spine. (Exhibit AA at p. 21.) Subsequently, after reviewing the applicant's deposition transcript and sub rosa footage, Dr. Terrazas kept applicant in DRE II but assigned 5% whole person impairment (Exhibit CC at p. 20) resulting in permanent disability as follows:

15.03.01.00-5-[1.4]7-490I-11-12%

Dr. Terrazas assigned no apportionment. (*Id.* at 22.) Therefore, in ADJI 1299606, based upon the substantial medical evidence of Dr. Terrazas, applicant is entitled to a permanent disability award of 12% for the lumbar spine. This is equivalent to 38.25 weeks of indemnity payable at the rate of \$290.00 per week, in the total sum of \$11,092.50.

## **Credibility of Applicant**

Defendant argues the applicant is not credible.

Venerable precedent holds that, in a bench trial, the trial court is the "sole judge" of witness credibility. (*Davis v. Kahn* (1970) 7 Cal.App.3d 868, 874.) The trial judge may believe or disbelieve uncontradicted witnesses if there is any rational ground for doing so. (*Id.*) The fact finder's determination of the veracity of a witness is final. (*People v. Bobeda* (1956) 143 Cal.App.2d 496, 500.) Credibility determinations thus are subject to extremely deferential review. (*La Jolla Casa deManana v. Hopkins* (1950) 98 Cal.App.2d 339, 345-346 ["[A] trial judge has an inherent right to disregard the testimony of any witness ... The trial judge is the arbiter of the credibility of the witnesses".].)

(*Schmidt v. Superior Court* (2020) 44 Cal.App.5th 570, 582 [emphasis added].)

Furthermore, in workers' compensation proceedings, a WCJ's credibility determinations are "entitled to great weight because of the [WCJ's] 'opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand .... ' [Citation.]"

(*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

In these cases, partially in consideration of subjective reports from applicant, Dr. Terrazas initially assigned applicant 30% whole person impairment for the hernia/groin and 8% for the lumbar spine. After reviewing applicant's deposition transcript and sub rosa footage of applicant, Dr. Terrazas determined applicant exaggerated his subjective complaints and reduced the assignments to 9% whole person impairment for the hernia/groin and 5% for the lumbar spine.

Applicant testified credibly at time of trial. Applicant was calm and respectful while being questioned. Applicant answered the questions posed to him in a thoughtful and straight-forward manner. The same sub rosa footage reviewed by Dr. Terrazas was also reviewed by the undersigned. The undersigned agrees with Dr. Terrazas' analysis of the film and the corresponding reduction in the whole person impairment assignment. Dr. Terrazas reporting is substantial medical evidence. Medically, causation is industrial; presumptively, causation is industrial. (MOH 11/08/2021 at pp. 2:4-6; 2:15; 2:19-22; 3:6.) Dr. Terrazas' reduction in whole person impairment adequately addresses applicant's exaggeration about his lack of functionality and or impairment.

## **RECOMMENDATION**

For the foregoing reasons, I recommend that the June 3, 2022, Petition for Reconsideration be DENIED.

DATE: June 14, 2022

**Sara Lopez**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE