

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

**LUIS ROSALES, *Applicant***

**vs.**

**IRELAND TILE AND STONE INC.;  
SEDGWICK 14779 SAN DIEGO,  
*Defendants***

**Adjudication Number: ADJ11027267  
Oakland 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.

Additionally, we note that applicant's argument that the August 3, 2022 supplemental report by Panel Qualified Medical Examiner, (PQME) Dr. Sonu (Joint Ex. 100) is inconsistent with Dr. Sonu's earlier opinions, is not supported by the evidence. Specifically, Dr. Sonu's January 16, 2018 report (Defendant's Ex. B.) does not state that applicant's symptoms are unrelated to his sacral cyst; rather, the report provides that the sacral cyst is unrelated to the April 11, 2017 lumbar contusion. (*Id* at p. 5.) Accordingly, we find that the reporting of Dr. Sonu is substantial evidence.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**FEBRUARY 3, 2023**

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

**LUIS ROSALES  
DAVID LOWE  
COLANTONI COLLINS**

**LN/pm**

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

**REPORT AND RECOMMENDATION ON PETITION  
FOR RECONSIDERATION**

**I  
INTRODUCTION**

Applicant's Occupation: Tile Setter  
Applicant's Age: 43  
Date of injury: April 11, 2017  
Parts of Body Inured: Lumbar Spine  
Identity of Petitioner: Applicant  
Timeliness: Yes  
Verification: Yes  
Date of Findings and Award November 22, 2022  
Defendant's Contentions: WCJ's Award based on QME Dr. Sonu's medical reporting is not substantial evidence.

**II  
STATEMENT OF THE CASE AND FACTS**

Injured worker Luis Rosales Ortega worked as tile setter for Ireland Tile & Stone, Inc. Mr. Ortega sustained an admitted injury to his lumbar spine.

The case was originally set for trial on August 30, 2021, before Judge Friedman. Judge Friedman issued a Findings and Award on November 1, 2021. Judge Friedman ordered the parties to develop the record and obtain supplement reports from Dr. Sonu. Judge Friedman opinioned that Dr. Sonu was to re-evaluate the applicant and review EMG studies. Dr. Sonu was to address the "causative element" of the applicant's radiculopathy.

After receipt of supplemental reports. The matter continued to a status conference before Judge Friedman. The parties were unable to resolve the issues pending before the court. Judge Friedman reset the matter for trial on November 15, 2022. Judge Friedman has since retired and the November 15, 2022, trial was set before a different judge. A Findings and Award issued on November 22, 2022, in which the WCJ found the applicant sustained 0% permanent disability based on the QME reports of Dr. Charles Sonu. Applicant contends that QME Dr. Sonu's medical reports are not substantial evidence. The WCJ acted in excess of its powers. For the following reasons the Applicant's petition should be denied

### **III** **DISCUSSION**

*The Findings of Fact and Award of 0% permanent disability based on QME Dr. Sonu 's medical reporting is not substantial evidence.*

Applicant's counsel is of the opinion that the Dr. Sonu's medical reports are not substantial evidence.

The Appeals Court determined that to constitute substantial evidence "... a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en bane).)

A medical report is not substantial evidence unless it offers the reasoning behind the physician's opinion, not merely his or her conclusions. (Dr. does not state that 50 percent apportionment would be reasonable partially due to the normal progress of the preexisting injury).

*Granado v. Workmen's Comp. App. Ed, 33 Cal. Comp. Cases 647.*

Applicant argues that Dr. Sonu does not find causation. WCJ Friedman requested the parties obtain a supplemental report from Dr. Sonu as to "causative element of the radiculopathy" (F&A dated 11/1/21) WCJ Friedman requested that the applicant undergo an EMG/NCV testing for Dr. Sonu's re-evaluation. The testing was performed.

As requested Dr. Sonu reviewed the July 28, 2022 EMO study which was within normal limits and "[n]o significant evidence of neuropathy, nerve entrapment syndrome, or radiculopathy ... " (Ex. 100). He reviewed the subjective and objective evidence. The lumbar spine MRI scan confirmed that there was no evidence of S1 nerve root compression from a lumbar disk injury. The sacral cyst is non-industrial. (Ex. 101) The applicant did not have lumbar radiculopathy on clinical examination. Dr. Sonu was of the opinion that with a reasonable degree of medical probability the right lower extremity complaints were not related to the April 11, 2017, industrial injury.

Dr. Sonu was of the opinion that the applicant sustained an industrial lumbar contusion on April 11, 2017. Temporary partial disability from April 11, 2017 to May 23, 2017. Permanent disability was 0%. Medical treatment for the lumbar contusion was not required. The lumbar radiculopathy was a result of non-industrial causation. (Ex. 101) Pursuant to Judge Friedman's instructions, Dr. Sonu was to address the applicant's "causative element" of his complaints of

radiculopathy. Dr. Sonu reiterated his opinion that the applicant's complaints of radiculopathy are not the result of industrial injury but are the result of non-industrial sacral cyst. (Ex 100, pg. 8)

Dr. Sonu's reports were well reasoned. He performed a thorough examination of the applicant taking all measurements including range of motion. (Ex. 101) He reviewed all the prior medical reports including diagnostic tests.

Based upon the above, I recommend the denial of the Applicant's Petition for Reconsideration.

DATED: December 9, 2022

**Tammy Homen**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE