WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

TEWOLDEBRHAN HAGOS, *Applicant*

vs.

IKEA U.S. RETAIL and LIBERTY MUTUAL, *Defendants*

Adjudication Numbers: ADJ12677607 (MF); ADJ13968462
San Jose 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.

We have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id*.)

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/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 27, 2021

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

TEWOLDEBRHAN HAGOS
ARTHUR NAVARETTE
MANNING KASS

PAG/bea

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

1. Applicant's Occupation:	Forklift driver
Applicant's Age:	35 (at time of injury)
Date of Injury :	10/06/2018; 10/06/2017 – 10/06/2018
Parts of Body Injured:	cervical spine, left shoulder, left elbow, left wrist
2. Identity of Petitioner:	Defendant filed the Petition.
Timeliness:	The petition was timely filed on 04/21/2021.
Verification:	The Petition was properly verified.

3. Date of Issuance of Order: 03/26/2021

4. Petitioner's contentions: Petitioner contends that the appeals board or the WCJ acted without or in excess of its powers; that the evidence does not justify the findings of fact, and; that the findings of fact do not support the order and decision. Specifically, Petitioner contends that Dr. Newman's reports are contradictory, incomplete, confuse causation of injury with causation of permanent disability, and are not substantial medical evidence. Petitioner also contends that applicant's testimony is not credible when compared to Dr. Newman's reports and his deposition.

Defendant has not filed an Answer as of the date of this Report and Recommendation.

II. FACTS

Applicant Tewoldebrhan Hagos, … while employed on 10/06/2018 and during the period 10/06/2017 through 10/06/2018 as a forklift driver by defendant IKEA U.S. Retail, claims to have sustained industrial injury arising out of and in the course of his employment to the cervical spine, left shoulder, left elbow, left wrist and left forearm.

The applicant initially filed a claim alleging a 10/06/2018 specific injury to his neck, left shoulder, left arm, left wrist, left hand, and left elbow (ADJ12677607) and treated with Dr. Kale Wedemeyer. On 11/20/2019, the claim was accepted as to the left shoulder, but denied as to the neck, left arm, left wrist, left hand and left elbow. (Exhibit D). Applicant was temporarily disabled for approximately eight

months and defendants paid temporary disability benefits from 10/10/2018 through 06/04/2019 at the rate of $444.88 per week. (MOH 2/04/2021; p.2, 42-44) On 12/09/2020, applicant filed an application for cumulative trauma injury for the period 10/06/2017 through 10/06/2018 for the same body parts as alleged in the specific injury.

On 02/04/2021 the matter proceeded to trial on the issues of injury AOE/COE, body parts injured, permanent disability, apportionment, need for further medical treatment, attorney's fee, and whether the 6/30/2020 and 11/12/2020 reports of PTP Dr. Michael Newman or the 02/03/2020, 02/20/2020 and 09/29/2020 reports of PQME Dr. William Stearns constitute substantial medical evidence on the issues.

On 03/26/2021 a Findings and Order issued finding that applicant sustained industrial cumulative trauma injury to his cervical spine, left shoulder, left elbow and left wrist; that applicant did not sustain injury on October 6, 2018; there is a need for further medical care for applicant's neck, left shoulder, left elbow, and left wrist; the issues of permanent disability, apportionment, and attorney's fees are deferred as premature pending further development of the record; and any other issues also remain specifically deferred; and ordering defendant to authorize and that applicant undergo the electro diagnostic testing recommended by Dr. Stearns and Dr. Newman, and that Dr. Newman review the electro diagnostic testing results and revisit his opinion on permanent disability and apportionment, if necessary.

It is from this Findings and Order that defendant seeks reconsideration.

III.
DISCUSSION

The court reviewed the documentary and testimonial evidence submitted by the parties and found applicant's testimony credible. The court also found the medical reports of Dr. Newman to be substantial medical evidence on the issue of injury AOE/COE and more persuasive than those of Dr. Stearns. Petitioner argues that no other medical provider in over a year of medical treatment, other than Dr. Newman, had come up with the diagnosis of cumulative trauma injury and asserts that Dr. Wedemeyer found no cumulative trauma injury in any of his treatment

records. However, Petitioner did not submit any evidence from any other medical provider indicating a finding of no cumulative trauma other than the reports of Dr. Stearns. Further, Petitioner twice refers to the November 28, 2019 (allegedly erroneously reported as November 28, 2017) report of Dr. Delaney in its Petition, which is not in evidence, to demonstrate Dr. Newman's failure to consider other causes of applicant's injury.

Petitioner also argues that "Without new medical evidence, Dr. Newman's November 12, 2020 (sic) expounds a novel theory that the applicant's pre-existing neck issues were 'lit up' by a cumulative trauma at IKEA." On page 8 of Dr. Newman's 6/30/2020 and 11/12/2020 reports under diagnostic impression he states, "work-related cumulative trauma cervical spine strain injury *in association with* cervical spondylosis and small disc-osteophyte complexes C-3 though C-6 and DDD C-3 through C-6." (emphasis added). This was not a novel theory nor one not based on the existing medical evidence. Dr. Newman reviewed the applicant's current and past work and medical history, the medical records, the MRI reports, and performed a comprehensive medical evaluation to support his diagnosis of industrial cumulative trauma. On page 13 of his November 12, 2020 report, Dr. Newman stated:

> I have opined that I find that sitting in a forklift all day and running the unit back and forth and twisting the neck from side to side and holding the neck in end-range positioning and using the left hand to work the steering wheel all day, 5 days a week, for over two years has caused this applicant a work- related cumulative trauma injury to his neck and left upper extremity.
>
> I do not find the work-related cumulative trauma caused the cervical spondylosis but I do find it contributed to the progression of the disorder and lit up the region and caused the region to be symptomatic.

Similarly, Dr. Stearns opined that driving a forklift at work does not cause cervical spondylosis even though driving a forklift at work may cause existing cervical spondylosis to be symptomatic. In his supplemental report, dated 2/20/2020, under DISCUSSION, he wrote:

> Mister Hagos has cervical spondylosis and left-sided cervical radiculitis- possibly cervical radiculopathy. I do not find convincing evidence of left shoulder pain generation. His mild left shoulder 02-10-20 MRI abnormal findings are normal aging changes unrelated to his work. Mister Hagos' neck, left shoulder, and left arm complaints, descriptions of activity limitations, and medical findings are consistent with cervical spondylosis and left-sided cervical radiculitis. Physical examination finds positive foraminal compression tests, diminished sensation described on the extensor aspect of his left forearm and lessened left grip strengths possibly due to cervical (C6 or C7) radiculopathy consistent with his cervical spine MRI that shows C5-6 small broad based disc osteophyte complex, mild left uncinate hypertrophy, and mild left neural foraminal narrowing. (Exhibit B, p. 6)

On page 7, under CAUSATION OF INJURY, he opined,

> I have been asked to address the issue of causation. Based on the history given to me by Mister Hagos, the records reviewed by me, and my examination, with reasonable medical probability I find no evidence of acute or cumulative work injury. Cervical spondylosis is a naturally occurring degenerative process in the absence of significant cervical trauma such as fracture, dislocation, or severe sprain. Driving a forklift at work does not cause cervical spondylosis even though driving a forklift at work may cause existing cervical spondylosis to be symptomatic. Mister Hagos undoubtedly had arthritis in his neck when he began working at IKEA in December 2016 because the cervical spondylosis evident on his cervical MRI requires many years to develop - much more than the 19 months he worked at IKEA.

On page 6 of his 9/29/20 report, he states "there is no medical evidence that driving or repeated head rotation causes or permanently aggravates neck arthritis. It is well known that driving can cause an arthritic neck to be painful. That is not the same as causing the arthritis that is painful with driving."

It is well established that for an injury to arise out of employment, there must be a causal connection between the employment and the injury. However, the causal connection need not be the sole cause of the injury. *Maher v. Workers Compensation Appeals Bd.* (48 Cal.Comp. Cases 326). It is also well established that if a subsequent industrial injury lights up, aggravates or accelerates a previously existing disease or condition resulting in disability, it is sufficient if the work is a contributing cause of the injury. (*South Coast Framing, Inc. v. WCAB*

(Clark) (2015) 80 CCC 489) Here, both Dr. Stearns and Dr. Newman are of the opinion that driving a forklift did not cause the applicant's cervical spondylosis and both are also of the opinion that driving a forklift may cause the condition to be symptomatic. However, Dr. Stearns' opinion that an injury cannot be industrial if it is caused by an underlying disease process is not supported as it is based on an incorrect legal theory.

Finally, Petitioner asserts that "Dr. Newman's reports confuse causation of injury with causation of permanent disability because he acknowledges that the January 8, 2019 MRI showed pre-existing spondylosis that was lit up by the work at IKEA, but fails to apportion to this pre-existing conditions (sic) despite objective findings supporting apportionment to this pathology." In *Escobedo*, the appeals board, en banc, held:

> Section 4663(a)'s statement that the apportionment of permanent disabilityshall be based on "causation" refers to the causation of the permanent disability, not causation of the injury, and the analysis of the causal factors of permanent disability for purposes of apportionment may be different from the analysis of the causal factors of the injury itself.

Thus, the percentage to which an applicant's *injury* is causally related to his or her employmentis not necessarily the same as the percentage to which an applicant's *permanent disability* is causally related to his or her injury. The analyses of these issues are different and the medical evidence for any percentage conclusions might be different. (*Escobedo v. Marshalls,* CNA Ins. Co., 70 Cal. Comp. Cases 604, 611)

Here, Dr. Newman found industrial cumulative trauma injury as he found that applicant's work contributed to the progression of the disorder and lit up the region and caused it to become symptomatic, which is consistent with the principles of *South Coast Framing*. While he found no apportionment to applicant's pre-existing condition, he did find that applicant's work contributed to and lit up the region, causing it to become symptomatic. Pursuant to *Escobedo*, the analyses and medical evidence for each of these issues are different, thus Petitioner's assertion that if Dr. Newman found injury, he must find apportionment, is misguided.

The reports of Dr. Newman are in compliance with Regulation §10682 and Labor Code §4628 and are found to be substantial evidence and more persuasive than the reports and opinions of Dr. Stearns. It is well-established that a WCJ may select amongst admissible reports and rely upon those which are more persuasive. Here, the more persuasive reports are those of Dr. Newman. The applicant's injury is therefore compensable.

The issues of permanent disability, apportionment, and attorney's fees are deferred to allow Dr. Newman to review the recommended electro diagnostic test results and revisit his opinion on permanent disability and apportionment, if necessary. All other issues remainspecifically deferred.

IV.
RECOMMENDATION

It is respectfully recommended that the applicant's Petition for Reconsideration bedenied for the reasons stated above.

DATE: 05/05/2021
SERVED: 05/06/2021

NORMA L. ACOSTA
WORKERS' COMPENSATION JUDGE