

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

TORI BLEVINS, *Applicant*

vs.

**ELIZABETH TILLEY;
STATE FARM INSURANCE COMPANY; administered by SEDGWICK CLAIMS
MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ9316587
San Luis Obispo District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration¹ 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 determinations 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].)

¹ Chairwoman Caplane and Commissioner Brass, who were on the panel that issued a prior decision in this matter, no longer serve on the Appeals Board. Chair Zalewski and Deputy Commissioner Schmitz were substituted in their place.

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/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 6, 2021

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

**TORI BLEVINS
GHITTERMAN GHITTERMAN
GOLDMAN MAGDALIN**

PAG/pc

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**

State Farm Insurance Company by and through their attorney of record, filed a timely and verified Petition for Reconsideration challenging the decision issued by WCJ John Durr alleging only that the finding AOE/COE to the thoracic spine was unsupported by the evidence. For the reasons that follow, it is recommended that the Petition for Reconsideration be denied.

Additionally, in the conclusion of their pleading, the petitioner also makes a contention that as the reporting of Dr. Pearson was substantial medical evidence; the Order to further develop the record was inappropriate, and further that said reporting of Dr. Pearson should be relied upon for all purposes. These contention should have been the subject of a Petition for Removal, as petitioner used the wrong procedure device, and there is no showing of significant prejudice or irreparable harm, these assertions should be dismissed or in the alternative denied based on the following:

**II
FACTS**

Tori Blevins, born January 13, 1956 while employed on April 12, 2013 by Elizabeth Tilley as a caregiver, Occupational Group No. 340, in Orange Grove, California, sustained an admitted injury arising out of and in the course of employment to her lumbar spine. There was an additional claim of injury to the thoracic spine and the left knee

At the time of trial Ms. Blevins described her injury occurring when she went into the room to assist the patient that she was care-giving for with morning care. She leaned down and put her arms around the patient. The patient put her arms around applicant's neck, and then when applicant went to lift, the patient pulled her down. She testified that it felt like something snapped in her lower back. She fell to the ground. She further testified that when she fell, she landed on her left knee and also hit a patient commode and nightstand striking her neck or upper back on the left side.

Following the trial and based on the persuasive medical reporting of the treater and the applicant's credible testimony, the nature and extent of the applicant's industrial injury was found to have involved the following body parts: The lumbar spine (admitted); the left knee and the thoracic spine. The issue of permanent disability was deferred and it was ordered that the parties draft a joint letter requesting clarification from PTP Dr. Moelleken only as to an

inconsistency (believed to be a typographical error) in the WPI rating for the lumbar spine.

A Petition for Reconsideration was filed only as to the finding that the thoracic spine was included as an industrially injured body part.

III

DISCUSSION

The Petitioner begins by discussing the January 30, 2014 report of Dr. Moelleken which was admitted at a prior evidentiary hearing. They specifically point to the diagnosis which included mid-back pain, “unclaimed” as well as left knee pain, also “unclaimed”. They also highlight the statement on CAUSATION where the doctor found that the patient did sustain an injury AOE/COE to the following body parts: the low back.

In the portion of the January 30, 2014 report titled HISTORY OF PRESENT ILLNESS: The applicant’s current complaints include low back pain with right lower extremity tingling, numbness, pain, and weakness. She also complains of bilateral wrist and hand numbness, with left knee pain. The wrist numbness and knee pain is not “claimed”.

In the portion of the report entitled DIAGNOSES:

1. Chronic low back pain;
2. Rule out lumbar radiculopathy;
3. Mid-back pain, unclaimed;
4. Left knee pain, unclaimed;
5. Bilateral wrist numbness, unclaimed.

What is most telling in this report of Dr. Moelleken is in the DISCUSSION section, he is specifically asking for clarification about “accepted” body parts. He wants to know whether the left knee, thoracic spine and bilateral wrist have been accepted; apparently for purposes of providing treatment. It appears that Dr. Moelleken did not speak to the left knee or the mid back pain in his treating reports because of his belief that they were not “accepted” and he was not authorized to provide treatment.

The applicant credibly testified that when she fell she hit her neck or upper back on the left side. The reporting of Dr. Moelleken consistently contains a diagnosis of mid-back pain, with a designation of “unclaimed”. On January 30, 2014 Dr. Moelleken asked the claims examiner whether the left knee, thoracic spine and bilateral wrist had been accepted. The issue of injury is further supported by Dr. Moelleken ordering a MRI of the thoracic spine that was taken May 23, 2014 at Vital Imaging.

At the prior evidentiary hearing a PR-2, dated April 14, 2014 (Exhibit 4) was also placed into evidence. Attached to that report is a pain diagram that was completed contemporaneously by the applicant, it clearly indicates complaints of pain at the left knee, low back and mid back.

Looking at the PR-4 of Dr. Moelleken dated July 15, 2015 (Exhibit 2). The description of the injury describes two distinct mechanisms of injury to the back. The first is being pulled down by the patient she was assisting and then also falling backwards; hitting her back on the nightstand. Under current complaints of pain in that report; the applicant complains of mid and low back aching pain. The doctor does a thoracic range of motion analysis, showing abnormal range of movement in flexion, extension, right rotation and left rotation. There is further reliance on the MRI of the thoracic spine resulting in a diagnosis of HNP of the thoracic spine. The doctor then indicates an injury AOE/COE to the back. The doctor subsequently provides whole person impairment ratings for the back which include a rating for the thoracic spine as DRE category II.

There is credible testimony and medical evidence both indicating industrial injury arising out of employment and in the course of employment to the back at both the lumbar and thoracic levels.

The petitioner also raised an issue regarding the reliance on the reporting of the treater, not on the panel QME. No determination was made that the panel QME Dr. Pearson's report was, not substantial medical evidence, as far as it went. However, the analysis indicated that the reporting of the primary treating physician, Dr. Moelleken, was more persuasive as he performed a complete analysis of the applicants back. In contract the panel QME (Exhibit A) listed the patient complaints only for the lumbar spine and left knee which was inconsistent with the treating reports of Dr. Moelleken, the prior contemporaneous pain diagrams and the applicant's testimony at time of trial.

Regarding the Order to further develop the record to correct an apparent typographical error. This is an interim discovery Order and would be subject to Removal not reconsideration

IV

RECOMMENDATION

There is credible testimony and substantial medical evidence both indicating industrial injury arising out of employment and in the course of employment to the left knee, lumbar and thoracic spine. The Petition for Reconsideration was only made as to the finding that the applicant sustained injury AOE/COE the thoracic spine. As the finding of injury is supported by the record, the Petition for Reconsideration should be denied.

As to the issue with the Order to further develop the record, this would be appropriately challenged by a Petition for Removal. Labor Code §5310 grants the power to the Appeals Board to remove to itself proceedings on any claim. However, this power has been described as “extraordinary” and should be only exercised when the moving party can demonstrate either the Order will result in significant prejudice or the order will result irreparable harm. 8 Cal. Code. Regs §10843 (a) (*Butte County v WCAB* (1991) 56 Cal. Comp. Cases 31; *Castro v WCAB* (1996) 61 Cal. Comp. Cases 1460). Here, the correction of the typographical error does not rise to this level. As the defendant used the wrong procedural device, the objection to the order to further develop the record should be dismissed, or in the alternative denied based on its merits.

Respectfully submitted,
JOHN E. DURR
Worker’s Compensation Judge
Date May 12, 2021