

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

**JACK ZUREK, *Applicant***

**vs.**

**COUNTY OF SACRAMENTO, *Permissibly Self-Insured, Defendant***

**Adjudication Number: ADJ16170210  
Sacramento District Office**

**OPINION AND ORDER  
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact, Award & Orders of February 15, 2024, wherein it was found that while employed during a cumulative period ending July 16, 2021 as a food worker, applicant sustained industrial injury to his abdomen in the form of a hernia.

Defendant contends that the WCJ erred in finding industrial injury, arguing that the opinions of panel qualified medical evaluator Michael S. Klein did not constitute substantial medical evidence. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will deny the defendant's Petition.

Applicant had a hernia condition prior to the employment at issue, having undergone surgery to repair an umbilical hernia on July 8, 2019. (May 16, 2023 report of Dr. Klein at p. 6; Minutes of Hearing and Summary of Evidence of July 18, 2024 trial at p. 6.) While incarcerated, applicant commenced the employment at issue at the bakery, beginning on April 1, 2021 and ending on July 16, 2021. (Minutes of Hearing and Summary of Evidence of January 18, 2024 trial at p. 6.) Applicant told Dr. Klein that his duties included "Hauling sacs of sugar, oats, and flour weighing 50 pounds, proportioning 55-gallon mixes involv[ing] frequent lifting and emptying, recurrent heavy lifting 25-30x/day with trips from storage rooms to individual machines. There was some assistance with dollies, but frequent handling and laborious effort required at end use." (May 16, 2023 report at p. 3.)

Applicant was taken off of work for a separate hand injury in July of 2021. (Minutes of Hearing and Summary of Evidence of January 18, 2024 trial at p. 6.) Applicant testified that he noticed a bump on his abdomen two weeks prior to being taken off work, and that after his injury, the bump grew in size. (Minutes of Hearing and Summary of Evidence of January 18, 2024 trial at p. 6.) Similarly, Dr. Klein was given a history of “the hernia be[coming] more noticeable after the hand injury on July 16, 2021.” (May 16, 2023 report at p. 2.) Applicant underwent two separate procedures to repair this recurrent hernia in June and September of 2022, and at the time of the evaluation by Dr. Klein, applicant had developed another recurrent hernia. (May 16, 2023 report at p. 7.)

Dr. Klein opined in his initial report that it was “medically reasonable and probable that the recurrent umbilical hernia aggravation resulted from the cumulative trauma industrial injury while performing the usual and customary duties as a baker’s helper.” (May 13, 2023 report at p. 6.)

Defendant’s main argument appears to be that there are no contemporaneous records documenting the hernia. While applicant gave Dr. Klein a history of applicant attempting to report the hernia injury (May 16, 2023 report at p. 7) and discussing the hernia with the physician treating him for his hand injury (June 15, 2023 report at p. 4), no documentation of the hernia exists until after he sought care after his incarceration period. However, when applicant sought care on January 3, 2022, shortly after his release from custody, he gave the attending physician a history of “[U]mbilical hernia noted about 1 year ago, but becoming more symptomatic.” (Ex. F, Excerpts of Kaiser North Valley Records.) The one-year period, if measured precisely, predated his employment.

Defendant somewhat contradictorily points both to the absence of mention of the recurrence of the hernia in the 2021 medical records, and the fact that the recurrence may have predated applicant’s employment, as reflected in the January 2022 records. (Petition for Reconsideration at p. 4.)

“Expert testimony is necessary ‘where the truth is occult and can be found only by resorting to the sciences.’ [Citation.]” (*Peter Kiewit Sons v. Ind. Acc. Com. (McLaughlin)* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].) In order to be considered industrial, work need only be a contributing cause of a physical injury. (*South Coast Framing, Inc. v. Workers’ Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 299 [80 Cal. Comp. Cases 489].) “Further, ‘the

acceleration, aggravation or “lighting up” of a preexisting disease is an injury in the occupation causing the same.’ [Citations.]” (*Clark*, 61 Cal.4th at p. 301.)

Here, while Dr. Klein accepted that there were multiple factors contributing to applicant’s condition, and that applicant’s condition pre-existed his employment, it was medically probable that applicant’s condition was aggravated by his work duties. (October 13, 2023 deposition at pp. 35, 46, 60-62, 73 [“if the [strenuous industrial strain/trauma] didn’t cause the recurrent hernia, [it] was certainly of sufficient magnitude to aggravate”], 74, 77, 91.) While defendant tries to put into question the entire profession of forensic medical investigation by pointing to the lack of contemporaneous records and the fact that Dr. Klein was evaluating the applicant almost two years after the fact, these factors do not render Dr. Klein’s reporting speculative as a matter of law. Dr. Klein acknowledged that the 2021 records did not contain evidence of applicant’s condition, but explained how it was nevertheless probable that his duties were a contributing cause to the condition. Dr. Klein made a determination based on his medical expertise. “His conclusion cannot be disregarded as being speculative when it was based on his expertise in evaluating the significance of these facts.” (*E.L. Yeager Construction v. Workers’ Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 930 [71 Cal.Comp.Cases 1687].) Dr. Klein was questioned repeatedly regarding the lack of contemporaneous records but was able to explain why he found that applicant’s work duties were a contributing cause to the aggravation of applicant’s condition regardless of the lack of so-called corroborating evidence.

We note that the WCJ stated in his Opinion on Decision that the history given to Dr. Klein regarding the work duties was credible. As the Court of Appeal has held:

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. (*Ibid.*) 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.)

Similarly, 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].)

Because the WCJ’s decision is supported by expert medical evidence that applicant’s work was a contributing cause of applicant’s injury, we will deny the defendant’s Petition.

For the foregoing reasons,

**IT IS ORDERED** that Defendant’s Petition for Reconsideration of the Findings of Fact, Award & Orders of February 15, 2024 is **DENIED**.

**WORKERS’ COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



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

**April 29, 2024**

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

**JACK ZUREK  
LIEBERT LAW  
TWOHY, DARNEILLE & FRYE**

**DW/oo**

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