

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

CARLOS GAMINO, *Applicant*

vs.

CITY OF SACRAMENTO, permissibly self-insured and self-administered, *Defendant*

**Adjudication Number: ADJ14746138
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award issued by the workers' compensation administrative law judge (WCJ) on March 23, 2022, wherein the WCJ found that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to his left knee and that applicant needs further medical treatment for his left knee.

Defendant contends that the reports from orthopedic qualified medical examiner James L. Chen, M.D., are not substantial evidence that applicant sustained an injury AOE/COE.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We did not receive an Answer from applicant.

We have considered the allegations in the Petition and the contents of the Report 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 by this reference, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued by the WCJ on March 23, 2022, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 13, 2022

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

**CARLOS GAMINO
METZINGER & ASSOCIATES
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

TLH/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

Date of Injury: CT through February 23, 2021
Age on DOI: 59 years old
Occupation: Maintenance worker two
Parts of Body Injured: Left knee
Identity of Petitioners: Defendant
Timeliness: Petition was timely
Verification: Petition was verified
Date of Order: March 23, 2022 served March 29, 2022
Petitioners Contentions:

Defendant contends the Appeals Board acted without or in excess of its powers by the WCJ's Order, Decision, or Award, and that the evidence does not justify the Findings of Fact, and the Findings of Fact do not support the Decision or Award. Specifically, Defendant contends Applicant failed to meet his burden of proof and AOE/COE is not supported by substantial medical evidence.

II

FACTS

Carlos Gamino claimed a cumulative trauma injury to the left knee for the period through February 23, 2021 while working as a Maintenance Worker Two for the City of Sacramento.

The matter went to trial on the issues of injury arising out of and in the course of employment to the left knee and need for further medical treatment. At trial, the parties submitted exhibits and Applicant testified. Thereafter, a Findings and Award issued finding Applicant sustained an industrial injury to the left knee for which Applicant needs further medical treatment. In response, Defendant filed a Petition for Reconsideration.

III

DISCUSSION

AOE/COE

Applicant claims to have sustained an industrial injury to the left knee during the cumulative trauma period through February 23, 2021. Defendant issued a notice of denial dated June 7, 2021 based on a finding of non-industrial injury by treating provider Dr. Panuska. (Defendant Exhibit A)

At trial, Applicant testified credibly. He testified in pertinent part as follows: He worked for the City of Sacramento for 22 years as a maintenance worker and is now a maintenance worker two. He physically works in the parks and walks all of the parks on foot. He picks up paper, empties garbage cans, mows the lawn, trims and cuts trees, digs holes, replaces benches, reseeds the grass, and prepares baseball fields. He lifts heavy garbage cans into the trucks if the truck does not have a lift. He uses a blower backpack daily. He edges the parks and then blows the walkways and parking lots. He works eight hours a day and has been doing this job for a long time. He has left knee problems currently. His left knee is always burning and is very painful. His left knee had been bothering him for years but it really started bothering him last year when he could not walk. Twice while on the job, his friends had to walk him to the parking lot and put him in his vehicle. He went to Kaiser. The sudden increase in symptoms happened last year. They use a lot of rental trucks that do not have a lift so you have to jump in and out of the truck. He is short and this twisted his knee over the years. His left knee hurt a little before but he did not take it seriously. In the past he would take a three day weekend to relax. Then early last year his left knee got to the point where he could not walk. When he cannot walk, he does not go into work. He will work a week or three and a half days before it becomes too painful. He lifts lawn mowers into the truck if it does not have a lift gate. There is a lot of walking to edge and blow the park and track down garbage cans. He is five foot seven inches tall and weighs 280 pounds currently, down from approximately 302 pounds. He had left leg problems on and off for about eight years. They said weight had something to do with it but he had been working for the City of Sacramento for over 20 years and has been performing his job all this time. He lives upstairs and uses a handrail on the stairs. Sometimes he tests to see if he needs the handrail. He has difficulty walking and using stairs.

The imaging from July 2017 showed bilateral knee osteoarthritis that was mild on the left side. (Applicant Exhibit 3)

Applicant was seen on October 27, 2018 for left knee pain. He had the pain for a while and twisted his knee yesterday at work with continued pain. He jumped down about three feet and noted some pain. He reported pain with walking. He had x-rays and was advised that the radiographs showed degenerative changes without acute injury. (Applicant Exhibit 3)

On October 30, 2018 he was seen for chronic left knee pain for years. He reported six days of left knee pain after getting in and out of the trailer. He would kneel to get up and then jump off the trailer. He felt like his Left knee was going to collapse. He reported anterior knee pain worse with walking and weight bearing. He had no prior surgery. Upon exam, he had large effusion and mild tenderness. He was informed that the knee pain may be from arthritis or possible gout. (Applicant Exhibit 3)

On February 26, 2021, Applicant reported left knee pain for well over a year. He reported that yesterday the pain was too severe to work. He believed the pain was from getting in and out of the truck. (Applicant Exhibit 3)

Applicant was seen on March 3, 2021. He got a steroid injection in the left knee two days earlier and was unable to stand or walk due to pain. He reported having a very physical job where he stands and walks all day. He was informed the severe pain was likely due to osteoarthritis. (Applicant Exhibit 3)

Applicant saw Dr. Panuska on March 17, 2021 for left knee pain arising on March 25, 2021 and ongoing for years. The mechanism of injury was years of walking and jogging and working with trucks. Applicant reported knee pain for three years that was getting worse over the last month. He jumps in trucks and walks a lot at work which he thought could be the cause of his knee pain. He reported being unable to walk much at this time and has been using his own time off because he cannot go to work. He works full time. He arrived for the appointment in a wheelchair and had difficulty getting on the exam table. Upon exam his knees were swollen and his left knee was tender and wrapped in a Velcro knee support. He had full range of motion with discomfort. Dr. Panuska provided a diagnosis of bilateral knee joint pain, released Applicant to full duty without restrictions the need for further care, or impairment. Dr. Panuska indicated the condition was not caused by employment considering the lack of a specific injury and years of knee pain being treated by his primary care practitioner. (Applicant Exhibit 3 / Defendant B)

On March 22, 2021, Applicant reported having chronic intermittent left knee pain for some time and that in mid-February his left knee started to get worse and became unbearable. He had an x-ray that showed mild osteoarthritis. When he went back to work today and the knee pain came back immediately and was unbearable to stand or walk. He could not even drive his car back home. He reported swelling and a give way sensation. He was assessed with pain caused by osteoarthritis with weight as a factor and a likely a meniscus injury. (Applicant Exhibit 3)

In September 2021, Applicant had a QME evaluation by orthopedic surgeon Dr. Chen. Applicant reported working as park maintenance for the City of Sacramento for 21 years. He did not recall a specific injury but his left knee started hurting during his work duties. Dr. Chen performed a record review and physical exam. There was left knee crepitus globally. Dr. Chen diagnosed Applicant with left knee industrial exacerbation of underlying degenerative arthritis. However under causation, Dr. Chen found an industrial injury to the left knee within a reasonable medical probability. Dr. Chen opined there is a large contribution of left knee pain due to obesity and degenerative arthritis but found Applicant's work duties to be quite physical. Dr. Chen clarified that he found some contribution of the left knee pain is due to work duties. Dr. Chen found no evidence of an industrial injury to the low back. Dr. Chen indicated

that apportionment will be relevant considering severe obesity and osteoarthritis but he deferred his finding until Applicant is permanent and stationary. (Applicant Exhibit 1)

Dr. Chen produced a supplemental report dated October 27, 2021 based on an additional record review. Dr. Chen's opinion remained the same and he acknowledged that Applicant has underlying degenerative osteoarthritis of the left knee, a diagnosis of gout, and a body mass index exceeding 40. (Applicant Exhibit 2)

Dr. Chin found industrial causation to the left knee as distinct from his finding regarding the low back. Dr. Chen performed a record review and physical exam and opined that Applicant's work duties were physical and contributed to the knee pain. Dr. Chen anticipated apportionment and deferred the issue pending permanent and stationary status. Based upon Applicant's credible testimony and the findings of QME Dr. Chen, which are more persuasive it is found that Applicant sustained injury to his left knee arising out of and occurring in the course of employment during the cumulative trauma period through February 23, 2021.

Dr. Chin used the word exacerbation in his diagnosis of "left knee industrial exacerbation of underlying degenerative osteoarthritis." (Applicant Exhibit 2) However, this appears to be a clerical error or misunderstanding of the term. The remainder of Dr. Chin's opinions are that Applicant sustained an industrial injury as described above.

NEED FOR FURTHER MEDICAL TREATMENT

Dr. Chen recommended treatment of physical therapy, cortisone injections, and anti-inflammatory medications. (Applicant Exhibit 1)

Based upon the findings of QME Dr. Chen, it is found that Applicant is in need of further medical treatment to cure or relieve from the effects of the industrial injury.

IV

RECOMMENDATION

For the reasons stated above, it is respectfully recommended that Defendant's Petition for Reconsideration be denied.

DATE: April 20, 2022
Ariel Aldrich
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE