

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

**JOSEPH MARK GODFREY, *Applicant***

**vs.**

**R RANCH AT THE LAKE RANCH OWNERS;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ11355769  
Santa Rosa 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 observe that while the Petition for Reconsideration avers development of the record is necessary, applicant's counsel raised issues of ostensibly missing records in deposition of the Agreed Medical Evaluator held on January 27, 2021, and the record does not reflect the submission of these records to the AME in the more than two years that followed prior to trial submission on March 28, 2023. (See Ex. B, Transcript of the Deposition of Peter Newton, M.D., June 23, 2021, at p. 33:10.)

We further note that applicant's attorney makes various allegations in his verified Petition for Reconsideration that are substantially misleading or that are made without any reasonable basis or with reckless indifference as to their truth or falsity. (Cal. Code Regs., tit. 8, § 10421, subd. (b)(5)(A)(iii)-(iv).) Specifically, he alleges that AME Dr. Newton "instructed the parties to further develop the record," but offers no citation to the record in support of this assertion. (Petition for Reconsideration, July 9, 2023, at p. 5:23.) Our review of the record occasioned by applicant's Petition reveals no such statement made by the AME. We admonish applicant's attorney Kenneth D. Martinson that a petition for reconsideration may be dismissed or denied for failing to cite to

the evidence, for raising meritless arguments and for making allegations that are misleading or made with reckless indifference. Additionally, the offending party may be subject to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.) Future compliance with the Appeals Board's rules is expected.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

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



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

**September 6, 2023**

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

**JOSEPH MARK GODFREY  
LAW OFFICE OF KENNETH D. MARTINSON  
STATE COMPENSATION INSURANCE FUND**

**SAR/abs**

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

# REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

## I

### INTRODUCTION

Applicant was employed as a ranch hand and alleges that he sustained injury to his cervical spine, lumbar spine and bilateral shoulders on a cumulative basis, through his last day worked. He was 58 years old at the time of alleged injury. Applicant seeks reconsideration of the court's June 19, 2023 decision finding that the applicant did not suffer industrial injury as a result of his employment. The Petition was timely and properly verified.

## II

### FACTS

Applicant was employed for approximately five months by R Ranch during which time [he] has had fairly strenuous and varied duties. See generally Minutes of Hearing and Summary of Evidence, dated November 14, 2019 at pg. 6-7. He filed a claim alleging injury<sup>1</sup> and through his attorney agreed to use Dr. Newton as an Agreed Medical Evaluator to assess his injuries. Doctor Newton evaluated the applicant and issued a report dated June 24, 2019 (Joint Exhibit J4) and following that, three supplemental reports (Joint Exhibits J1 - J3). Following this, the case went to trial before the undersigned on November 14, 2019.

Following the first trial, the court held that the applicant had not sustained a specific injury. See Findings and Order dated February 18, 2020. Although the court regrettably failed to make explicit its denial of the applicant's petition to disqualify Dr. Newton, the court relied on his reports, and noted in its Opinion on Decision that "Applicant's Petition to remove Dr. Newton as the AME in this case is denied as baseless." Findings and Order, Opinion on Decision dated February 18, 2020 at pg. 2.

Unfortunately, despite the fact that the injury was pled as a cumulative trauma, Dr. Newton's reporting was silent on the issue of whether a cumulative trauma injury had occurred. As a result, the undersigned ordered the parties to complete the record and obtain Dr. Newton's

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<sup>1</sup> The body parts alleged has been a matter of ongoing dispute, with the applicant original claiming (via the Application) injury to "999 unclassified," later amended to "880 Body Systems." Dr. Newton found problems affecting the neck, bilateral shoulders, bilateral elbows, right wrist, lumbar spine and bilateral lower extremities, none of which he attributed to applicant's employment.

opinion as to whether or not the applicant had sustained an industrial injury on a cumulative basis. Findings and Order dated February 18, 2020. This was the only issue that needed clarification.

For whatever reason, this resulted in five additional reports, and a deposition which was conducted in two parts, part one commencing on January 27, 2021, and part two being concluded on June 23, 2021. Dr. Newton was unequivocal that applicant had not suffered a cumulative injury. Thereafter, the case was resubmitted. The court found consistent with the reporting of Dr. Newton that the applicant had not suffered a cumulative trauma, and as the court had previously found that the applicant had not suffered a specific injury, the court concluded that the applicant had not suffered any industrial injury as a result of his employment with R Ranch. The Petition for Reconsideration under current consideration followed.

### **III DISCUSSION**

The applicant argues that the court did not review the complete record, because the court characterized Dr. Newton's two part deposition as Dr. Newton being deposed once. This is merely semantic, and the court takes exception to the suggestion that it did not fully review all of the submitted evidence. All admitted evidence was thoroughly reviewed.

The court agrees that there was no explicit order that the applicant's Petition to disqualify Dr. Newton as the AME in this case. That ruling was implicit in the court's findings in its February 18, 2020 decision, and was explicit in the body of the Opinion on Decision. The court notes that no Petition for Reconsideration was filed following that Finding and Order. Notwithstanding, the court recommends that be made explicit on Reconsideration, as set forth below. The applicant's suggestion that Dr. Newton violated his privacy rights by asking about his HIV status is not indicative of a need to replace him. Applicant need only have declined to answer if he felt that question was intrusive.

With respect to Applicant proposed Exhibits marked for identification purposes as Applicant's 9 and Applicant's 10, the court did not admit those when originally offered in 2019. See Findings and Order dated February 18, 2020, Rulings on Evidence, pg. 1. Their exclusion was not challenged at the time. The court in its most recent decision simply recounted its prior decision.

With respect to the need for additional discovery, the court agrees that Dr. Newton suggests that additional reporting might be possible, but the fact is, the court ordered development of the

record on one issue only - whether applicant suffered a cumulative trauma injury while employed at R Ranch. Applicant suggests that certain medical records, records that have never been offered as evidence, nor even properly identified, may change the AME's conclusions as to this matter. However, the court has not been made aware of any such medical reports, and it is entirely clear based on the current record that Dr. Newton does not believe that the applicant suffered a cumulative injury. As noted in the court's Findings and Order dated June 19, 2023, Dr. Newton indicated in all 5 reports procured following the court's initial findings that applicant did not suffer a cumulative trauma injury.

Finally, the court notes that in its original decision, it ordered development of the record. Thereafter, the parties engaged in three years of additional discovery, and the AME in the case authored five more reports. For the applicant to claim at this point that additional discovery is required strains credibility.

#### **IV RECOMMENDATION**

The court recommends that Reconsideration be granted, and that the Board amend the Findings and Order to add an additional Order to the effect that the applicant's September 13, 2019 Petition to Disqualify the Panel QME (sic) is denied. The court recommends that the applicant's request to engage in further discovery be denied.

Dated: 07/21/2023

**Jason E. Schaumberg**  
Workers' Compensation Judge