

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

**WILLIAM BURTON, *Applicant***

**vs.**

**UNITED NATURAL FOOD INC, INSURED BY  
INDEMNITY INSURANCE COMPANY,  
*Defendants***

**Adjudication Number: ADJ17046531  
Sacramento 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.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

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

**LISA A. SUSSMAN, DEPUTY COMMISSIONER**  
**CONCURRING NOT SIGNING**



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

**March 1, 2024**

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

**WILLIAM BURTON  
EASON & TAMBORNINI  
LOUIS PAPELL**

**LN/pm**

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**

**INTRODUCTION**

1. Order issued: December 11, 2023
2. Identity of Petitioner: [Defendant]
3. Verification: The petition is verified
4. Timeliness: The petition is timely
5. Date Petition for Reconsideration filed: January 4, 2024
6. Petitioners alleges: Applicant's back is not industrially related

Applicant sustained an industrial injury to his left fifth finger on April 21, 2022, while working as an order selector, occupational group code 360. Applicant claims further injury to his back which defendant denied. The Court found applicant's back injury to be industrially related based upon the reporting of PQME Dr. Rakkar. Defendant filed its Petition based upon this Finding.

Dr. Rakkar submitted five PQME reports and sat for a deposition; throughout he continued to find applicant's back injury industrial in nature. Applicant was first evaluated by Dr. Rakkar on November 3, 2022. This evaluation is the first documented evidence of back pain. (Applicant was in pro per at the time of the evaluation and had yet to obtain counsel). According to the report applicant was injured when he "slipped on the wet floor and landed hard on his back, while bracing himself with his left hand." "the floor was wet due to lots of smashed berries that had not been cleaned up".(Exhibit 1, p.1). At trial applicant testified that he was injured when "slipped on fruit on the ground. He put his left hand out to try and break his fall." "he states he hit his back when he fell". (Summary of Evidence p. 4 lines 10-12). Dr. Rakkar opined that applicant's low back pain was due to irritation of his facet joints due to the fall. Dr. Rakkar reviewed medical reports spanning a time period of May 17, 2022 (when applicant reported the injury) through June 22, 2022; there is no mention of back pain in the review of records as the review focuses on applicant's

fractured finger and potential surgical correction. Applicant testified that he discontinued treatment in late June 2022 because defendant denied the injury. (Summary of Evidence p. 4 lines 14-16).

Dr. Rakkar's deposition took place on March 10, 2023. In the deposition, Dr. Rakkar agrees to leave the issue of if applicant's back is industrially related to the trier of fact. Petitioner argues that Dr. Rakkar did not rely on applicant's mechanism of injury to determine AOE/COE for applicant's lumbar spine. When asked if the question should be one for the trier of fact Dr. Rakkar testified as follows:

Yeah, I suppose so, unless there is any other records that come up. Often what I find with patients is they tend to focus on something that they find to be more bothersome. They may have multiple things going on. But his finger was quite deformed, and I think he wanted to talk about that a lot. That may have been the case with these reports. I don't know. But I do know when I was asking him what happened and "How did you fall, and what did you hurt, and how did you land," and all that, those are the two things that he told me about were his hand, wrist, and his back.

(Exhibit 3 p.9 lines 9-19) He later clarified:

Q: Earlier counsel asked you if you would defer your opinion on causation to the trier of fact. And I understand both of us are in worlds that we are not a part of. You're not a lawyer; I am not a doctor. But we're trying to communicate things that go over both of them, right? What counsel was trying to do is basically, there may be a -- there is a dispute, I guess, of whether or not the back is part of the injury. And I'm not exactly sure what he meant by defer to the trier of fact on this. But assuming it is found that he fell, and when he fell, it was the mechanism of injury that he describes. That mechanism of injury would be sufficient to cause an injury to the back?

MR. PAPELL: Objection; asked and answered. The doctor already indicated it is a possible mechanism of injury.

BY MR. DRAKE:

Q Is there anything that you would need to see or any further information that you need to determine whether or not the low back was injured in the fall?

A No. I mean, he's described the way he fell, and the way he described it made sense to me. The way he landed made sense to me. So it made sense to me that he would be experiencing some back pain. As to why he didn't mention it in his clinic appointments, I think that's a great question for him. But I have to go by what he is telling me when I see him.

(Exhibit 3 p.18 lines 3-25, p.19 lines 1-5).

The Court disagrees with Petitioner's interpretation of the doctor's testimony. Petitioner opines that Dr. Rakkar sought clarification from the applicant regarding the reason for the delay in the back complaints. (Petition for Reconsideration p. 3 lines 9-12). The Court opines that Dr. Rakkar was simply stating that why applicant allegedly delayed reporting in his back complaints was simply a question he could not answer and should be posed to the applicant. Nonetheless, based on the applicant's mechanism of injury (in which applicant did credibly testify) Dr. Rakkar found that the back injury was industrially related.

Petitioner also argues that Dr. Rakkar's opinion that applicant's back injury was related to the fall was not based upon reasonable medical probability. In the deposition Dr. Rakkar testified:

Q: That mechanism of injury, is that sufficient within a reasonable degree of probability to cause an injury to the low back?

A: Yeah. That's a possible mechanism for an injury to the back, yes.

(Exhibit 3 p. 16 lines 5-12). Again, the Court disagrees with Petitioner's interpretation of the testimony. Although Dr. Rakkar answered that it was a possibility he answered in the affirmative to the question of if it was a reasonable degree of probability.

The Court opined that Dr. Rakkar's reporting was substantial medical evidence; Petitioner disputes this. Specifically, Petition refutes that the reports are based on pertinent facts and an adequate history. Applicant gave an adequate history, it is noted in Dr. Rakkar's earliest reporting. Applicant gave a history of falling with his hand outstretched behind him. The history matches applicant's testimony, which was credible regarding the mechanism of injury. These are the facts that Dr. Rakkar relied upon; he confirmed this in his deposition testimony. Hence, Dr. Rakkar's reporting is substantial medical evidence.

### **RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

Date: January 16, 2024

**Darcy Kosta**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE