

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

**MICHAEL LOPEZ, *Applicant***

**vs.**

**PROTAC SECURITY, and NATIONAL LIABILITY & FIRE INSURANCE, administered  
by BIBERK INSURANCE SERVICES, *Defendants***

**Adjudication Number: ADJ13363031  
Oxnard District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on June 2, 2021, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and in the course of employment (AOE/COE) to his lumbar spine, and that applicant is entitled to further medical treatment to cure or relieve the effects of his injury.

Defendant contends that applicant's trial testimony is not substantial evidence that he sustained an injury AOE/COE to his low back, and if applicant did sustain injury AOE/COE he is only entitled to an "apportioned/ partial future medical award."

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from applicant.

We have considered the allegations in the Petition for Reconsideration (Petition) and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, and for the reasons discussed below, we will deny reconsideration.

**BACKGROUND**

Applicant claimed injury to his low back while employed by defendant as a security guard on May 8, 2020. Applicant had a previous workers' compensation claim involving his back (case number ADJ9791594) that was settled by a Compromise and Release; the Order Approving Compromise and Release was issued on April 23, 2018.

Applicant initially received treatment for the May 8, 2020 injury from Wayne B. Jonas, M.D., at the Lompoc North Health Center. (App. Exh 2, Dr. Jonas, May 8, 2020.) Dr. Jonas noted:

He states that he works as a security guard and he was making rounds, he slipped and almost fell aggravating his back pain this morning.  
(App. Exh 2, p. 1.)

Applicant was subsequently seen by Marc F. Wilkerson, DC. In his Doctor's First Report of Injury, Dr. Wilkerson stated, "Patient reported [sic] while he was on patrol post he was walking on an incline and slipped and hurt his back." (App. Exh. 3, Dr. Wilkerson, July 10, 2020, p. 1.)

On October 21, 2020, applicant was evaluated by orthopedic qualified medical examiner (QME) Jeffrey M. Lundeen, M.D. Dr. Lundeen examined applicant, took a history, and reviewed the medical record. The diagnosis was, "Low back pain-radicular, with a history of prior lumbar spine surgery in 2017." (App. Exh. 1, Dr. Lundeen, October 21, 2020, p. 7 [EAMS p. 11.]) The doctor had earlier noted that:

The mechanism of injury was a slip and fall. The patient states that he was at work and that while on patrol and walking around the perimeter of a compound, he slipped and fell on a wet muddy incline. The patient states that he fell on his buttocks and low back.  
(App. Exh. 1, p. 1.)

Dr. Lundeen concluded:

Based upon the history as provided by the patient, the review of available medical records, and the performance of a thorough physical examination, it is my opinion, within reasonable medical probability, that the injury involved in this claim, May 8, 2020, caused permanent aggravation to this patient's preexisting low back pain condition.  
(App. Exh. 1, p. 7 [EAMS p. 11].)

The parties proceeded to trial on February 10, 2021. The WCJ's summary of applicant's testimony included the following:

On May 8, 2020, he was on Santa Rosa Road in Santa Barbara County. He drove to the location. He parked his car. He had to go through the security gate. The parking area was slightly inclined. He had parked there on May 8, 2020, in the early morning. It was wet and foggy that morning. As he exited his car, he slipped and caught himself, but he felt pain in his low back and lower leg. ¶ He reported the injury to Sal Orozco that day in the morning. ¶ ... Ben Parliament is one of the managers at ProTac. He recalls calling him to get the insurance

information. ¶ He was seen at Lompoc Health that day. ¶ He told Ben and the doctor of one single slipping event.  
(Minutes of Hearing and Summary of Evidence (MOH/SOE), February 10, 2021, p. 4.)

The WCJ's summary of defense witness Benjamin Parliament's testimony included:

He received a call from Michael Lopez. Michael Lopez said he was injured at work and asked for the insurance information. He advised him he was at the doctor's office. He told him he injured his back on an incline and/or decline and that he slipped.  
(MOH/SOE, pp. 5 – 6.)

The summary of defense witness Salvador Orozco's testimony included:

He had a conversation with the applicant about the lack of wearing a mask. The applicant said he hurt his back exiting his vehicle and needed to go home. Moments later, he said he needed to go to the hospital.  
(MOH/SOE, pp. 6 – 7.)

The issues submitted for decision included injury AOE/COE, permanent disability, and need for further medical treatment. (MOH/SOE, pp. 2 – 3.)

## DISCUSSION

In the Opinion on Decision, the WCJ stated in part, that:

Based on the credible testimony of Applicant with due regard for his demeanor as a witness together with the medical reporting of Jeffrey Lundeen, M.D., ... it is found Applicant sustained injury to his lumbar spine arising out of and in the course of employment.  
(Opinion on Decision, p. 1.)

In his Report the WCJ explained that he found applicant's testimony to be credible, that it was consistent with the history as noted by Dr. Lundeen, and that there were no material differences between applicant's testimony and that of the defense witnesses. (Report, p. 2.)

It is well established that a WCJ's opinions regarding witness credibility are entitled to great weight. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500, 505]; *Sheffield Medical Group v. Workers' Comp. Appeals Bd. (Perez)* (1999) 70 Cal.App.4th 868 [64 Cal.Comp.Cases 358]; *Nash v. Workers' Comp. Appeals Bd.* (1994) 24 Cal.App.4th 1793 [59 Cal.Comp.Cases 324].) Here, regarding the WCJ's decision, he explained his opinion and set forth his rationale. Based on our review of the trial record, we accept the WCJ's

determination regarding applicant's credibility and we do not disturb his decision that applicant sustained injury AOE/COE.

Regarding the issue of an apportioned medical award, referring to the Supreme Court's decision in *Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal. Comp. Cases 647], the Second District Court of Appeals explained:

In *Granado*, the Supreme Court provided the following rationale for its conclusion that "medical expense is not apportionable." "If medical expense reasonably necessary to relieve from the industrial injury were apportionable, a workingman, who is disabled, may not be able to pay his share of the expense and thus forego treatment. Moreover, the uncertainties attendant to the determination of the proper apportionment might cause employers to refuse to pay their share until there has been a hearing and decision on the question of apportionment, and such delay in payment may compel the injured workingman to forego the prompt treatment to which he is entitled." (*Granado, supra*, 69 Cal.2d at pp. 405-406.) (*Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1249, 1261, [82 Cal.Comp.Cases 679].)

In the Petition defendant cites *Sherbank v. Workers' Comp. Appeals Bd. (Nishimori)* (1986) 51 Cal.Comp.Cases 504 [writ denied] and *Borgato v. Gallo Salami, Inc.* (1991) 19 CWCR 57 in support of its contention that it "should be held responsible for payment of only 37.5% of the claimant's future medical treatment..." (Petition, p. 10.) Those cases actually indicate that under appropriate circumstances, a non-settling defendant may be permitted to seek reimbursement in proceedings on the issue of contribution. That is, apportionment of medical treatment between defendants may be approved if the settlement occurs while all industrial injury cases are active, so that the non-settling defendant has a right to seek reimbursement in proceedings in the nature of contribution from the settling defendant, and/or file a lien claim, depending on the time at which the non-settling defendant became aware of the settlement. Thus, when a case is settled with knowledge of other pending cases, the non-settling defendants have a right to seek contribution from the settling defendant in connection with benefits paid. (See *County of Yuba v. Workers' Comp. Appeals Bd.* (2006) 71 Cal.Comp.Cases 1598, 1600 [writ denied].) Clearly the facts in those cases are inconsistent with the facts of the present matter and the rulings are not applicable.

An award of medical treatment for an injury involving one employer with one insurance carrier may not be apportioned. (See Lab. Code, § 4600; *Granado v. Workmen's Comp. Appeals Bd., supra*; *Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 159

[48 Cal.Comp.Cases 566]; *Fisk v. Workers' Comp. Appeals Bd.* (1993) 20 Cal.App.4<sup>th</sup> 1078 [58 Cal.Comp.Cases 732].) As noted by the WCJ, "...a defendant cannot apportion medical treatment and this would be subject to a petition for contribution with the prior insurance carrier." (Opinion on Decision, p. 2.) Again, we agree with the WCJ's decision and will not disturb the F&A.

Accordingly, we deny reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the Findings of Fact and Award, issued by the WCJ on June 2, 2021, is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

I CONCUR,

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

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



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

**AUGUST 27, 2021**

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

**MICHAEL LOPEZ  
HOURIGAN, HOLZMAN & SPRAGUE  
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