

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

**GARY FARRELL, *Applicant***

**vs.**

**DEFENDERS DIRECT, INC., and TRAVELERS PROPERTY CASUALTY COMPANY  
OF AMERICA; AMERICAN ZURICH INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ11158729 ADJ11158728**

**Bakersfield District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Applicant seeks reconsideration of the Joint Findings of Fact & Joint Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on September 8, 2022, wherein the WCJ found in pertinent part that applicant's September 28, 2016, industrial low back injury caused 8% permanent disability (ADJ11158729); and that applicant's August 12, 2017, industrial low back injury caused 13% permanent disability (ADJ11158728).

Applicant contends that the reports from orthopedic qualified medical examiner (QME) Marc J. Friedman, M.D. are not substantial evidence and that the reports from orthopedic agreed medical examiner (AME) Alexander Angerman, M.D., are substantial evidence and should be the basis for the decision regarding applicant's disability.

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

We have considered the allegations in the 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, which we adopt and incorporate by this reference thereto, 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 advisor on September 28, 2016 (ADJ11158729). Applicant also claimed injury to his low back while employed by defendant as a security advisor on August 12, 2017 (ADJ11158728).

On September 16, 2017, QME Dr. Friedman evaluated applicant. After examining applicant, taking a history, and reviewing the medical record, Dr. Friedman diagnosed:

Lumbar strain, related on a more probable than not basis to his industrial injury 09/28/16, exacerbated by second industrial injury 08/12/17 both of which are not fixed and stable.  
(Def. Exh. A, Dr. Friedman, September 16, 2017, p. 17.)

He later stated that applicant's condition was not permanent and stationary at the time of the evaluation. (Def. Exh. A, p. 17.)

Dr. Friedman re-evaluated applicant on July 28, 2018. He re-examined applicant and reviewed the medical record pertaining to the treatment applicant received subsequent to the September 16, 2017, evaluation. Dr. Friedman explained his opinions as to applicant's disability as follows:

In terms of the Fifth Edition of the AMA Guides, page 384, Table 15-3, he would be a Category II with an 8% whole person impairment compatible with the clinical history of specific injury and non-verifiable radicular complaints. Given his significant limitations as noted under the section of ADLs, e.g., difficulty sitting, standing, and climbing stairs, I would add a 3% whole person impairment rating for a combined 11% whole person impairment rating.  
(Def. Exh. B, Dr. Friedman, July 28, 2018, p. 8.)

As to the issue of apportionment, Dr. Friedman stated:

On reviewing medical records, testimony, etc., it is my medical opinion ... since I have no history of prior lumbar spine disability, 40% of the patient's lumbar disability would be secondary to his injury of September 28, 2016 and 60% due to his second injury on August 12, 2017.  
(Def. Exh. B, p. 7.)

AME Dr. Angerman evaluated applicant on May 17, 2019. Dr. Angerman examined applicant, took a history, reviewed the medical record he was provided, and stated:

Subsequent to the August 12, 2017 injury, the patient stated to me that he underwent an updated lumbar MRI scan and additional lumbar epidural injections with those records not provided. Quite obviously, it is mandatory that I be given the opportunity to review the entire medical file before I am able to render any further opinions in this case including the updated lumbar MRI scan to determine whether there was significantly increased pathology noted on that study.

(App. Exh. A3, Dr. Angerman, May 17, 2019, pp. 17 – 18.)

In his September 18, 2019, supplemental report, Dr Angerman, referring to his prior report, explained:

I indicated it was mandatory that I be given the opportunity to review the entire medical file before I am able to render any further opinions in this case. I deferred orthopaedic opinions pending receipt of additional information. ¶ However, parties are requesting a supplemental report at this time. Therefore, I will issue this supplemental report as requested, although I am unable to render final opinions until all of the orthopaedic records have been received including the results of the most recent lumbar MRI scan which the patient stated has been performed.

(App. Exh. A2, Dr. Angerman, September 18, 2019, p. 2.)

Dr Angerman was provided medical records to review, and in his “permanent and stationary supplemental report” he stated:

Additional medical records are now provided to me for my review, which are summarized above. Many of those records were previously provided to me and incorporated into my prior reporting. ¶ I still have not received the results of the lumbar spine MRI scan reportedly performed subsequent nor operative reports for the additional lumbar epidural injections reportedly performed at that time. I continue to request that all such records be provided to me for my review, and I am currently basing my orthopaedic opinions solely on the information available to me. I reserve the right to amend my orthopaedic opinions upon receipt of new information.

(App. Exh. A1, Dr. Angerman, August 11, 2020, p. 12.)

The parties proceeded to trial on June 28, 2022. The cases were consolidated for trial and the issues submitted for decision included permanent disability and “Substantiality of medical-legal reports.” (Minutes of Hearing and Summary of Evidence, June 28, 2022, pp. 3 – 4.)

## DISCUSSION

To be substantial evidence a medical opinion must be based on pertinent facts, on an adequate examination and accurate history, and it must set forth the basis and the reasoning in support of the conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) When a physician's report is well-reasoned, is not speculative, is based on an adequate history and examination, and sets forth the reasoning behind the physician's opinion, not merely his or her conclusions; the report constitutes substantial evidence. (*Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647 *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660].) A medical opinion is not substantial evidence if it is based on facts no longer germane, or on an inadequate medical history or examination. (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workmen's Comp. Appeals Bd. supra.*)

Here, AME Dr. Angerman stated, and reiterated, the fact that he had not been provided the complete medical record, including the most recent lumbar MRI and the most recent lumbar epidural injection operative reports. (See App. Exh. A3, pp. 17 – 18; App. Exh. A2, p. 2; and App. Exh. A1, p. 12.) The doctor informed the parties that it was “mandatory” that he be “given the opportunity to review the entire medical file....” (App. Exh. A2, p. 2.) Although he repeatedly told the parties that he needed to review the medical records, as noted above, Dr. Angerman was not provided those records to review. Thus, his opinions are not based upon an adequate medical history, and in turn, are not substantial evidence.

Regarding the reports from QME Dr. Friedman, it is well settled that the relevant and considered opinions of one physician, though inconsistent with other medical opinions, may constitute substantial evidence and that the Appeals Board may rely on the medical opinion of a single physician unless it is “based on surmise, speculation, conjecture, or guess.” (*Place v. Workmen's Comp. Appeals. Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525, 529].) Applicant argues that Dr. Friedman's opinions as to the issue of impairment “do not correlate with the reviewed diagnostic study [lumbar MRI].” (Petition, p. 4.) It is important to note that pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, (AMA Guides):

The physician must use the entire range of clinical skill and judgment when assessing whether or not the measurements or tests results are plausible and consistent with the impairment being

evaluated. If, in spite of an observation or test result, the medical evidence appears insufficient to verify that an impairment of a certain magnitude exists, the physician may modify the impairment rating accordingly and then describe and explain the reason for the modification in writing.  
(AMA Guides, p. 19.)

Clearly, the AMA Guides provide guidelines for the exercise of a reporting physician's professional skill and judgment. The fact that a party disagrees with the reporting physician's opinion does not mean that the physician's opinions are incorrect. As noted, and explained, by the WCJ, the application of the AMA Guides in determining an injured worker's impairment "is a medical question within the expertise of the evaluators" and is not a question within the expertise of counsel. (Report, p. 9; also see e.g., Def. Exh. G, Bradford Anderson, M.D., August 4, 2017; Def. Exh. H, Hrair Darakjian, M.D., August 23, 2018.)

Having reviewed the record, we agree with the WCJ that the reports from Dr. Friedman constitute substantial evidence and are an appropriate basis for determining the disability caused by applicant's industrial injuries. Thus, we see no factual or legal basis for disturbing the F&A.

Accordingly, we deny reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Joint Findings of Fact & Joint Award, issued by the WCJ on September 8, 2022, is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

I CONCUR,

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**November 29, 2022**

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

**GARYFARRELL  
JOSEPH PLUTA, ESQ.  
LAURA G.CHAPMAN & ASSOCIATES  
POLLARD MAVREDAKIS CRANERT**

**TLH/mc**

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

## **Report and Recommendations on Petition for Reconsideration**

**I. Introduction:** Applicant-Petitioner Gary Farrell seeks reconsideration to annul the Joint Findings of Fact & Joint Award of September 8, 2022.

Petitioner Gary Farrell, then 59 years of age, sustained a specific industrial injury to his low back on September 28, 2016 while employed at Bakersfield, California as a Security Advisor (Occupation Group 370) by Defendant-Employer Defenders Direct, Inc. On September 28, 2016, Defendant-Employer Defenders Direct, Inc. was insured for California workers' compensation liability by Defendant-Carrier Travelers' Property Casualty Company of America. The September 28, 2016 claim is being heard as case ADJ 11158729, which has been designated as the master file and depository of documentary exhibits.

Petitioner Gary Farrell, then 60 years of age, sustained a second specific industrial injury his low back on August 12, 2017 while employed in Bakersfield, California as a Security Advisor (Occupational Group 370) by Defendant-Employer Defenders Direct, Inc. By August 12, 2017, Defendant-Employer had become insured for California workers' compensation liability by Defendant-Carrier American Zurich Insurance Company.

Following Trial on June 28, 2022 and submission for decision on July 29, 2022, Joint Findings of Fact and a Joint Award issued on September 8, 2022. Among other things, Petitioner was found to have sustained temporary disability following the second injury due to both injuries, to have sustained 8% permanent partial disability as a result of the first injury, 13% permanent partial disability as a result of the second injury and to need further medical treatment as a result of both injuries. *Joint Findings of Fact & Joint Award 9/08/2022 p. 3 (Findings of Fact #6 & #7), p. 4 (Finding of Fact #12, #14 & #15)*. Indemnity consistent with the findings was awarded with a general award of further medical treatment. *Joint Findings of Fact & Joint Award 9/08/2022 pp. 5-6 (Award)*. The undersigned PWCJ relied on the expert medical opinion of Dr. Marc Friedman, who served as panel-selected Qualified Medical Evaluator in ADJ 11158729 (the first injury) rather than the expert medical opinion of Dr. Alexander Angerman, who served as an Agreed Medical Evaluator incase ADJ 11158728 (the second injury). *Joint Findings of Fact & Joint Award 9/08/2022 pp. 7-8 (Opinion on Decision)*.

By timely,<sup>1</sup> verified and properly served petition, Applicant Gary Farrell seeks reconsideration. *Petition for Reconsideration 9/30/2022 p. 10 (verification), p. 11 (Proof of Service)*. An authorized ground for reconsideration is alleged consistent with Lab. C. §5903 {c} (evidence not justifying the findings of fact). *Petition for Reconsideration 9/30/2022 p. 1 lines 23-26*. Petitioner contends that the undersigned PWCJ erred by basing the Trial-level decision on Dr. Friedman's medical-legal reporting thereby denying the Petitioner the "proper" (i.e. higher) level of permanent partial disability indemnity suggested by the Agreed Medical Evaluator. *Petition for Reconsideration 9/30/2022 p. 2 lines 1-11*.

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<sup>1</sup> The pending petition for reconsideration was filed at the Bakersfield District Office on September 30, 2022, the 22nd day after the Joint Findings of Fact & Joint Award of September 8, 2022.

Petitioner argues that 1) “Dr. Friedman’s QME reports are not substantial medical evidence” (*Petition for Reconsideration 9/30/2022 p. 4 line 1 to p. 5 line 8*), 2) “The Court should rely on Dr. Angerman’s Medical-Legal reporting as Opposed to Dr. Friedman’s reporting” (*Petition for Reconsideration 9/30/2022 p. 5 line 10 to p. 7 line 2*), and 3) “PWCJ Norton’s criticisms of Dr. Angerman’s reporting should not discount its persuasiveness” (*Petition for Reconsideration 9/30/2022 p. 7 line 4 to p. 8 line 17*).

Defendant Travelers Property Casualty Company has provided a timely<sup>2</sup>, verified and properly served Answer to the pending Petition. *Answer to Petition for Reconsideration 10/07/2022 p. 6 (verification); Proof of Service 10/07/2022*. Defendant Travelers[<sup>3</sup>] argues that the reports of AME Dr. Angerman do not constitute substantial medical evidence for lack of review of medical reports including diagnostic testing. *Answer to Petition for Reconsideration 10/07/2022 p. 6 (verification); Proof of Service 10/07/2022 p. 3 line 4 to p. 4 line 20*.

An Answer to the pending petition on behalf of Defendant American Zurich Insurance Company has not been received as of the composition of this Report & Recommendation. It is recommended that the pending petition be denied. Reliance on the substantial and expert opinion of QME Dr. Freidman was appropriate.

**II. Facts:** Prior to September 28, 2016, Petitioner Gary Farrell was free of difficulties with his lumbar spine and normally active. *Defendant’s Exhibit A: Report of Marc Freidman, M.D. 9/16/2017 p. 2*. He was employed by Defendant-Employer Defenders Direct Inc. as a Security Advisor. *Minutes of Hearing 6/28/2022 p. 3 lines 2-7 (Admitted Fact #1)*. Petitioner’s work was not limited to giving security advice and selling security systems but included installing the sensors, alarms and keypad as well as educating customers in their use. *Summary of Evidence 6/28/2022 p. 7 lines 4-9*.

On September 28, 2016, Petitioner sustained the first of the two specific low back injuries giving rise to the present claims. While unloading heavy equipment, he experienced the onset of back stiffness which worsened to significant back pain and spasm. Petitioner obtained medical treatment including anti-inflammatory medication and time off work. *Defendant’s Exhibit A: Report of Marc Freidman, M.D. 9/16/2017 p. 2; Minutes of Hearing 6/28/2022 p. 3 lines 3-7 (Admitted Fact #1-ADJ 111588729)*. MRI scanning was obtained. It indicated a 5.8 mm disc extrusion compressing the left L4 nerve root and a 6 mm disc protrusion at L4-L5 “without evidence for compressive discopathy or central canal stenosis.” *Joint Exhibit B: MRI report of Stockdale Radiology (Gabriel Gelves, D.O.) 10/28/2016*. Notwithstanding the L4 nerve root compression, there was “no evidence of radiating pain to the lower extremities on lumbar motion” with intact sensation “in all dermatomes in the bilateral lower extremities” with low back pain after a return to modified work duties. *Defendant’s Exhibit G: Report of US Healthworks (Bradford Anderson, M.D.) 8/04/2017 pp. 1, 3-4*.

Petitioner was able to return to modified work as a “ride along” assisting other workers with paperwork. He was able to continue earning his base salary, but did not obtain commissions from sales. *Summary of Evidence 6/28/2022 p. 6 lines 28-41*.

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<sup>2</sup> Travelers’ Answer was filed on Friday October 7, 2022, the 8th day after the filing of the pending petition.



While Petitioner was on modified work, Defendant-Employer Defenders Direct, Inc.'s compensation insurance coverage changed from Defendant-Carrier Travelers Property Casualty Company of America to Defendant-Carrier American Zurich Insurance.

On August 12, 2017, and while still on limited duty from the first specific injury, Petitioner sustained the second of the two specific injuries giving rise to the present claims. His car was struck by a truck, resulting in a flat tire. While unloading equipment from his car to change the tire, Petitioner experienced a recurrence and increase in his back pain. *Defendant's Exhibit A: Report of Marc Freidman, M.D. 9/16/2017 p. 2.* Additional MRI scanning indicated "a left central disc extrusion impinging on left S1 nerve root with forminal stenosis similar to previously." Petitioner's symptoms now included "left leg numbness and weakness." *Defendant's Exhibits C&D: MRI reports of Kern Radiology (Danilo D. Gomes) 9/07/2017.*

Petitioner was unable to continue modified working after the second specific injury and had not worked since. *Summary of Evidence 6/28/2022 p. 6 lines 43-45; Defendant's Exhibit H: Report of US Healthworks (Hrair Darakjian, M.D.) 8/23/2018 p. 1.*

Marc Friedman, M.D. is serving as a panel-selected Qualified Medical Evaluator in the field of Orthopedic Surgery in case ADJ 11158729 (the first specific injury). He initially evaluated Petitioner on September 16, 2017 and provided a report. *Defendant's Exhibit A: Report of Marc Freidman, M.D. 9/16/2017.*<sup>3</sup>

Dr. Freidman's review of the medical records available to him noted left leg weakness and radiculopathy as of January 6, 2017. *Defendant's Exhibit A: Report of Marc Freidman, M.D. 9/16/2017 p. 10 (review of reports (2) of Bradford Anderson, M.D. 1/16/2017).* Subsequent treatment reports noted improvement in Petitioner's condition and did not indicate radiculopathy with Petitioner considered by one provider to have "reached plateau and no further improvement is expected" as of April 17, 2017 and another anticipating MMI as of May 31, 2017. *Defendant's Exhibit A: Report of Marc Freidman, M.D. 9/16/2017 p. 10 (review of report of Bradford Anderson, M.D. 4/14/2017 and Peyman Sarrafian, M.D. 4/24/2017.* However, the reviewed reports went on to note additional treatment from Hrair Darakjian, M.D. who recommended a trial of epidural injections and noted radiculopathy. *Defendant's Exhibit A: Report of Marc Freidman, M.D. 9/16/2017 pp. 15-16 (review of reports of Hrair Darakjian, M.D. 5/30/2017 and 7/27/2017).*

Notwithstanding the rough consensus between Drs. Anderson and Sarrafian that Petitioner's condition had stabilized, Dr. Friedman opined that Petitioner's condition from the two injuries was "not fixed and stable" and recommended further evaluation after the second epidural injection recommend by Dr. Darakjian. *Defendant's Exhibit A: Report of Marc Freidman, M.D. 9/16/2017 pp. 17-18.*

QME Dr. Friedman re-evaluated Petitioner and provided a report on July 28, 2018. Dr. Freidman noted that Petitioner's complaints included "numbness on an intermittent basis going down the left posterior thigh to the calf to the foot." *Defendant's Exhibit B: Report of Marc Freidman, M.D. 7/28/2018 p. 2.* Dr. Freidman opined that Petitioner's condition "now should be considered permanent and stationary." Dr. Friedman classified Petitioner's impairment as within Category II

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<sup>3</sup> Page 5 of Dr. Friedman's initial report was not included with the filed copy.

of the Diagnosis Related Estimates (DRE) of the AMA Guides with 8% Whole Person Impairment with a 3% add-on “for a combined 11% whole person impairment rating,” *Defendant’s Exhibit B: Report of Marc Freidman, M.D. 7/28/2018 p. 8*. Dr. Friedman apportioned 40% of Petitioner’s lumbar disability to the initial injury of September 28, 2016 and the remaining 60% to the second injury of August 12, 2017 with no apportionment to other factors. *Defendant’s Exhibit B: Report of Marc Freidman, M.D. 7/28/2018 p. 7*.

Treating doctor Darakjian provided a PR-4 Primary Treating Physician’s Permanent and Stationary Report dated August 23, 2018. He diagnosed Petitioner with “L5-S1 disc protrusion with no active radiculopathy.” *Defendant’s Exhibit H: PR-4 Report of U.S. Healthworks (Hrair Darakjian, M.D.) 8/23/2018 p. 7*. Dr. Darakjian agreed with Dr. Freidman that Petitioner was classified in DRE Category II but suggested only 5% Whole Person Impairment. He deferred consideration of apportionment pending review of additional records. *Defendant’s Exhibit H: PR-4 Report of U.S. Healthworks (Hrair Darakjian, M.D.) 8/23/2018 p. 7*.

Alexander Angerman, M.D. was selected by Petitioner and Defendant-Carrier American Zurich Insurance (the carrier for the second specific injury) as an Agreed Medical Evaluator in the field of orthopedic surgery. He initially evaluated Petitioner on May 17, 2019 and provided a report. Petitioner’s complaints to Dr. Angerman included back pain and spasms including radiation of pain to the left hip socket and down the left leg to left great toe and second toe with numbness, tingling and weakness. *Joint Exhibit A-3: AME Report of Alexander Angerman, M.D. 5/17/2019 p. 1*. Petitioner estimated that his condition improved 75% to 80% between the two specific injuries, was “worsened 100%” by the second specific injury and had “improved approximately 50%” since then. *Joint Exhibit A-3: AME Report of Alexander Angerman, M.D. 5/17/2019 p. 2*

Dr. Angerman reviewed the medical records provided to him, which included Dr. Friedman’s QME report but does not appear to have included Dr. Darakjian’s PR-4 report. *Joint Exhibit A-3: AME Report of Alexander Angerman, M.D. 5/17/2019 pp.14-15*. Dr. Angerman indicated that he had not been provided with records of a 1992 injury disclosed by Petitioner nor records of the epidural injections received by Petitioner. *Joint Exhibit A-3: AME Report of Alexander Angerman, M.D. 5/17/2019 p.17*. Dr. Angerman was provided with the September 2016 Stockdale Radiology MRI scans (obtained between the injuries) but not the September 2017 Kern Radiology MRI scans (obtained after the second injury). *Joint Exhibit A-3: AME Report of Alexander Angerman, M.D. 5/17/2019 pp. 9-10*.

Dr. Angerman diagnosed “Lumbar Herniated Disc Syndrome with Left Lower Extremity Radiculopathy.” *Joint Exhibit A-3: AME Report of Alexander Angerman, M.D. 5/17/2019 p. 16*. He opined that September 2016 MRI results “correlate with the patient’s complaints of left lower extremity pain, numbness, tingling and weakness.” *Joint Exhibit A-3: AME Report of Alexander Angerman, M.D. 5/17/2019 p. 17*. However, he deferred other opinions and recommendations until he “received the entirety of the records requested.” *Joint Exhibit A-3: AME Report of Alexander Angerman, M.D. 5/17/2019 p. 18*.

Dr. Angerman provided a supplemental report on September 18, 2019. He indicated that “no new medical records were submitted for me review at the present time ... “He noted that Petitioner had presented to him with “residual complaints referable to his lumbosacral spine with left lower

extremity radiculopathy.” *Joint Exhibit A-2: AME report of Alexander Angerman, M.D. 9/18/2019 p. 1.* Dr. Angerman noted that he had been provided with 2016 MRI scanning but not scanning after the second injury or treatment records regarding the “lumbar epidural block injections subsequent to the September 28, 2016 injury.” He reminded the parties that:

I indicated that it was mandatory that I be given the opportunity to review the entire medical file before I am able to render any further opinions in this case. I deferred orthopedic opinion pending receipt of additional information. *Joint Exhibit A-2: AME report of Alexander Angerman, M.D. 9/18/2019 p. 2.*

Dr. Angerman indicated that he had been informed that stipulations resolving the reported 1992 injury was not forthcoming and the parties were still in the process of trying to obtain the records he had requested:

However, the parties are requesting a supplemental report at this time. Therefore, I will issue this supplemental report as requested although I am unable to render final opinions until all of the orthopedic records have been received including the results of the most recent MRI scan which the patient stated has been performed.

The opinions and recommendations herein are limited to answering the interrogatories posed to me by parties in the case. *Joint Exhibit A-2: AME report of Alexander Angerman, M.D. 9/18/2019 p. 2.*

Dr. Angerman provided a supplemental report on August 11, 2020. He indicated that he had been provided with some additional medical records to review. These records did not include information regarding the reported 1992 injury “or the MRI scanning after the second injury, although they did include information regarding the epidural injections. He provided his medical-legal opinions with the understanding that “I am currently basing my orthopedic opinions solely on the information available to me” and reserved the right to amend his opinions upon receipt of new information. He also assumed that the trier of fact would accept “the patient’s statement as true and factual including the mechanism of injury” and the absence of any non-industrial injuries or activities accounting for his ongoing disabilities/impairments. *Joint Exhibit A-1: AME report of Alexander Angerman, M.D. 8/11/2020 p. 12.*

With those limitations, Dr. Angerman opined that Petitioner probably sustained the August 12, 2017 injury (the second specific injury) with apportionment to the prior injuries. He opined that Petitioner probably was permanent and stationary on July 28, 2018, when so declared by Dr. Friedman and that the treatment and periods of temporary disability prior to that point “should be considered appropriate and warranted on an industrial basis.” *Joint Exhibit A-1: AME report of Alexander Angerman, M.D. 8/11/2020 p. 12.*

Dr. Angerman suggested whole person impairment totaling 30% by combining range-of-motion impairment, soft-tissue lesions of the intervertebral discs and both motor and sensory neurological impairment. *Joint Exhibit A-1: AME report of Alexander Angerman, M.D.*

8/11/2020: *Impairment Rating Repo (addendum)*. He apportioned 10% of the impairment to the 1992 injury, 80% to the September 28, 2016 (the first of the two in the present case) and the remainder to the August 12, 2017 injury (second of the two). He reminded the parties that “I do reserve the right to amend my orthopedic opinions upon receipt of new information, most importantly any MRI scan results subsequent to the August 12, 2017 date of injury.” *Joint Exhibit A-1: AME report of Alexander Angerman, M.D. 8/11/2020 p. 16.*

The parties were unable to settle these cases. After Trial on June 28, 2022 and submission for decision on July 29, 2022, Joint Findings of Fact & Joint Award issued on September 8, 2022. Among other things, Petitioner was found to have sustained 8% permanent partial disability as a result of the first specific injury of September 28, 2016 and 13% permanent partial disability as a result of the second specific injury of August 12, 2017. *Joint Findings of Fact & Joint Award 9/08/2022 p. 3 (Finding of Fact #6); p. 4 (Finding of Fact #14)*. Compensation consistent with the findings was awarded. *Joint Findings of Fact & Joint Award 9/08/2022 p. 5 (Joint Award ¶B & C)*. The undersigned PWCJ relied on the expert opinion of QME Dr. Freidman as more likely correct than the tentative opinion of AME Dr. Angerman. *Joint Findings of Fact & Joint Award 9/08/2022 pp. 7-8.*

**III. Discussion:** Petitioner argues that 1) “Dr. Friedman’s QME reports are not substantial medical evidence” (*Petition for Reconsideration 9/30/2022 p. 4 line 1 to p. 5 line 8*), 2) “The Court should rely on Dr. Angerman’s Medical-Legal reporting as Opposed to Dr. Friedman’s reporting” (*Petition for Reconsideration 9/30/2022 p. 5 line 10 to p. 7 line 2*), and 3) “PWCJ Norton’s criticisms of Dr. Angerman’s reporting should not discount its persuasiveness” (*Petition for Reconsideration 9/30/2022 p. 7 line 4 to p. 8 line 17*). Defendant Travelers’ argues that the reports of AME Dr. Angerman do not constitute substantial medical evidence for lack of review of medical reports including diagnostic testing. *Answer to Petition for Reconsideration 10/07/2022 p. 6 (verification); Proof of Service 10/07/2022 p. 3 line 4 to p. 4 line 20.*

Petitioner’s first argument is “Dr. Friedman’s QME reports are not substantial medical evidence.” *Petition for Reconsideration 9/30/2022 p. 4 lines 1-2.* Petitioner correctly notes that WCAB decision must be based on substantial evidence and that a medical report that is based on facts no longer germane, an inadequate history or examination, incorrect legal theories, or upon surmise, speculation, conjecture or guess is insubstantial. *Petition for Reconsideration 9/30/2022 p. 4 lines 3-18.*

Petitioner argues that Dr. Friedman’s classification of Petitioner’s lumbar impair scans obtained from Stockdale Radiology which indicated compression of the L4 nerve root. within Diagnostic Related Estimate (DRE) Category II is inconsistent with the MRI nerve root. *Petition for Reconsideration 9/30/2022 p. 4 line 18 to p. 5 line 8.* In fairness, this first set of MRI scans did, in fact, indicate L4 nerve root compression and, furthermore, AME Dr. Angerman later opined that these MRI results “correlate with the patient’s complaints of left lower extremity pain, numbness, tingling and weakness.” *Joint Exhibit B: MRI report of Stockdale Radiology (Gabriel Gelves, D.O.) 10/28/2016. Joint Exhibit A-3: AME Report of Alexander Angerman, M.D. 5/17/2019 p. 17.*

But the first problem with the first argument of the pending petition is that while nerve root compression can cause radicular symptoms it does not necessarily do so. Compression, impingement and radiculopathy are different things. In this case, after the first specific injury in this case but before the second, and notwithstanding the L4 nerve root compression, there was “no evidence of radiating pain to the lower extremities on lumbar motion” with intact sensation “in all dermatomes in the bilateral lower extremities” with low back pain after a return to modified work duties. *Defendant’s Exhibit G: Report of US Healthworks (Bradford Anderson, M.D.) 8/04/2017 pp. 1, 3-4*. Thus, it not the case that the nerve root compression revealed in the first MRI scans is itself a confirmation of radiculopathy. Furthermore, that is a medical question within the expertise of the evaluators.

The second problem with the first argument of the pending petition is that even if compression is somehow always impingement confirming radiculopathy, a DRE Category II classification is still appropriate when previously documented radiculopathy resolves with conservative care. American Medical Association Guides to the Evaluation of Permanent Impairment 5<sup>th</sup> ed. P. 384 Table 15-3. Treating Dr. Darakjian note the lack of radicular symptoms in his PR-4 report and classified Petitioner’s impairment in DRE Category II, albeit with a different percentage of Whole Person Impairment than suggested by Dr. Freidman.<sup>4</sup> *Defendant’s Exhibit H: PR-4 Report of U.S. Healthworks (Hrair Darakjian, M.D.) 8/23/2018 p. 7*.

The third problem with the first argument of the pending petition is that it is contradicted by the third argument of the pending petition. In the first part of the first argument, Petitioner correctly notes that substantial evidence requires germane facts supported by an adequate history and examination. In the third argument, however, the pending petition urges the WCAB panel to disregard the flaws in the records provided to AME Dr. Angerman so long as the assumed employment history was not demonstrably false. These arguments contradict each other.

The second argument of the pending petition is “The Court should rely on Dr. Angerman’s Medical-Legal reporting as opposed to Dr. Freidman’s reporting.” *Petition for Reconsideration 9/30/2022 p. 5 lines 10-11*. Petitioner acknowledges that the Trier of Fact may follow one physician even when another disagrees, but argues that AME Dr. Angerman should have been followed because Dr. Angerman’s analysis included a detailed review of Petitioner’s range-of-motion impairment, soft-tissue lesions of the intervertebral discs and both motor and sensory neurological impairment rather than just a classification within the DRE Categories. *Petition for Reconsideration 9/30/2022 p. 5 line 14 to p. 6 line 2; Joint Exhibit A-1 AME report of Alexander Angerman, M.D. 8/11/2020: Impairment Rating Repo (addendum)*.

The first problem with the second argument of the pending petition is that it does not justify reconsideration. This argument forthrightly notes that the Trier of Fact may follow the substantial opinion of one physician even if another disagrees. A WCAB decision based on

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<sup>4</sup> Presumably, Petitioner doesn’t mind that the undersigned PWCJ employed the higher of the two potential ratings within DRE Category II.

substantial medical evidence is not invalidated by the possibility that a different decision could have issued.

The second problem with the second argument of the pending petition is that DRE classification is the preferred method of the AMA Guides. American Medical Association Guides to the Evaluation of Permanent Impairment 5<sup>th</sup> ed. P. 379 §15.2.

The third problem with the second argument of the pending petition is Dr. Angerman's detailed analysis relies on his forthright discussion of the deficiencies of the medical legal record presented to him. Dr. Angerman was quite clear that his estimate of permanent impairment was a best effort with a flawed record at the request of the parties. *Joint Exhibit A-1: AME report of Alexander Angerman, M.D. 8/11/2020 p. 12 & p. 16.* As between the best effort of a respected evaluator provided with a flawed record and the best effort of a respected evaluator provided with a complete record the undersigned PWCJ appropriately followed the later.

The third argument of the pending petition is "PWCJ Norton's criticisms of Dr. Angerman's reporting should not discount its persuasiveness." *Petition for Reconsideration 9/30/2022p. 7 lines 4-5.*

The first part of the third argument correctly notes that Agreed Medical Evaluators are selected for their competence and neutrality and should generally be followed absent good reason to the contrary. But, thereafter, the third argument denies that Dr. Angerman's final report was conditional and preliminary in light of the flawed medical-legal record presented to him and asserts that the evaluation present in Dr. Angerman's final report "conditioned his reporting on whether the trier of fact accepted the applicant's recounting of the mechanism of injury ..." and since Petitioner's history of the mechanism of his two specific injuries was not disputed, Dr. Angerman's assessment of impairment should have been followed. *Petition for Reconsideration 9/30/2022 p. 7 line 12 to p. 8 line 3.*

In its Answer, Defendant-Carrier Travelers details the flaws in the medical records provided to Dr. Angerman and faithfully quotes him for the tentative and preliminary nature of the report he eventually provided. *Answer to Petition for Reconsideration 10/07/2022 p. 3 line 24 to p. 5 line 1.*

The first problem with the first part of the third argument of the pending petition is that it assumes a false dilemma. There is no contradiction when a medical-legal evaluator indicated that he is providing the best opinion he can on a flawed record and also reports that he is assuming the accuracy of the history regarding the mechanism of the injuries. Dr. Angerman did not have to choose between those options and did not abandon his criticisms of the medical records provided to him by noting his assumption that the reported mechanisms of injury were correct.

The second problem with the first part of the third argument of the pending petition is that, like the second argument, it does not justify reconsideration even if accurate. If the Trial-level decision was appropriately supported by substantial medical evidence, it does not matter than the Trier of Fact could have also validly reached a different result.

In the second part of the third argument of the pending petition, Petitioner complains that Dr. Freidman's initial report of September 16, 2017 did not review the MRI scanning of September 7, 2017 in his review of medical records although admitting that it was discussed in the initial history.<sup>5</sup> *Petition for Reconsideration 9/30/2022 p. 8 lines 3-12; Defendant's Exhibit A: QME Report of Marc Friedman, M.D. 9/16/2017p. 2 (history including MRI scan) pp. 5-17 (review of records)*. The third argument does not explain why it makes any difference that Dr. Friedman's relied on an accurate history of the content of the then-recently completed MRI scan as opposed to obtaining the same information some other ways.

The third argument concludes by repeating the first argument. *Petition for Reconsideration 9/30/2022 p. 8 lines 14-17*. The problems with the first argument have already been discussed herein.

**IV. Recommendation:** It is recommended that the pending petition be denied.

DATE: October 18, 2022

**Robert Norton**  
PRESIDING WORKERS'  
COMPENSATION JUDGE

SERVED: ON ALL PARTIES AS SHOWN ON THE ATTACHED SERVICE ROSTER  
BY: \_\_\_\_\_  
ON: OCTOBER 18, 2022

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<sup>5</sup> It is worth noting that the Kern Radiology report of the MRI taken September 7, 2017 (nine days before Dr. Friedman's QME exam) was transcribed and signed on September 12, 2017 (four days before the QME exam).