WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JACARI CALDWELL, ***Applicant***

vs.

OLD DOMINION FREIGHTLINE; GALLAGHER BASSETT SERVICES, ***Defendants***

Adjudication Number: ADJ13990999
Santa Ana 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.

It is well established that for the purpose of meeting the causation requirement in a workers' compensation injury claim, it is sufficient if the work is a contributing cause of the injury. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd*. (2015) 61 Cal.4th 291 [80 Cal.Comp.Cases 489].) "...[T]he proximate cause requirement of Labor Code section 3600 has been interpreted as merely elaborating on the general requirement that the injury arise out of the employment. The danger from which the employee's injury results must be one to which he or she was exposed in the employment." (*Id*., at 297 - 298 [citations omitted].) The acceleration, aggravation or 'lighting up' of a preexisting condition "is an injury in the occupation causing the same." (*Id*., at 301, quoting *Tanenbaum v. Industrial Acc. Com*. (1935) 4 Cal.2d 615, 617 [1935 Cal. LEXIS 590]; see also *Zemke v. Workers' Comp. Appeals Bd*. (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358]; *Reynolds Electrical & Engineering Co. v. Workers' Comp. Appeals Bd.* (*Buckner*) (1966) 65 Cal.2d 438 [31 Cal.Comp.Cases 421].)

We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd*.

(1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id*.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 25, 2022

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

JACARI CALDWELL
MEHR & ASSOCIATES, P.C.
KWAN & ASSOCIATES

PAG/ara

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
INTRODUCTION

Defendants Old Dominion Freight Line and Ace American Insurance administered by Gallagher Bassett Services Inc. (hereinafter "defendants" or "Petitioners") have filed a timely Petition entitled "Petition For Reconsideration And/Or Removal," (hereinafter "petition") challenging the 2/3/2022 Findings and Order/Opinion on Decision of Workers Compensation Administrative Law Judge Nate Halprin (hereinafter "WCJ").

The statutory grounds set forth in the petition are: (1) The award made and filed by the Workers' Compensation Appeals Board judge [sic], the appeals board acted without or in excessive [sic] of its powers; (2) The evidence does not justify the findings of fact; and (3) That the finding of fact do [sic] not support the award. Defendants further petition the Workers' Compensation Appeals Board for removal pursuant to California Code of Regulations section 10955 and California Labor Code sections 5307 and 5310, contending themselves aggrieved by the decision of the judge, contending that the action will result in significant prejudice and irreparable harm.

The parties proceeded to trial on 1/11/2022; the matter stood submitted for decision on that date. The parties stipulated in pertinent part to the following facts: Jacari Caldwell, born [] while employed on 12/2/2020 as an OSC Clerk at Bloomington, California by Old Dominion Freight Line, Inc., claims to have sustained injury arising out of and in the course of employment to the lumbar spine, with additional claims of injury to additional body parts deferred.

The issue submitted for decision was: 1) Injury arising out of and in the course of employment.

Counsel for Applicant offered nine trial exhibits; counsel for Defendants offered five trial exhibits. All proposed exhibits were entered into evidence without objection.

Applicant Jacari Caldwell testified on his own behalf. Defendants offered the testimony of Jacqueline Rodriguez.

Ms. Rodriguez testified that it was her *belief* that applicant did not suffer an injury at Old Dominion. The WCJ accepts that testimony as being a truthful reflection of Ms. Rodriguez' lay instinct. (Opinion On Decision, 2/3/2022, page 5.) Her lay opinion that applicant did not suffer industrial injury, however, was conclusory and otherwise without preponderating support. Other than her statement of *belief*, the weight of Ms. Rodriguez' testimony uniformly supported a conclusion of injury AOE/COE. Her belief was also contrary to the expert findings of the primary treating physician and the Panel Qualified Medical Evaluator.

Ms. Rodriguez' testified that: (1) The applicant reported his injury contemporaneous with its occurrence; (2) the applicant filled out an injury packet pursuant to directions from human resources; (3) In completing the packet, the applicant disclosed he had prior problems; (4) There

was site video depicting the point of alleged injury; and, (5) The site video depicted applicant clutching at his back at the point-of-injury. (Amended MOH/SOE 1/11/2022, page 8:15-20.)

The actual site video was not offered by defendants.

At trial, the applicant credibly testified that he injured himself while moving items, which was part of his routine every day. He was moving boxes containing computers and printers, and felt pain. He remained at the point-of-injury for ten minutes, and then went to the office to report the injury. He was referred to, and went to the industrial clinic. (Amended MOH/SOE, 1/11/2022, page 4:20-23.) The injury report he completed for his employer asked whether he had the same or similar injuries before. He indicated he had prior similar injuries, disclosing a car accident and prior injury at Amazon. (Amended MOH/SOE, 1/11/2022, page 7:10-14.)

Dr. Omid Haghighinia served as a primary treating physician.

Trial Exhibit 3 was the medical report of Dr. Omid Haghighinia, D.C. entitled “Primary Treating Physician’s Medical-Legal Report.” Dr. Haghighinia concludes in that report: “…Given the patient’s current symptoms, physical findings and the nature of his injury, I believe that this patient’s current condition and complaints are the direct result of his industrial injury of 12/20/2020…” (Exhibit 3, Primary Treating Physician’s Medical-Legal Report Dr. Omid Haghighinia, D.C. dated 2/1/2021, Page 10.) Applicant was forthcoming with Dr. Haghighinia, disclosing a prior industrial injury to his back and a prior auto accident aggravating his back. . (Exhibit 3, Primary Treating Physician’s Medical-Legal Report Dr. Omid Haghighinia, D.C. dated 2/1/2021, Page 4.)

Dr. Vi Nguyen served the parties as the Panel Qualified Medical Evaluator.

Trial Exhibit 2 was the medical report of Dr. Vi Nguyen, D.C. entitled “Panel Qualified Medical Evaluation In the Specialty of Chiropractic Medicine.” Dr. Nguyen concludes in that report that “…it is within reasonable medical probability that his new injury to the neck, lower back, and mid back sustained on December 2, 2020 have arisen out of his employment at Old Dominion Freight Line…” (Exhibit 2, Panel Qualified Medical Evaluation In the Specialty of Chiropractic Medicine, Dr. Vi Nguyen, D.C. dated 4/20/2021, Page 48 of 52.) Dr. Nguyen was provided and reviewed subpoenaed records pertaining to both a prior auto accident and a prior industrial injury. (Exhibit 1, Panel Qualified Medical Evaluation In the Specialty of Chiropractic Medicine, Dr. Vi Nguyen, D.C. dated 7/6/2021, Page 5-11.) After reviewing those records, Dr. Nguyen found no basis upon which to change his earlier April 2021 opinions, including his opinion on causation. (Exhibit 1, Panel Qualified Medical Evaluation In the Specialty of Chiropractic Medicine, Dr. Vi Nguyen, D.C. dated 7/6/2021, Page 12.)

In summary, the applicant testified credibly of the mechanism of having suffered an industrial injury. The applicant reported the injury to his employer contemporaneous with the injury. The applicant completed an injury report contemporaneous with the injury. The injury report included information concerning prior injury to the same or similar body parts. The site video depicted applicant clutching at his back at the point-of-injury. The applicant was sent to the industrial clinic, where he provided a history of his industrial injury and a recitation of prior injuries. The industrial

clinic found injury AOE/COE. The Primary Treating Physician found injury AOE/COE. The Panel Qualified Medical Examiner found injury AOE/COE.

On 2/3/2022, the WCJ authored the following Findings of Fact: Jacari Caldwell, born [] while employed on 12/2/2020 as an OSD Clerk at Bloomington, California by Old Dominion Freight Line, Inc. sustained injury arising out of and in the course of employment to the lumbar spine, additional claim(s) of injury to additional body parts deferred. (Findings of Fact, 2/3/2022, page 1.)

II
DISCUSSION

Petitioner alternatively seeks relief by way of Reconsideration and/or Removal. Insofar as petitioner seeks Removal, it has failed to articulate the factual elements which might give rise to a right to Removal. Petitioner has failed to clearly articulate substantial prejudice or irreparable harm in the event Removal is not granted. There is no clear demonstration that Reconsideration will not be an adequate remedy.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. Cortez v. Workers' Comp. Appeals Bd. 92006) 136 Cal. App. 4th 596, 600 [71 Cal. Comp. Cases 155, 157]; Kleeman v. Workers' Comp. Appeals Bd. (2005) 127 Cal. App. 4th 274, 28154 [70 Cal. Comp. Cases 133, 136]. The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. Ca. Code Regs. Tit. 8, section 10955; see also Cortez, supra; Kleeman, Supra. Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. Cal. Code Regs., tit. 8, section 10955.

It appears to the court that Defendants' Petition should be treated as a Petition For Reconsideration.

> "….If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].)…" Elshami v. C, 2019 Cal. Wrk. Comp. P.D. LEXIS 390, *1-2.

PETITIONERS' CONTENTIONS

In their petition, Defendants summarize their contentions as follows: (1) It was error for the WCJ to have found that Applicant sustained an industrial injury AOE/COE; (2) It was error for the WCJ to have found an industrial injury despite the Applicant's impeachment of credibility, and lack of candor; (3) It was error for the WCJ to have based the decision upon medical evidence which relies upon inaccurate and/or incomplete medical history; and, (4) It was error for the WCJ to not have

attributed the allegations of injury to outside non-industrial causation and/or pre-existing condition. (Petition, page 2:4-12.)

PETITIONER'S CONTENTION 1: IT WAS ERROR FOR THE WORKERS' COMPENSATION APPEALS BOARD JUDGE TO HAVE FOUND THAT THE CLAIMANT SUSTAINED AN INDUSTRIAL INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT ALLEGED ON 12/2/2020

At trial, the applicant credibly testified that he injured himself while moving items, which was part of his routine every day. He was moving boxes containing computers and printers, and felt pain. He remained at the point-of-injury for ten minutes, and then went to the office to report the injury. He was referred to the industrial clinic three days later. (Amended MOH/SOE, 1/11/2022, page 4:20-23.) The injury report he completed for his employer asked whether he had the same or similar injuries before. He was forthcoming and indicated he had, disclosing a car accident and prior injury at Amazon. (Amended MOH/SOE, 1/11/2022, page 7:10-14.)

Dr. Omid Haghighinia served as a primary treating physician. Dr. Haghighinia concluded: "…Given the patient's current symptoms, physical findings and the nature of his injury, I believe that this patient's current condition and complaints are the direct result of his industrial injury of 12/20/2020…" (Exhibit 3, Primary Treating Physician's Medical-Legal Report Dr. Omid Haghighinia, D.C. dated 2/1/2021, Page 10.)

Dr. Vi Nguyen served the parties as the Panel Qualified Medical Evaluator. Dr. Nguyen concluded that "…it is within reasonable medical probability that his new injury to the neck, lower back, and mid back sustained on December 2, 2020 have arisen out of his employment at Old Dominion Freight Line…" (Exhibit 2, Panel Qualified Medical Evaluation in the Specialty of Chiropractic Medicine, Dr. Vi Nguyen, D.C. dated 4/20/2021, Page 48 of 52.) After reviewing records, Dr. Nguyen found no basis upon which to change his earlier April 2021 opinions, including his opinion on causation. (Exhibit 1, Panel Qualified Medical Evaluation in the Specialty of Chiropractic Medicine, Dr. Vi Nguyen, D.C. dated 7/6/2021, Page 12.)

In summary, the applicant testified credibly of the mechanism of having suffered an industrial injury. The applicant reported the injury to his employer contemporaneous with the injury. The applicant completed an injury report contemporaneous with the injury. The injury report included information concerning prior injury to the same or similar body parts. The site video depicted applicant clutching at his back at the point-of-injury. The applicant was sent to the industrial clinic, where he provided a history of his industrial injury and a recitation of prior injuries. The industrial clinic found injury AOE/COE. The Primary Treating Physician found injury AOE/COE. The Panel Qualified Medical Examiner found injury AOE/COE.

PETITIONER'S CONTENTION 2: IT WAS ERROR FOR THE WORKERS' COMPENSATION JUDGE TO HAVE FOUND AN INDUSTRIAL INJURY DESPITE THE APPLICANT'S IMPEACHMENT OF CREDIBILITY, AND LACK OF CANDOR.

The court assessed applicant's testimony to be credible as it relates to his depiction of having suffered an injury at work. Defendants believe the court's assessment to have been flawed. By way

of petition, defendants contend that applicant has been thrice arrested. Defendants contend that applicant has been previously injured. Defendants contend that applicant's case is flawed by inconsistency. Various of these arguments were made by defendants at various points, sometime on and sometimes off the trial record, sometimes based on evidence and sometimes by way of bare assertions by counsel, sometimes for the first time on request for Reconsideration.

Permeating the petition is Defendants' contention that applicant did not make a credible witness on his own behalf at trial (Petition, page 4:2.) The court, however, viewed the entirety of the trial evidence including Applicant's testimony, and concluded otherwise. The court concluded applicant's testimony to be credible, and the histories provided to the medical practitioners to be consistent with the testimony applicant provided the court at trial.

In their petition, Defendants contend applicant's credibility was impeached by inconsistent statements concerning prior injuries and restrictions. By way of example, petitioner contends: "…The applicant testified at Trial that he never had any previous injuries which precluded him from working…" (Petition, page 5:21-23.)

Applicant's actual testimony was: "…During his first week at Old Dominion, there was an incident where 75 lb bags spilled from a pallet. He told his employer he was reluctant to clean up the spilled bags. At the time, he had recently had a car accident during the holidays. He felt his condition was not compatible with picking up heavy things. Within a month of beginning employment at Old Dominion, however, he was performing all of his usual and regular duties without complaints…" (Amended MOH/SOE, page 5:7-11.)

In their petition, Defendants contend applicant's credibility was impeached by testimony from defense witness Jacqueline Rodriguez. By way of example, petitioner contends: "Ms. Jacqueline Rodriguez testified that she reviewed the cameras which showed that there was no actual visible incident or injury as the applicant alleged to have occurred…" (Petition, page 6:10-12.)

Defendants did not produce the site video for the court's review.

Ms. Rodriguez did testify she and others checked the site video; however the court could not conclude from the questions asked and answers given that she saw no visible incident or injury depicted on the site video. (Amended MOH/SOE, page 8:16-18.) The sum total of her testimony relating to this contention was: "…She is aware of his claimed injury of December 2, 2020. She does not believe that he was injured. She and others checked video from cameras that enabled her to view him at the time of the alleged injury. The video revealed him standing around and then using his right hand to clutch at his back…" (Amended MOH/SOE, page 8:15-18.) Defendants did not pursue with Ms. Rodriguez any detailed questioning concerning what video depicted applicant doing before standing around, nor after clutching his back. Ms. Rodriguez' testimony was consistent with that of Applicant, who testified that for ten minutes following his injury, he remained in place to see if the pain was just temporary, and then went to report the injury. (Amended MOH/SOE, page 4:20-22.)

In their petition, Defendants contend applicant to have been thrice associated with criminal behavior, thus impeaching his credibility relative to injury AOE/COE. (Petition, 6:13-23.) At trial,

defendants did not provide the court with any evidence concerning any criminal proceedings which may have followed arrests, nor any evidence of the outcome of these purported arrests. As to one of the alleged arrests, defendants failed at trial to provide the court with evidence of the arrest, itself. Petitioner seems to invite the court to make a leap of faith; specifically, that applicant has been arrested, that arrest equals moral turpitude, and therefore applicant's credibility relating to his injury has been impeached. In presentation of its case at trial, defendants did not offer evidence which might have allowed the court to evaluate whether applicant was prosecuted for or convicted of crimes of moral turpitude.

Defendants contend in their petition that in March 2009, applicant was arrested by the Riverside Police Department for theft of a computer from his sister, contending that to be a crime of moral turpitude. Defendants contend that this impeaches applicant's credibility. (Petition, page 6:20-23.) The only trial evidence pertaining to this contention is Exhibit E, subpoenaed records of the Riverside Police Department. These records support a conclusion that eleven years before the applicant's alleged injury, he was arrested on a charge of grand theft. Defendants offered no records concerning proceedings which may have followed that arrest. Petitioner seems to be inviting the court to conclude from that arrest that a conviction of a crime of moral turpitude followed. The trial record supports no such conclusion. The trial record does not support petitioner's contention that this arrest impeaches applicant's credibility concerning injury AOE/COE.

Defendants contend in their petition that applicant was arrested 11 days prior to the alleged date of injury on weapons-related charges. (Petition, page 6:13-19.) Defendants offered no documentary trial exhibits pertaining to this event. Defendants offered no evidence of the nature of the weapon(s). Upon cross-examination, applicant was asked, and testified that he suffered an arrest in November 2020 in connection with a weapons charge. Defendants then abandoned the line of questioning. There was no significant questioning concerning the outcome of the arrest, no questions concerning criminal proceedings that may have followed, no questions concerning any conviction that may have resulted. Otherwise stated, there was no evidence offered of any post-arrest proceedings. (Amended MOH/SOE 1/11/2022, page 5:22-25.) The trial record does not support petitioner's contention that this arrest impeaches applicant's credibility concerning injury AOE/COE.

Defendants contend in their petition that applicant was previously arrested on domestic violence charges, constituting a crime of moral turpitude which they contend negatively impacts credibility. (Petition, page 6:13-19.) There were no records pertaining to this criminal event introduced into the trial record by defendants. Applicant testified that years earlier, he had been arrested for domestic violence; however, that charge was dropped. (Amended MOH/SOE 1/11/2022, page 5:24-25.) The trial record does not support petitioner's contention that this arrest impeaches applicant's credibility concerning injury AOE/COE.

Petitioner contends a right to reconsideration pursuant to California Labor Code Section 5803.5 and Insurance Code Section 1871.4. (Petition, page 7:20-page 8:6.) In support, petitioner cites to the case of Quiroz v. WCAB 62 California Compensation Cases 987.

California Labor Code Section 5803.5 states in pertinent part: "Any conviction pursuant to Section 1871.4 of the Insurance Code that materially affects the basis of any order, decision, or award of the appeals board shall be sufficient grounds for a reconsideration of that order, decision, or award…"

Insurance Code Section 1871.4 makes it a crime to make or cause to be made any knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying various specie of workers compensation benefits. (California Insurance Code Section 1871.4.) Anyone convicted of a violation of Insurance Code Section 1871.4 may be ineligible to receive or retain any compensation, where that compensation was owed or received as a result of a violation of Section 1871.4. (California Insurance Code Section 1871.5.)

In citing to *Quiroz*, petitioner contends that the applicant in *Quiroz* "…made representations to the WCAB that were contrary to the statement and other evidence supplied to the fact finder…In that case, the applicant's finding of industrial injury was reversed…The same should be the result in this present case…" (Petition, page 7:26-page 8:1.)

The *Quiroz* case, however, is entirely inapposite to the instant case. In Quiroz v WCAB, defense counsel presented to the WCJ a criminal complaint charging Quiroz with a violation of California Insurance Code Section 1871.4. Defendant requested that the hearing be taken off-calendar pending resolution of the criminal proceeding. That request was denied, and the WCJ initially found the applicant had sustained injury. The WCAB granted reconsideration, rescinding the WCJ's Findings & Award. Its decision was based on new evidence that became available after the issuance of the Findings & Award; specifically, evidence of a conviction of Quiroz for violation of Insurance Code Section 1871.4.

In the case at bar, defendants offered no evidence of criminal complaint or indictment, nor of proceedings or conviction under California Insurance Code Section 1871.4. Defendants offered no evidence at all pertaining to a violation of Insurance Code Section 1871.4, nor did they move to continue or take off-calendar the trial in this matter. This argument seems to have materialized for the first time on Reconsideration.

The sum total of evidence concerning criminal conduct by applicant, when viewed through a prism most charitable to petitioner, is that applicant suffered three arrests. No evidence was offered by defendants pertaining to felony convictions involving moral turpitude. The court found applicant's testimony to be credible. The court did not find this arrest evidence sufficiently impeaching to overcome applicant's credible testimony concerning injury AOE/COE.

PETITIONER'S CONTENTION 3: IT WAS ERROR FOR THE WORKERS' COMPENSATION JUDGE TO HAVE BASED THE DECISION UPON MEDICAL EVIDENCE WHICH RELIES UPON INACCURATE AND/OR INCOMPLETE MEDICAL HISTORY

Applicant credibly testified that he injured himself while moving items; specifically, he was moving boxes containing computers and printers, and felt pain. He then went to the office to report

the injury. (Amended MOH/SOE, 1/11/2022, page 4:20-23.) The court found this testimony to be credible.

Exhibit C is an "Employee Statement of Injury." In that document, signed by applicant, he advises of an injury suffered 12/2/2020 which he reported to Marlene and Jackie the day it occurred. The employer witness testified that site video depicted applicant standing and reaching around to clutch at his back with his right hand. (MOH/SOE 1/11/2022, Page 8:17-18.) The witness Jacqueline Rodriguez testified that, after reaching to clutch his back, the applicant reported having sustained an injury to his back. (MOH/SOE 1/11/2022, Page 8:16-19.)

Three days after reporting his injury, applicant was referred by the employer to the company clinic. Exhibit 6 is the Doctor's First Report authored by Dr. Keith Wresch, describing his evaluation of applicant. The report reflects a history of applicant having suffered an injury to his low back and neck "…lifting many boxes…" (Exhibit 6, paragraph 17.)

Dr. Omid Haghighinia served as a primary treating physician. Trial Exhibit 3 was the medical report of Dr. Omid Haghighinia, D.C. entitled "Primary Treating Physician's Medical-Legal Report." The applicant provided Dr. Haghighinia with a history of organizing boxes. While lifting and carrying, twisting, and reaching above and below the shoulder, and stooping he felt a weakness in his back that radiated to his lower extremities and neck. (Exhibit 3, Primary Treating Physician's Medical-Legal Report Dr. Omid Haghighinia, D.C. dated 2/1/2021, Page 10.) Applicant was forthcoming with Dr. Haghighinia, disclosing a prior industrial injury to his back and a prior auto accident aggravating his back. . (Exhibit 3, Primary Treating Physician's Medical-Legal Report Dr. Omid Haghighinia, D.C. dated 2/1/2021, Page 3.)

Dr. Vi Nguyen served the parties as the Panel Qualified Medical Evaluator. Trial Exhibit 2 was the medical report of Dr. Vi Nguyen, D.C. entitled "Panel Qualified Medical Evaluation In the Specialty of Chiropractic Medicine." Applicant told Dr. Nguyen that he was organizing boxes, when he felt pain in his back. (Exhibit 2, Panel Qualified Medical Evaluation In the Specialty of Chiropractic Medicine, Dr. Vi Nguyen, D.C. dated 4/20/2021, Page 33 of 52.)

The applicant testified credibly concerning the mechanisms of injury. The applicant reported his injury promptly to his employer. The applicant completed a written accident report. The applicant was referred by his employer to the company clinic. Thereafter, applicant undertook treatment with a primary treating physician, and was seen by a Panel QME. The applicant provided a consistent history to each and all of the medical providers, and to the court. There is no merit to petitioner's contention that the decision is based upon medical reporting containing false or incomplete history(ies).

PETITIONER'S CONTENTION 4: IT WAS ERROR FOR THE WORKERS' COMPENSATION APPEAL'S BOARD JUDGE TO NOT HAVE ATTRIBUTED THE ALLEGATIONS OF INJURY TO OUTSIDE NON-INDUSTRIAL CAUSATION AND/OR PRE-EXISTING CONDITION

Petitioner contends in their Petition that the court should have found applicant had no injury AOE/COE, because the court should have "…attributed the allegations of injury to outside non-industrial causation and/or pre-existing condition." (Petition, page 2:11-12.)

The court specifically addressed that contention in its Opinion On Decision, noting "…Defendants contend prior symptoms associated with prior injuries (a 2015 industrial injury and a 2017 motor vehicle accident) supports a conclusion that applicant did not suffer injury AOE/COE. While this may be evidentiary at a later time regarding apportionment, it is not preponderating on the issue of injury AOE/COE. Applicant disclosed prior injury incidents to the doctors in this case (Keith Wresch, M.D., Vi Nguyen D.C., and Omid Haghighinia, D.C.), who still conclude a finding of industrial injury to be consistent with the applicant's account of injury occurring at Old Dominion..." (Opinion On Decision 2/3/2022, page 6.)

RECOMMENDATION

It is recommended that the Petition For Reconsideration and/or Removal be denied in its entirety.

DATE: March 10, 2022

Nate Halprin
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE