

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ROSA JOHNSON, *Applicant*

vs.

CITISTAFF SOLUTION INC.;
OLD REPUBLIC, administered GALLAGHER BASSETT SERVICES, *Defendants*

Adjudication Number: ADJ10527506
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.

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/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 5, 2022

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

**ROSA JOHNSON
BENSON LAW
SLATER & ASSOCIATES**

JMR/pc

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 OF WORKERS'
COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

- | | | |
|----|--|---|
| 1. | Applicant's occupation | General Laborer |
| | Applicant's Age | 64 |
| | Date of Injury | May 16, 2016 |
| | Parts of Body Injured | Lumbar Spine, Right Leg, and Right Knee |
| | Manner in which it occurred | Specific Incident |
| 2. | Identity of Petitioner | Defendant CitiStaff Solutions, Inc. |
| | Timeliness | Petition is timely |
| | Verification | Petition is verified |
| 3. | Date of Order | April 8, 2022 |
| 4. | Petitioner contends that the WCJ erred in | |
| | a) Finding the applicant to be credible: | |
| | b) Finding the Medical Reports of QME Dr. Halbridge substantial medical evidence; and | |
| | c) Finding that the applicant sustained an injury on May 16, 2016, arising out of and in the course of her employment with CitiStaff Solutions, Inc. to her lumbar spine, right leg, and right knee. | |

**II
FACTS**

The applicant Rosa Johnson, filed an application for adjudication alleging that while employed on May 16, 2016, as a general laborer, by CitiStaff Solutions, Inc., she sustained an injury arising out of and in the course of employment to her back, chest, right leg, right thigh, and right femur.¹ Defendant denied this claim.

On June 2, 2021, the trial recommenced before Judge Stone, and the applicant's testimony was started but not completed.

Subsequently, Judge Stone retired, and the matter was transferred to the undersigned Judge to complete the trial.

¹ APPLICATION FOR ADJUDICATION EAMS Doc ID: 19233298

The parties appeared before the undersigned Judge on February 9, 2022. At the hearing, the parties advised the Undersigned Judge that the prior Summary of Evidence was accurate and they were ready to continue with the applicant's testimony.

The applicant testified at trial that on May 16, 2016, while working at CitiStaff, she felt something strike the back of her right lower leg. The applicant turned and saw the containers she believed struck her. She is not sure if one or more boxes fell and hit her.²

The applicant further testified that when the boxes fell, they pushed the applicant forward towards the conveyor belt. As she went forward, she bent and twisted her knee. At the time, she felt pain in her right knee and back.³

The applicant testified that she did hurt her chest at the time but was not struck in the chest.

Dr. Neil Halbridge evaluated the applicant as the Panel Qualified Medical Examiner. Dr. Halbridge diagnosed the applicant with a contusion, right posterior thigh, right low back strain, and Chondromalacia patella with mild degenerative joint disease, right knee.⁴

As to causation, Dr. Halbridge stated that the right posterior thigh resulted from the specific work injury of May 16, 2016. Regarding the lumbar spine and right lower extremity, Dr. Halbridge stated that they resulted from the specific work injury of May 16, 2016, superimposed upon the natural progression of multilevel degenerative disc disease. For the right knee, Dr. Halbridge found that it was a compensable consequence injury secondary to her injury to the lumbar spine.⁵

Dr. Halbridge was deposed by the parties and had the opportunity to review a video that allegedly showed the incident in this matter. He was asked if the video were of the applicant and the incident, would it change his opinion on causation.

Dr. Halbridge indicated that he would, stating that the injury would be more of a cumulative injury related to repetitive lifting. Dr. Halbridge further stated that he would apportion less of the applicant's injuries to the specific incident of May 16, 2016.⁶

² MOH/SOE 6/2/2021 EAMS Doc ID: 74264287, page 3, lines 10 to 12

³ MOH/SOE 6/2/2021 EAMS Doc ID: 74264287, page 3, lines 22 to 24

⁴ JOINT EXHIBIT 4: Report of Dr. Neil Halbridge, dated 6/12/2018, page 2

⁵ JOINT EXHIBIT 6: Report of Dr. Neil Halbridge, dated 8/12/2017, pages 10 & 11

⁶ JOINT EXHIBIT 1: Deposition transcript of Dr. Neil Halbridge, dated 2/15/2019 page 13, lines 11 to 20

Based on the applicant's testimony and the medical reporting of the Panel Qualified Medical Examiner, Dr. Halbridge, the undersigned Judge, found that the applicant sustained an injury arising out of and in the course of employment to her lumbar spine, right leg, and right knee.

Defendant Citistaff Solutions, Inc. has filed a Petition for Reconsideration to the undersigned Judge's Findings.

III

DISCUSSION

CREDIBILITY OF THE APPLICANT

The defendant asserts that the undersigned Judge erred in finding the applicant a credible witness.

The applicant testified that before she started with CitiStaff, she did not have any knee pain. She just felt tired.⁷

She was asked whether, before her injury, she had treatment at Kaiser. She said yes, but it wasn't hurting.⁸

The applicant was referred to the Kaiser records and was asked if she went to Kaiser. The applicant testified that she recalls going. Stating that she just felt tired and that both legs were hurting. That Kaiser put a bandage on her right knee so the soreness would go away. However, she couldn't recall the date.⁹

The defendant points to the Kaiser records in which it is stated that the applicant, on July 20, 2015, was visiting Kaiser for right Knee Pain. The report states that the applicant was reporting no specific trauma or injury but had been having knee pain for three to four months.¹⁰

The applicant was seen at Kaiser again on August 10, 2015, where knee pain was reported, and it was reported that the applicant was able to bear weight but was using a cane to ambulate.¹¹

Subsequent to August 10, 2015, the applicant was seen at Kaiser on October 25, 2015, for a follow-up evaluation. The reports indicated that the

⁷ MOH/SOE 6/2/2021 EAMS Doc ID: 74264287, page 6, lines 2 to 4

⁸ MOH/SOE 6/2/2021 EAMS Doc ID: 74264287, page 6, lines 2 to 4

⁹ MOH/SOE 6/2/2021 EAMS Doc ID: 74264287, page 6, lines 1 to 7

¹⁰ DEFENSE EXHIBIT A Kaiser records, Pages 42 through 46

¹¹ DEFENSE EXHIBIT A Kaiser records, Pages 62 through 63

applicant had knee pain and included the comment that the applicant was able to bear weight but was using a cane to ambulate.¹²

The Kaiser records are not contradictory to the applicant's testimony. The applicant acknowledges having been treated at Kaiser and that the treatment included her knees.¹³

Furthermore, the applicant testified that when she started working for CitiStaff, she had arthritis but had no pain in her knee.¹⁴ The applicant's testimony that she did not have any knee pain before she started with CitiStaff, though vague, is not inconsistent with the Kaiser records as her statement can be construed to mean she was asymptomatic when she started at CitiStaff.

The defendant also points to the applicant's testimony wherein she was asked if she used a cane prior to working for CitiStaff, to which she answered no. The applicant was then asked to review the Kaiser records, in which it was noted that she used a cane to assist in ambulation. The applicant responded that she did not recall this.¹⁵

The undersigned Judge had the opportunity to observe the applicant while she provided this testimony and saw nothing that would indicate that the applicant was attempting to hide information and failing to recall details from seven years past.

The California Supreme Court has stated that the Legislature's command in section 3202 that the courts liberally construe the Act with the purpose of extending benefits for the protection of persons injured in the course of their employment governs all aspects of workers' compensation and applies to factual as well as statutory construction.¹⁶

The undersigned Judge does acknowledge that there is some inconsistency in the records. However, upon observation of the applicant's demeanor, while providing testimony, the undersigned Judge found no evidence that the applicant was intentionally coloring the facts in an attempt to blind the Judge to the truth. Furthermore, given the distance in time from the events in question to the applicant's testimony, the undersigned Judge determined that the inconsistencies were insufficient to taint the applicant's overall credibility.

¹² DEFENSE (sic) EXHIBIT A Kaiser records, Page 164

¹³ MOH/SOE 2/9/2022 EAMS Doc ID: 75210902, page 2 lines 15 and 16, and MOH/SOE 6/2/2021 EAMS Doc ID: 74264287, page 6, lines 4 to 7

¹⁴ MOH/SOE 2/9/2022 EAMS Doc ID: 75210902, page 2 lines 14 and 15

¹⁵ MOH/SOE 2/9/2022 EAMS Doc ID: 75210902, page 2, lines 22 to 25; page 3 lines 1&2

¹⁶ *Arriaga v. County of Alameda*, 9 Cal. 4th 1055, 1065

The defendant also asserts that the applicant's statement to Dr. Halbridge that she started having trouble walking approximately five months post-injury was dishonest.

The undersigned Judge believes this is a misstatement of the record as he could not locate such a statement in Dr. Halbridge's reporting. However, the record does show that the applicant reported to Dr. Halbridge that "[a]bout five months following her injury, she developed pain in her lower back, which she attributes to walking with an uneven gait."¹⁷

The applicant's statement about when she developed low back pain is not inconsistent with the record showing that she was having knee issues prior to working for CitiStaff. Nor does it demonstrate an attempt to deceive Dr. Halbridge and/or the undersigned Judge.

The defendant's final assertion is that the inconsistencies in the description of the mechanism of injury show the applicant is not a credible witness.

The first description in the records of the event of May 16, 2016, is contained in the Kaiser records when the applicant reported on May 17, 2016, a container fell on her right leg at work.¹⁸

The second description of the event is contained in the report of Dr. Jack Feldsher dated May 19, 2016, in which it was reported that while the applicant was working, a co-worker behind her dropped a container of lettuce on the back of her right leg.¹⁹ The report also noted a contusion to the right lower leg and right thigh.

Dr. Halbridge saw the applicant on August 12, 2017, at which time she reported that on May 16, 2016, she had a specific work injury when 3-4 plastic containers weighing about 25-30 pounds fell and struck the examinee's right posterior thigh.²⁰

At trial, the applicant testified that on May 16, 2016, she heard a bang and felt something, a container, maybe more, hit her lower right leg. The applicant stated that she turned and saw it was a container or two, maybe more, that had hit her. However, she didn't see what was in those containers as she was preparing the salad.²¹

There is a fifth description of the May 16, 2016 event contained in the deposition of Dr. Halbridge. In his deposition, Dr. Halbridge was shown a video

¹⁷ JOINT EXHIBIT 6 Report of Dr. Neil Halbridge, dated 8/12/2017 page 3 paragraph 5

¹⁸ DEFENSE EXHIBIT A: Kaiser records, various dates, page 424

¹⁹ JOINT EXHIBIT 3: Report from Irwindale Industrial Clinic, dated 5/19/2016.

²⁰ JOINT EXHIBIT 6: Report of Dr. Neil Halbridge, dated 8/12/2017, page 3

²¹ MOH/SOE 6/2/2021 EAMS Doc ID: 74264287, page 3, lines 1 to 5

of what is alleged to be the applicant being struck in the right calf by a plastic container. Dr. Halbridge stated that if the video was of the incident and the applicant, then he would amend his opinion of injury to include just the low back and right knee.²²

However, Dr. Halbridge concedes that the video shows an event occurring wherein a container hits the ground and then hits an individual in the right calf, who then reacts by pulling their leg away.²³ He notes that the individual does tense up her back muscles.²⁴

In reviewing the evidence submitted, the Undersigned Judge was required to keep in mind that no one, not even the applicant, witnessed and/or saw the event alleged to have caused the injury. It is only the applicant's attempts to explain what she felt but did not see that are contained in the records as descriptions of the event.

Given the nature of the event, the undersigned Judge determined that the applicant's attempts to describe the event was predicated on her knowledge of what was behind her and what she physically felt at the time of the incident. With this in mind, it is not surprising that the description of the event would vary in detail but would stay consistent in substance.

The undersigned Judge determined that even though the particulars concerning the objects striking the applicant changed in weight and number, this variance was not fatal and was insufficient to undermine the applicant's credibility when viewing her testimony as a whole.

Based on the above, there was insufficient evidence that the applicant was actively and intentionally altering the facts in a manner that would undermine her credibility.

Wherefore, the Undersigned Judge did not err in finding the applicant to be a credible witness.

MEDICAL REPORTS OF QME DR. HALBRIDGE

The defendant asserts that the Undersigned Judge erred in finding the Medical Reports of the QME Dr. Halbridge substantial medical evidence.

The basis for the defendant's assertion is its claim that the history and information provided by the applicant to Dr. Halbridge were inaccurate. As a result, the reporting of Dr. Halbridge is insubstantial medical evidence.

²² JOINT EXHIBIT 1: Deposition transcript of Dr. Neil Halbridge, dated 2/15/2019 page 10 lines 24&25; page 11 lines 1&2

²³ JOINT EXHIBIT 1: Deposition transcript of Dr. Neil Halbridge, dated 2/15/2019 page 11 lines 2 to 5

²⁴ JOINT EXHIBIT 1: Deposition transcript of Dr. Neil Halbridge, dated 2/15/2019 page 14 lines 2&3

It is well established that a medical opinion based on an inaccurate medical history will not constitute substantial evidence.²⁵

In reviewing the medical report of Dr. Halbridge, it is noted that the applicant did provide a description of the event, which was accurate in substance even if disputable as to specifics, i.e., number and weight of boxes.

Dr. Halbridge was able to evaluate the applicant in real-time and assess the veracity of her complaints as compared to her objective test result.

Dr. Halbridge was provided and reviewed the applicant's deposition, wherein the applicant stated that she had right knee pain two to three years prior to her deposition.²⁶

It is also noted that Dr. Halbridge reviewed the applicant's Kaiser Records, wherein the applicant's prior knee problems were discussed.

Further, a review of the reports of Dr. Halbridge shows no statements by the applicant during the evaluation that are in contradiction with the medical records Dr. Halbridge reviewed.

Based on the above, the medical reporting and opinions of Dr. Halbridge were based on an accurate history, diagnostic testing, and his evaluation of the applicant.

As such, the medical reporting and opinions of Dr. Halbridge are substantial evidence.

INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT

Defendant asserts that the undersigned Judge erred in finding that the applicant sustained an injury on May 16, 2016, arising out of and in the course of her employment with CitiStaff Solutions, Inc. to her lumbar spine, right leg, and right knee.

Dr. Halbridge diagnosed the applicant with a contusion to her right posterior thigh, right low back strain with multilevel degenerative disc disease, and right knee chondromalacia patella with mild degenerative joint disease.²⁷

²⁵ Bishop v. Workers Compensation Appeals Bd., Lucky Stores, 63 Cal. Comp. Cases 1330, 1331 (Cal. App. 3d Dist. November 25, 1998)

²⁶ JOINT EXHIBIT 6: Report of Dr. Neil Halbridge, dated 8/12/2017, page 8

²⁷ JOINT EXHIBIT 6: Report of Dr. Neil Halbridge, dated 8/12/2017, page 9

As to causation, Dr. Halbridge stated that the lumbar spine and right lower extremity resulted from the specific work injury of May 16, 2016, superimposed upon the natural progression of multilevel degenerative disc disease.²⁸

As to the right knee, Dr. Halbridge stated that the right knee was a compensable consequence injury secondary to injury to the lumbar spine with right lower extremity and altered gait superimposed upon the natural progression of underlying preexisting mild degenerative joint disease.²⁹

In Dr. Halbridge's subsequent deposition, he was shown the video that allegedly showed the incident. Dr. Halbridge stated that if he assumed the video was of the applicant, it did demonstrate that the event did occur and that based on the reaction of the individual in the video would have resulted in injury to the lumbar spine and knee.³⁰

Having found that the applicant was a credible witness and that the medical reporting and opinions of Dr. Halbridge were substantial evidence, the undersigned Judge was not in error in finding that the applicant had sustained an injury on May 16, 2016, arising out of and in the course of her employment with CitiStaff Solutions, Inc. to her lumbar spine, right leg, and right knee.

VI

RECOMMENDATION

For the reasons stated above, it is respectfully recommended that the defendant's petition for reconsideration be denied.

DATE: May 16, 2022
Oliver Cathey
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

²⁸ JOINT EXHIBIT 6: Report of Dr. Neil Halbridge, dated 8/12/2017, page 10

²⁹ JOINT EXHIBIT 6: Report of Dr. Neil Halbridge, dated 8/12/2017, page 11

³⁰ JOINT EXHIBIT 1: Deposition transcript of Dr. Neil Halbridge, dated 2/15/2019 page 14, lines 1 to 4, page 13 2 to 5 & 18 to 20