

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

**MIGUEL GALVAN, *Applicant***

**vs.**

**ROY MILLER FREIGHT LINES; NATIONAL INTERSTATE, *Defendants***

**Adjudication Number: ADJ12577928  
San Diego 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 and opinion on decision 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 and opinion on decision, both of 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/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

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



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

**AUGUST 9, 2021**

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

**MIGUEL GALVAN  
COLEMAN CHAVEZ & ASSOCIATES  
PERONA LANGER BECK SERBIN & HARRISON**

**PAG/bea**

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

## INTRODUCTION

|                               |                                 |
|-------------------------------|---------------------------------|
| <u>Date of Injury:</u>        | <u>March 13, 2019</u>           |
| <u>Age on DOI:</u>            | <u>37</u>                       |
| <u>Occupation:</u>            | <u>Truck Driver</u>             |
| <u>Identity of Petitioner</u> | <u>Defendant</u>                |
| <u>Timeliness:</u>            | <u>The petition is timely</u>   |
| <u>Verification:</u>          | <u>The petition is verified</u> |
| <u>Date of Decision:</u>      | <u>5/14/2021</u>                |

### Petitioner's Contentions

1. That the Worker's Compensation Judge acted in excess of his powers;
2. That the evidence does not justify the Findings of Fact;
3. That the Findings of Fact do not support the Order or Decision or Award

### FACTS

Applicant was employed by defendant as a truck driver on March 12, 2019. Applicant alleged that on the date of his alleged injury he was unloading a truck trailer when he fell and sustained injury to both of his knees. The employer denied injury and the case came to trial regarding injury AOE – COE.

At trial, applicant testified regarding the manner in which his injury occurred. The employer presented witnesses who stated they had no knowledge of such an injury. The parties had not utilized the procedures in labor code section 4060 to obtain a medical evaluation to determine the nature and extent of the alleged injury.

Therefore, there was no medical evidence submitted at trial. Pursuant to labor code section 5701, the WCJ ordered applicant to be examined by Dr. John Lane for the purposes of determining whether applicant had sustained an injury, and whether the mechanism of injury described by applicant is consistent with the objective findings. Dr. Lane issued two reports (WCAB exhibits X and Y). In his reporting, Dr. Lane found that applicant has a posterior horn medial meniscus tear of the right knee and that applicant requires treatment. Dr. Lane further concluded that “the

mechanism of injury which is alleged would have caused the current symptomsthat he has.”

Thereafter, the WCJ issued an opinion which found applicant’s testimony to be more credible than that of Defendants witnesses, and found that applicant had sustained the injury as alleged.

### **DISCUSSION**

Defendant’s petition contains two pages of argument. The essence of these arguments is that the WCJ should have found defendant’s witnesses to be more credible than applicant. The WCJ was presented at trial with conflicting testimony regarding whether applicant had sustained an injury. The defense testimony consisted of two persons who both stated that they did not witness the injury in question. Applicant stated that he was alone in the truck’s trailer when the injury occurred.

Therefore, after having had the opportunity to observe the demeanor of all witnesses, the WCJ has found that applicant’s testimony is more credible.

This is further supported by the medical reporting of Dr. Lane (WCAB exhibits X and Y), who concluded that applicant’s history of injury is consistent with the objective findings of a torn meniscus. It should be noted that Dr. Lane stated that this is not a serious injury, however, medical treatment is required.

### **RECOMMENDATION**

It is recommended that reconsideration be denied.

DATED: 06/14/21

**ANDREW J SHORENSTEIN**  
WORKERS’ COMPENSATION  
ADMINISTRATIVE LAW JUDGE

## **OPINION**

Having had the opportunity to observe the demeanor of the witnesses presented by both parties, and to assess their credibility, as well as to carefully consider the documentary evidence, the workers' compensation administrative law judge (WCJ) concludes that applicant has met his burden of proof on the issues presented. In so doing, the WCJ has resolved conflicts in the evidentiary record in applicant's favor in keeping with his assessment of the credibility of the various witnesses. *Garza v. WCAB (1970) 35 Cal. Comp. Cases 500.*

The WCJ has amended the date of injury, consistent with his powers granted by the WCAB and previous case law, to conform with applicant's credible testimony at trial regarding the actual date of injury, the manner in which the injury occurred, and his reporting of his injury to the employer prior to termination of his employment.

In addition, the WCJ has relied upon the medical reporting of Dr. John Lane (WCAB exhibits X and Y). The WCJ finds these reports to be substantial evidence in regards to the issue of the nature and extent of the industrial injury as alleged by applicant. The objective MRI findings in the reporting of Dr. Lane are consistent with applicant's description of the injury in question.

DATED: May 14, 2021

**ANDREW J SHORENSTEIN**  
**WORKERS' COMPENSATION**  
**JUDGE**