

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

ANGELICA JUAREZ, *Applicant*

vs.

**BARNETT TOOL & ENGINEERING; ALLIANZ GLOBAL CORPORATION,
*Defendants***

**Adjudication Number: ADJ11710208
Oxnard 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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 7, 2022

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

**ANGELICA JUAREZ
LAW OFFICES OF JOSEPH I. GRAHAM
LEWIS BRISBOIS BISGAARD & SMITH**

PAG/pc

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

Angelica Juarez, a 61-year-old assembler for Barnett Tool and Engineering, filed an Application for Adjudication on 11/24/18, alleging that she sustained injury arising out of and in the course of employment to her neck, low back, and left knee as a result of a fall off a stepstool. The claim was denied by the employer.

Applicant has filed a timely, verified Petition for Reconsideration of the Findings and Order dated 1/11/22 alleging that:

1. By the order, decision, or award, the Board acted without or in excess of its powers, and;
2. The evidence does not justify the findings of fact, and;
3. The findings of fact do not support the order, decision, or award.

Petitioner contends that the Court erred in determining that Applicant was not a credible witness and thus the finding that she did not sustain injury AOE/COE.

II.

FACTS

Petitioner reported an incident involving a fall to human resources manager Jennifer Darling on 11/8/18, but declined medical treatment (Summary of Evidence 3/23/21, page 4). An accident report was filled out by Ms. Darling which noted that the mechanism of injury was reported to have occurred as a result of Petitioner hitting her knee on a metal shelf (Defense B). The incident was unwitnessed (Defense B). The accident report stated that the time was 10 am. Petitioner ultimately requested medical treatment five days later on 11/13/18, and the employer referred her for medical treatment (Summary of Evidence 3/23/21, page 4).

Petitioner was initially seen by Dr. Figueroa on 11/13/18 (Applicant's 2) and returned to work with restrictions. Petitioner returned to Dr. Figueroa on 11/15/18. In conjunction with that visit, the doctor issued a report (Joint AA) wherein Petitioner gave a history of a fall off a two step ladder on to her left knee which struck the concrete floor. Under the caption of "EXAM" it was stated: "Hysterionic (sic) behavior noted and lack of physical findings inconsistent (sic) with HX. Left sided body hypoesthesia (50%) ???"

The claim was denied by the employer on 12/3/18 (Defense A) on the grounds that inconsistent information was provided as to the mechanism of injury as well as the notation in the report from Dr. Figueroa dated 11/15/18 regarding the findings being inconsistent with the history.

Petitioner was evaluated by Panel Qualified Medical Examiner Richard Rosenberg on 6/25/19 (Applicant's 1). Dr. Rosenberg's report reflects a history that Petitioner fell while she was ascending a two step stool and as a result she fell flat on her back. Dr. Rosenberg found the injury to be industrially related.

On the first date of trial which occurred on 3/23/21, Jennifer Darling testified that she came to the conclusion that Petitioner's claim was fraudulent because of four different statements provided to various individuals regarding the mechanism of injury including the initial report that she bumped her knee on a metal shelf, a statement to Mike Taylor that she bumped her knee on the stepstool, the history to Dr. Figueroa that she fell off a stepladder and fell on the concrete floor, and another statement (likely to Dr. Rosenberg) that she fell on her knee and fell backwards on the concrete floor (Summary of Evidence 3/23/21, page 6).

Petitioner testified on the third day of trial which took place on 11/9/21. Petitioner testified that on the date of the alleged injury, she used a step stool in an attempt to place parts back on a shelf (Summary of Evidence 11/9/21, page 4). She also testified that she was in the process of descending the step stool when she slipped and fell (Summary of Evidence 11/9/21, page 4). Additionally, she had not complete the task of returning the parts to the shelf when she fell, but could not remember if the parts she had been attempting to return were in her hand at the time of the fall (Summary of Evidence 11/9/21, page 4). She also testified that that her back and left knee struck the ground, and that she fell backwards on half of her back (Summary of Evidence 11/9/21, pages 4 and 5). In addition to the testimony that her left knee struck the ground, she also testified that her left knee hit the bottom of the stepstool. Petitioner testified that she punched in her time card at 7:30 and was injured soon after her alleged fall (Summary of Evidence 11/9/21, page 4). Finally, she testified that she reported the injury to Ms. Darling at approximately 8 am (Summary of Evidence 11/9/21, page 5).

Upon being questioned about whether Petitioner had been reprimanded about using the wrong adjusters, she testified that she didn't know what that (an adjuster) was. In a follow up question, she testified expressly that there was a problem with the adjusters, using a term that she previously claimed no knowledge of ((Summary of Evidence 11/9/21, page 5).

Co-worker Sandro Guzman also testified on 11/9/21. Mr. Guzman testified that his work station is situated directly across from Petitioner's work station, but that he did not see any accident

(Summary of Evidence 11/9/21, page 2). Mr. Guzman was not certain as to whether he was present at the time of the alleged incident, but that he normally arrives at work at 7:30 am (Summary of Evidence 11/9/21, page 2).

Defendant submitted pictures of the area where the injury allegedly occurred (Defense C). The pictures depict an area between the shelf and Petitioner's work space which was described by Sandro Guzman in his testimony to measure approximately three feet (Summary of Evidence 11/9/21, page 3).

The Court issued a Findings and Order dated 1/11/22 wherein it was found that Applicant did not sustain injury AOE/COE and was ordered to take nothing.

III. **DISCUSSION**

CREDIBILITY

In a case of disputed causation, the credibility of the Applicant is a key factor in the determination of whether an industrial injury occurred. In cases where Applicant's testimony is not deemed to be credible, the Court may find that Applicant did not meet her burden to prove a compensable injury. Internal and external (with the medical record) contradictions in Applicant's testimony can lead to the finding of no injury¹.

At the outset, it must be noted that the alleged injury in this case was unwitnessed. As such, the veracity of Petitioner's testimony was crucial to the determination of injury. Here, there were multiple discrepancies between Petitioner's testimony with the medical and evidentiary record which when taken as a whole with other evidence, add up to the conclusion that Petitioner's testimony is not believable.

The first argument raised in the Petition is that the Court erred relied in part on the report of Dr. Figueroa dated 11/13/18 in making the credibility determination. Petitioner argues that Dr. Figueroa stated that the findings which

¹ *Los Angeles Unified School District v. WCAB (Henry)* (1981) 46 CCC 94; *Nash v. WCAB* (1994) 59 CCC 324; *Alvarez v. WCAB* (1997) 62 CCC 677 (writ denied); *Carroll v. WCAB* (1973) 38 CCC 81 (writ denied); *Flusher v. WCAB* (1966) 31 CCC 199 (writ denied); *Randhawa v. WCAB* (2003) 68 CCC 1563 (Court of Appeal opinion unpublished in official reports); *Myers v. WCAB* (1996) 61 CCC 888 (writ denied); *Pino v. WCAB* (1992) 57 CCC 62 (writ denied); *Lopez v. WCAB* (2012) 77 CCC 741 (writ denied); *Lee v. WCAB* (2012) 77 CCC 847 (writ denied); *Atkinson v. Vanguard Car Rental*, 2013 Cal. Wrk. Comp. P.D. LEXIS 589; *Daza v. Signature Services/Newport Federal*, 2015 Cal. Wrk. Comp. P.D. LEXIS 659; *Walle v. WCAB* (2018) 83 CCC 915 (writ denied); *Fobbs v. WCAB* (2014) 79 CCC 471 (writ denied); *Ouyang v. WCAB* (2014) 79 CCC 1222 (writ denied); *Thomas v. WCAB* (2015) 80 CCC 487 (writ denied); *Sanchez v. WCAB* (2016) 81 CCC 768 (writ denied); *Estrada v. WCAB* (2017) 82 CCC 387 (writ denied); *Garcia v. WCAB* (2017) 82 CCC 614 (writ denied); *Machado v. WCAB* (2017) 82 CCC 914 (writ denied); *Chavez v. Sysco*, 2017 Cal. Wrk. Comp. P.D. LEXIS 532; *Flores v. Los Angeles Southwest College/Los Angeles Community College District Child Development Center*, 2019 Cal. Wrk. Comp. P.D. LEXIS 269; *Tallant v. National Express Corp.*, 2021 Cal. Wrk. Comp. P.D. LEXIS 215.

were inconsistent with the history only pertained to the finding of left sided hypoesthesia, and not to the injury to the neck back and knee. The Court disagrees with Petitioner's assessment in that regard. Dr. Figueroa examined Petitioner relative to all of her physical complaints. The mention of histrionic behavior and lack of physical findings inconsistent with her history was listed under the exam heading as a separate entry, similar to a bullet point, than the mention of the Hypoesthesia, which appears to have been listed separately on a different line. Any doubt in that regard should have been resolved by deposing Dr. Figueroa, but no such deposition occurred in this case. In any event, the Court's focus in citing this report was not causation itself, but credibility. Dr. Figueroa noted that Petitioner exhibited histrionic behavior during his exam. Webster's dictionary defines the term "histrionic" as: deliberately affected: overly dramatic or emotional: theatrical. Thus Dr. Figueroa was of the impression that Applicant's presentation was not genuine. This presents a credibility concern. The fact that Dr. Figueroa concluded that the histrionic behavior in conjunction with a lack of physical findings were inconsistent with her history raises the credibility concern to a different level. Thus, whether or not Dr. Figueroa was referring to Petitioner's orthopedic complaints as opposed to just the left sided hypoesthesia is not a significant distinction as it pertains just to the determination of credibility.

Petitioner also argues that the Court erred in considering that Dr. Rosenberg obtained a history from Applicant that she "landed flat on her back" and that she fell as she was "ascending the two step stool" as factors in determining Petitioner's credibility. Petitioner's argument is that it is not clear as to the circumstances surrounding the interpreters used in the case. But there was no argument or testimony provided at trial tending to demonstrate any problem in that regard. To the contrary, Applicant relies on the reporting of Dr. Rosenberg to prove injury. Thus, if Petitioner's argument is to be accepted, it creates yet another ground on which to support a finding of no injury, since Dr. Rosenberg's opinion clearly could not be relied upon if the interpreter was not qualified. However, if there is was an issue with the communication between Applicant and Dr. Rosenberg, those facts should have been brought out in deposition testimony, or at the very least through Petitioner's testimony. But again, just as with the reporting of Dr. Figueroa, no deposition was taken to clarify any alleged problems with the interpreting. But assuming no communication/interpretation issue, the history regarding the mechanism of injury to Dr. Rosenberg is significantly at odds with Petitioner's trial testimony.

Petitioner argues that the Court erred in considering Petitioner's inconsistent testimony regarding her knowledge of the term adjuster. Frankly, this inconsistency was not a major factor in the decision, but just a small piece of information that added onto an already substantial number of factors negatively impacting Petitioner's credibility. However, it was an odd sequence of testimony which potentially could have been clarified by one of the reasons proposed by Petitioner. However, counsel chose not to clarify this glaring

inconsistency at the time of trial. The inconsistency did not regard a substantive issue, so it did not carry great weight in the credibility determination, but did serve as another example of the questionable nature of Petitioner's testimony. Had the testimonial inconsistency not occurred, the decision would not have been different.

Finally, Petitioner argues that the Court erred in determining that Applicant's testimony regarding whether she had items in her hand at the time of the fall was inconsistent. But the Court did not find an inconsistency, but raised a credibility concern. The Summary of Evidence dated 11/9/21 is clear. Applicant testified that she was in the process of putting screws and elbows back on the shelf, but that she fell as she was descending the step stool. She also testified that she had not put the parts back on the shelf before she fell. She also testified that she didn't remember if the parts were in her hand when she fell. The entire sequence of testimony is questionable and raises serious credibility concerns. The story has too many holes that were left unexplained to constitute reliable testimony. For example, the testimony as given reflects that she ascended a step stool to place parts back on a shelf, but didn't actually complete this task for some unknown reason. Then, while descending the step stool, she fell, but does not know whether she was holding the parts that she did not put back on the shelf were in her hand or not. Petitioner equates this lack of memory of this supposedly significant event as tantamount to whether he remembers what he had for lunch yesterday, or what he watched on television. It is not the same. Applicant was not being asked to recall mundane or insignificant events such as the weather that day, or what she had for breakfast. Her memory was strong enough for her to remember that she didn't put back the parts before she fell. It's not a stretch to suggest that she should have been able to remember whether the parts were in her hand during the fall. Again, counsel could have attempted to clean up this testimony at the time of trial, but chose not to do so.

Petitioner concludes that the inconsistencies noted by the Court are not inconsistencies, but variations of the same event. It is true that these inconsistencies can be referred to as variations. But there comes a point when a story has so many variations, that the occurrence of the event itself is suspect. That is the case here. Was she going up or going down? Did she hit her knee on the shelf, or the floor, or the stepstool. Did she fall flat on her back in a three foot space or did she fall on her side in a three foot space? Did she report the injury at eight or at ten? Many variations indeed.

However, no matter what version of Applicant's story is believed, the pictures of the site where the injury allegedly occurred places further doubt as the veracity of her claim. Clearly there is no way Petitioner fell backward. Had that occurred, she likely would have hit her head on the cart behind her. Thus, the numerous inconsistencies regarding the mechanism of injury, the lack of witnesses, the red flag raised by Dr. Figueroa, and the questionable plausibility

of this incident raised by the photographs of the work site, were just too much for the Court to ignore in deciding this case.

IV.
RECOMMENDATION

For the foregoing reasons, the undersigned WCALJ recommends that the Petition for Reconsideration be DENIED.

DATE: 3/1/22

Jeffrey Morgan

WORKERS' COMPENSATION

ADMINISTRATIVE LAW JUDGE