WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DANIEL MODUGNO, *Applicant*

vs.

PRESSURE PROFILE SYSTEMS; SECURITY NATIONAL INSURANCE, administered by AMTRUST, *Defendants*

Adjudication Number: ADJ12496855
Van Nuys District Office

OPINION AND DECISION AFTER RECONSIDERATION

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.

In the Findings of Fact of February 25, 2021, the Workers' Compensation Judge ("WCJ") found that applicant, while employed as an engineer/AC installer on August 10, 2019, did not sustain injury arising out of and occurring in the course of employment ("industrial injury") to his low back, shoulders or cervical spine.

Applicant filed a timely petition for reconsideration of the WCJ's decision. Applicant contends that the employer's testimony and medical reports justify a finding that applicant sustained an industrial injury as alleged, that the employer's testimony confirms the mechanism of injury described by applicant, that the medical reports likewise justify a finding of industrial injury, that applicant's testimony about his injury is corroborated by text messages to co-workers and contemporaneous medical records, and that even if applicant's evidence is "self-serving" as characterized by the WCJ, it is admissible, reliable, corroborated, and unimpeached.

Defendant filed an answer.

The WCJ submitted a Report and Recommendation ("Report").

INTRODUCTION

It is applicant's claim that while working for Pressure Profile Systems on Saturday August 10, 2019, he hurt his low back, shoulders and neck. It is clear that resolution of this claim depends

upon the trial testimony of the witnesses who observed the events that happened that weekend, including applicant, Mr. Jae Son (the owner of Pressure Profile Systems) and Mr. Steve Sanchez (who handled personnel matters). However, the testimony of these witnesses must be weighed in conjunction with the medical records closest in time to the alleged injury, which tend to corroborate applicant's claim (further discussed below). Based on our review of such evidence and the rest of the record, we are persuaded that the preponderance of evidence justifies a finding that applicant, while employed as an engineer/AC installer on August 10, 2019, sustained an industrial injury to his low back, shoulders and cervical spine. (Lab. Code, §§ 3202, 3202.5.) Accordingly, we will rescind the WCJ's decision, substitute our finding that applicant sustained an industrial injury as alleged, and return this matter to the trial level for further proceedings and determination of benefits by the WCJ.

As a preliminary matter, we observe that applicant has requested a trial transcript, which to date has not been forthcoming. Applicant states in his petition for reconsideration that his contentions are "based solely on the Summary of Evidence [SOE] provided by WCJ Glass." (Petition for Reconsideration, p. 2:8-10.) Otherwise, applicant's petition does not allege that there are specific instances in which the SOE may differ from the trial transcript, in a way that would affect the outcome. Therefore, the Board is not obligated to review the trial transcript, if or when it is produced. (See *National American Ins. Co. v. Workers' Comp. Appeals Bd.* (*Chezem*) (1996) 61 Cal.Comp.Cases 289 [writ den.], citing *Allied Comp. Ins. Co. v. I.A.C.* (*Lintz*) (1961) 57 Cal.2d 115 [26 Cal.Comp.Cases 241].)

FACTUAL BACKGROUND RELEVANT TO CLAIMED INJURY

At trial of this matter on February 3, 2021, applicant called Mr. Son as an adverse witness, who testified as follows about the events of August 10, 2019:

> The witness texted the applicant to help with an air conditioning unit.[1] He had discussed it with the applicant the day before. Apparently some ceiling tiles hadn't been put in properly, and the company that was hired to do that didn't complete the job at the new location. The applicant volunteered to go in on Saturday morning to work on the ceiling tiles, but then the AC unit came in and the applicant agreed to come in and help the witness install it. […] The witness had bought a large wall-mounted air conditioning unit. He

[1] At trial, applicant introduced Exhibit 12, which consists of photocopies of various text messages purportedly concerning injury-related events. The contents of the exhibit are nearly unintelligible, but to the extent they can be understood, it appears there are no texts dated Saturday August 10, 2019 in which applicant texted Mr. Son or Mr. Sanchez that he had hurt himself at work that morning.

had come up with a make-shift solution for the large unit in the afternoon before he had texted the applicant to help out with the unit. The applicant said he would come in and then seemed to change his mind. The applicant eventually came in early to prepare the area. He moved work benches and other things and covered equipment with a tarp. He came in on 8/10/[19][2] to help out the witness. The witness got there about 9:00 or 10:00. The applicant had apparently been there since about 8:00. The witness did most of the work and he cut the drywall with a table saw. He needed the applicant to help lift up the unit. […] He thinks that the ladders were put in place by the time he got there. The witness was standing on a workbench. He recalls putting the air conditioning unit on the ladder. The location to put up the unit was high. The air conditioning unit was up some 11 feet. They lifted the air conditioning unit to the ladder, and then from there they lifted it up to the location. There was no discussion afterwards about any injury. They put the unit in the wall. The applicant didn't tell the witness that he had hurt him. After the unit was installed, it was a little crooked. The witness went up with some drywall and sealant and worked on the problem. The applicant grabbed a beer from the fridge and watched as the witness worked. He doesn't recall when the applicant left.

The applicant reported the injury several weeks later, according to his recollection. He reviewed an e-mail dated 8/17/[19], reporting the injury. He then determined that the first time he knew about the injury was on 8/17/[19]. He did not give the applicant a claim form regarding the injury. Steve Sanchez in HR was to deal with such things. He doesn't even know what a claim form is.

Steve handles matters with personnel. He knows that Steve met with the applicant a number of times. The witness did not send the applicant to get medical treatment. He didn't send him for medical treatment because the applicant wasn't injured. The witness has a doctorate in engineering. He is not a medical doctor. He performed no testing on the applicant between 8/10/[19] and 8/17/[19]. The alleged injury occurred on 8/10/[19], and it doesn't make sense to the witness. They moved the air conditioning unit together to its location.

(SOE, 2/3/21, pp. 5:9-6:12.)

Applicant's trial testimony about the circumstances of the alleged August 10, 2019 injury was as follows:

[2] The Summary of Evidence ("SOE") repeatedly refers to 2017 as the year the injury-related events took place. However, the correct year is 2019, which we have inserted into our references to the SOE as needed.

> On 8/9/[19], he was driving home; it was a Friday. Jae [Mr. Son] wanted him to help out and install an air conditioning unit on Saturday. The applicant did go in. He prepared the area for the unit. He moved tables and benches and he put up two ladders. Dr. Son was not there. He was there about one and a half or two hours prior to Dr. Son's arrival.
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> The unit to be installed was about 11 feet from the ground. They needed to put a hole in the wall. The area also had to be reinforced to support the AC unit. They framed the wall and the hole. They picked up the unit. They put the unit on top of the six-foot ladders. Applicant was not able to use his hands to take it up there.[3] Jae left the ladder to go get some tools. The applicant almost fell. He stabilized the ladder to hold the unit. He had already hurt himself by that point. He told the employer that, "You hurt me." They went ahead because he had to install the unit. The applicant was in pain. He worked through the pain to install the unit. He finished installing the unit. He was almost crying, he was in so much pain. He went to get a beer when they were done. He knew he was hurt. He told Jae, "You hurt me." He went into work that day because Jae threatened his employment if he didn't go in. After the beer, he went home.
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> He called Steve Sanchez when he got home. He iced his back and went to bed. After he woke up, he told Mr. Sanchez he was hurt at work. Steve said, "Don't say anything. Don't tell anyone."
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> He went to an urgent care by his house on 8/13/[19]. It was called Torrance Urgent Care. He got a report from the doctor. He scanned it and e-mailed it to the employer. He went to the urgent care one time. He then went to Harbor UCLA. He was in severe pain. He felt pain in his mid-back, lower back and shoulders, along with his neck.

Upon cross-examination, applicant testified in relevant part as follows:

> 8/10/[19] was a Saturday. He left the location about noon. He was scheduled to return on 8/12/[19], on Monday. He reported to work.
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> He saw the employer on 8/11/[19]. He met with Steve Sanchez. He was going to move tables to his house. The applicant wanted the tables in his garage. He took them. He did not go see a doctor on 8/10/[19] or 8/11/[19]. He didn't see a doctor on 8/12/[19].
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> (SOE, 2/3/21, pp. 9:24-10:4.)

[3] It appears the implication of this testimony is that applicant could not grasp the ladder because his hands were holding the air conditioner as he climbed the ladder.

Mr. Steve Sanchez, who handled personnel matters for the employer, is a lifelong friend of the applicant. Mr. Sanchez testified about various post-injury events as follows:

> The applicant worked on the construction of the newer location. He cleaned up and prepared the building. They all helped out. He was aware that the applicant went into work on 8/10/[19]. He knows that the employer needed help that day. [Mr. Sanchez also] needed help tearing up his bathroom. He wanted to know if the applicant could help him with the shower doors. He knows that the applicant had helped [Mr. Son] at the warehouse.
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> The applicant didn't tell the witness he was hurt on 8/10/[19]. The applicant came over to his house the next day, as they needed to get the shower doors installed, and he helped him with the process of fixing up the bathroom.
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> On 8/13/[19], which would be Tuesday, he got a note from an urgent care center. He knows he got a note also on 8/31/[19] that said the applicant could return to work. He doesn't remember the first note, however. The witness [here Sanchez apparently was referring to the applicant] was not suspended from the employer. There was no injury mentioned by the witness.
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> On Sunday [the day following the alleged injury] the applicant carried large boards from the employer's location. He used the witness' Yukon. He drove the boards to the applicant's house and delivered them. The applicant did all of the lifting himself.
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> On Monday he could tell that [Mr. Son] and the applicant were not getting along. The applicant was telling him that [Mr. Son] was not treating him right. The witness was trying to help the guy, and he said that the employer was hurting his back. Apparently there was a butt dial that occurred, and it recorded the conversation between Mr. Sanchez and the applicant. Afterwards, there was some conversation about a Workers' Comp claim. There was nothing about a Workers' Comp claim that came up until later.
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> The applicant, during the ["butt dial"] conversation, was complaining about how [Mr. Son] was hostile to him. Apparently the applicant was trying to put some compressor lines on the wall outside, and the applicant was upset about [Mr. Son's] suggestions as to how to do this. He did, during the conversation, mention that his back was hurt, but he did mention it only briefly during a 40-minute conversation. He did mention that his back was hurting that Monday.
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> (SOE, 2/3/21, p. 11:3-24.)

Turning to the medical evidence, we note the medical records of UCLA Harbor Medical Center show that applicant visited there on August 21, 2019. There is a history of injury in the "outpatient note" stating that applicant had an onset of back pain one week before the visit. The history also states in relevant part: "CEO of company instructed him to install AC system at new building, then patient lifted a very heavy AC unit and since [then] his back has been hurting. UCC visit in Torrance- gave him ibuprofen and some other medication that sedated him. The location where the incident occurred was at work." The same medical records show that applicant was diagnosed with lumbar strain at the time. (Exhibit 11, EAMS p. 2.) These records also include an "emergency documentation" note with a "brief history/exam MSE" indicating that applicant said, "he injured his back at work on August 10, 2019 while installing and lifting air condition unit [,]" with the note further confirming that applicant had been seen at an urgent care center one week before he visited the UCLA Harbor Medical Center. (Exhibit 11, EAMS p. 3.)

The first full narrative report in evidence is dated September 19, 2019, authored by Dr. Brodie, an orthopedic surgeon. This report includes a history of injury that has some added details, yet the mechanism of the alleged injury is consistent with the trial testimony and UCLA Harbor Medical Center records discussed above:

> On August 10, 2019, the project [the applicant] was working on was completely out of the scope of his normal duty activities. He was injured installing a commercial air conditioning unit. "They had me doing heavy construction work for three months which was not my normal duties, office work." He states they had him performing these duties to save money. He states, "The day before this incident occurred, I received a text from the owner of the company asking me to come in on Saturday to install this air conditioning unit because the bids for others were too high." He again states, "I replied to his text by telling him that this unit is too big and too heavy." He was going to do the work with the help of the owner. He states, "When I refused, he threatened to fire me. I felt forced and went in to help him to do [it]." The unit was installed. He indicates the unit was very heavy, maybe over 100 pounds. It had to be lifted and installed 10 feet off the ground. Therefore, he had to climb a ladder. "I got it to the top of the ladder and had to hang onto it for a while, while he went to get some tools. I hung on with all my strength to prevent it from falling." The unit was eventually installed. "While I was lifting the unit above my head my back was already hurting. He asked me if I was okay. I told him no, you hurt me. I was in considerable pain." When he went home, he iced his back and with a heating pad he alternated between ice and heat on his lower back.

> "I went back to work on Monday back to the office." The patient apparently put a few tiles in a ceiling to hide bad electrical work, but did not continue when he was confronted by the owner. He remained at work until the end of his work day performing other construction work, office-type work.
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> On Tuesday, he went to work but because of his bad back he left early and went to the doctor. He went to urgent care in Torrance. "They said I had messed my back up when I told them what happened on the Friday [sic] before." Urgent care put the patient off work and provided him with medication. X-rays were obtained. He is not sure if he received an injection. "I was hurt on the 10th and [the urgent care visit] was on the August 13, 2019."
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> (Exhibit C, p. 3.)

Having recorded the above history of injury, Dr. Brodie diagnosed applicant with "acute strain/sprain of the lumbar spine." (Exhibit C, p. 9.)

Dr. Nissanoff, an orthopedic surgeon, served as the Panel Qualified Medical Evaluator (PQME) in this matter. The doctor's first comprehensive report is dated May 5, 2020, and it includes the following history of injury, as related by applicant:

> The applicant reports that on August 10, 2019, he was "forced to lift and install an industrial grade air-conditioning unit". He was threatened with termination if he did not lift the massive air-conditioning unit. He and the owner lifted the unit which weighed in excess of 100 lbs. and as he began to climb a ladder without the use of his hands he noted pain in his neck, shoulders and back. While the unit was on top of the ladder, the owner walked away and the applicant had to reach and re-grip the unit in order to prevent it from falling.
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> He was then forced by the owner to lift the unit by himself, while on the ladder, over his head and install the air-conditioning unit. He noted severe pain in the neck, shoulders and back. He worked for a total of six hours on the day of the injury. That evening he contacted human resources and reported that he had sustained an injury while lifting an air-conditioning unit. He was advised not to tell anyone. He was not offered medical care.
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> The applicant continued to work the next two days. His last day of work took place on 08/12/2019, a Monday. He mentioned his industrial injury to two different coworkers. He was supposed to have been doing ladder work, but he did not do so due to severe pain in the back. He was sent to Home Depot to buy hardware.

> On 08/13/2019, he followed up with Torrance Urgent Care where he complained of low back pain, his chief complaints at that time. He was evaluated, provided with a prescription for a pain reliever and advised him to follow-up with his primary care physician. He was placed on temporary total disability.
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> (Applicant's Exhibit 1, pp. 2-3.)

DISCUSSION

At the outset, we take note that the WCJ does not dispute the fact that applicant probably sustained some kind of injury around the time of the employment events in question. This is because the WCJ states in his Report, "[I] was left with the impression that *applicant's injury* either occurred during the lifting of countertops for his own use [the day after the alleged industrial injury]*, or by cause or means unknown.*" (Report and Recommendation, p. 4, italics added.) In light of the WCJ's frank acknowledgment that applicant probably sustained an injury during the weekend in question, we review the record mindful that applicant need only prove he sustained an employment-related injury on Saturday August 10, 2019; he need not disprove that he sustained an injury at some other point during the weekend. (Lab. Code, § 3202.5.)

Reviewing the trial testimony and medical records excerpted before, the testimony of the three percipient witnesses establishes that applicant and Mr. Son worked together on Saturday morning, August 10, 2019, when together they lifted a heavy air conditioner about eleven feet to its installation point, high on a wall. Applicant testified that he used a ladder or ladders, while Mr. Son stood on a work bench. But there is no dispute they worked together to lift a heavy air conditioner, with applicant apparently ascending the ladder without using his hands because they were holding the air conditioner. Applicant testified that he hurt his back and it was very painful. Though Mr. Son denied that applicant hurt himself or told Mr. Son about it, applicant testified that he worked through the pain. In that case, Mr. Son would not have been aware of any injury at the time.

According to Mr. Sanchez's testimony about the "butt dial," by Monday (the second day after the claimed injury) applicant told Mr. Sanchez that he had hurt his back. There are no urgent care medical records in evidence. However, applicant's testimony and that of Mr. Sanchez (who received a note from urgent care) establish that applicant sought and received treatment at a Torrance urgent care facility on Tuesday, August 13, 2019 - the third day after the injury. Mr. Son

admitted he received an email report of the injury on August 17, 2019, one week after applicant and Mr. Son lifted the heavy air conditioner together.

We are persuaded that the record as just described constitutes a preponderance of evidence establishing that on Saturday August 10, 2019, applicant sustained industrial injury to his low back, right and left shoulders, and cervical spine, as confirmed by Dr. Nissanoff. (See applicant's Exhibits 1 and 2.) Although Mr. Son's testimony, standing alone, might suggest that applicant did not sustain an injury while lifting the air conditioner, it is outweighed by other evidence that is in agreement about the timeline of circumstances following the claimed injury. Mr. Sanchez's testimony establishes that on the Monday following the Saturday when applicant and Mr. Son lifted the air conditioner, Mr. Sanchez received word from applicant that he was claiming he had been injured on Saturday. Mr. Sanchez's testimony also establishes that applicant sought treatment from a Torrance urgent care center on Tuesday, only the third day after the injury, which is confirmed by the UCLA Harbor Medical Center records. The narrative medical report closest in time to the injury, that of Dr. Brodie dated September 19, 2019, further confirms the chronology of the injury and its aftermath as described by applicant.

The history of injury later reported on May 5, 2020 by the PQME, Dr. Nissanoff, is largely the same in essential detail: applicant hurt himself while lifting the heavy air conditioner with Dr. Son on Saturday, August 10, 2019; the employer learned of applicant's claim of injury no later than Monday, August 12, 2019; and applicant sought treatment for it at an urgent care center on Tuesday, August 13, 2019. (Applicant's Exhibit 1.) About a week later, on August 21, 2019, applicant sought further treatment at UCLA Harbor Medical Center, whose records confirm the same chronology of injury.

As noted before, the WCJ apparently came to the conclusion that applicant hurt himself doing some personal work the day after the injury, when he lifted some heavy tables or countertops. Applicant admitted upon cross-examination that on Sunday, August 11, 2019, he met with Mr. Sanchez in order to move tables to applicant's place, so he could have them in his garage. Applicant simply testified that he took the tables. Mr. Sanchez testified that he saw applicant move the countertops, and that it did not appear applicant was in pain when he moved them a distance of about 20 feet. Mr. Son's testimony about applicant moving the tables on Sunday was as follows:

> The applicant came back to work the day after they put the air conditioning unit in, and picked up eight-foot counter tops. They were solid wood. There were two of them. The applicant apparently

> installed these in his own garage. The counter tops were solid wood. They were about 60 to 100 pounds. They were about one and a quarter inch thick.
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> He received no medical report from the applicant on 8/12/[19], the Monday after the alleged injury. On that day, Lynda, a tech in the office, said there was debris on her equipment. Apparently the applicant had put a tarp with old paint on it over her equipment. He had some discussions with the applicant about this. The applicant did not say he was hurt that day. The applicant did apologize for putting the tarp on the equipment.
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> (SOE, 2/3/21, pp. 12:21-13:4.)

In the testimony just described, Mr. Son gave some details about how applicant moved the countertops the day after the industrial injury. According to Mr. Son, applicant picked up two, eight-foot long countertops made of solid wood, weighing 60 to 100 pounds. Taking Mr. Son's estimate of the weight of the countertops at face value, Mr. Son could not have known how applicant moved them because he was not present when the moving took place. (SOE, 2/3/21, 14:2.) In our view, therefore, Mr. Son's testimony about this intervening event is not persuasive and does not rebut the other evidence discussed above, which shows that applicant likely hurt himself at work the day before - lifting a heavy air conditioner while perched on a ladder. Further, we are not troubled by Mr. Son's testimony that he received no report of injury from applicant until August 17, 2019, because applicant testified that he had worked through the pain of the industrial injury that happened the week before. In a like manner, Mr. Sanchez's testimony indicates that applicant showed no pain when he moved the countertops. (SOE, 2/3/21, p. 14:7-9.)

With respect to the dissent, we agree that a WCJ's credibility determinations ordinarily are entitled to great weight when examining the entire record to evaluate a claimed industrial injury. (*Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500].) In this case, however, it appears that the WCJ's doubts about applicant's credibility did not concern whether the events of August 10, 2019 actually took place, but whether they were injurious. In fact, the WCJ evidently believed that applicant did sustain an injury around the time of the claimed industrial injury. On this issue, we again note that the fact applicant lifted countertops weighing 60-plus pounds the day following the work injury does not mean that the work injury never took place. Defendant frames the case as applicant having hurt himself lifting the countertops rather

than lifting the air conditioner. To be persuasive, we believe this theory would need supporting evidence that applicant showed pain symptoms when he moved the countertops. We find no such evidence in the record.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact of February 25, 2021 are **RESCINDED**, and the following Finding is **SUBSTITUTED** in its place:

FINDING

1. Applicant, while employed on August 10, 2019 as an engineer/AC installer, Occupational Group Number in dispute, at Rosecrans Avenue in California by Pressure Profile Systems, sustained injury arising out of and occurring in the course of employment to his low back, right and left shoulders, and cervical spine.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that this matter is **RETURNED** to the trial level for further proceedings and determination of benefits by the WCJ, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

I DISSENT. (See Attached Dissenting Opinion.)

/s/ DEIDRA E. LOWE, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA
MAY 9, 2022

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

DANIEL MODUGNO
GLAUBER BERENSON
HANNA, BROPHY, MACLEAN, MCALEER, JENSEN, LLP

JTL/ara

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

DISSENTING OPINION OF COMMISSIONER LOWE

I dissent. One of the chief guiding principles of the Appeals Board's review upon reconsideration is to give the WCJ's credibility determinations great weight because the WCJ has the opportunity to personally 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].) In general, this principle of review gives way only when there is evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id*.)

In this case, the WCJ found incredible applicant's testimony about when and how the claimed injury happened, with the WCJ further concluding that applicant's lack of credibility also tainted the medical records purporting to show that an industrial injury occurred on Saturday August 10, 2019. Based on my own review of the record, I agree with the WCJ and find no evidence of considerable substantiality to support overturning the WCJ's denial of the claimed injury.

Mr. Son, the employer who was present when the claimed injury was supposed to have happened, denied that applicant got injured or that he mentioned any injury. (SOE, 2/3/21, p. 5:24-25.) There is no other direct corroborating evidence of the claimed injury because even Mr. Sanchez, applicant's lifelong friend, testified that applicant did not tell him of the injury the next day. (SOE, 2/3/21, p. 11:7-9.) Mr. Sanchez also testified that applicant did not appear to be in pain when he was moving the countertops the day after the injury. (SOE, 2/3/21, p. 14:7-9.) That the tabletops were heavy is corroborated by photos contained in Exhibit A. Since applicant testified that he was in so much pain at the time of the alleged injury that he nearly cried (SOE, 7:15-18), it is difficult to reconcile his heavy lifting activities the next day, and the lack of indication of any injury perceived by either Mr. Son or Mr. Sanchez.

In his petition for reconsideration, applicant makes much of the supposed agreement between his testimony and that of Mr. Son about lifting and installing the air conditioner. Based on all the other evidence, including applicant's moving of heavy countertops from Steven Sanchez's house to his own the next day without assistance or any sign of pain, it is unreasonable to assume that an injury occurred the previous day merely because applicant lifted something heavy and the employer acknowledged the fact of the lifting. It further undermines applicant's claim of injury on Saturday that he did not seek treatment until Tuesday, when acrimony between applicant and Mr. Son broke out into the open. According to Mr. Sanchez's trial testimony, "[o]n

Monday he could tell that Jae [Mr. Son] and the applicant were not getting along." (SOE, 2/3/21, p. 11:15-16.) Applicant did not seek treatment until the next day (Tuesday), and he waited until the following weekend to report his claimed injury. (SOE, 2/3/21, pp. 6:3-7 & 11:9-12.) This sort of injury chronology is inconsistent with applicant's allegation that his claim is bona fide. Adding to his burden of strained credibility, applicant admits in his petition (p. 13:9) that his prior felony conviction for domestic violence is a "knock" on his credibility (the only one he says), even though neither the WCJ nor defendant has mentioned the felony conviction upon reconsideration.

In his Report and Recommendation, the WCJ succinctly summarizes his doubts about applicant's claimed injury by stating, "[I] could not and did not rely on the testimony of the applicant as to the issue of injury arising out of and/or in the course of employment, as his testimony was deemed unreliable. His reporting to the doctors was deemed unreliable, and to the extent the doctors relied on applicant's history, their reports could not be relied upon."

I agree. I would not second-guess the WCJ's credibility determinations of the three trial witnesses: applicant, Mr. Son and Mr. Sanchez. The WCJ found Mr. Son and Mr. Sanchez credible, but the WCJ found applicant not credible. Applicant's lack of credibility tainted the histories of injury contained in the medical reports relied upon by the majority. I would affirm the WCJ's finding that applicant did not sustain an industrial injury as alleged.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 9, 2022

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

DANIEL MODUGNO
GLAUBER BERENSON
HANNA, BROPHY, MACLEAN, MCALEER, JENSEN, LLP

JTL/ara

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