

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

JUANA LLAMAS, *Applicant*

vs.

**MCFARLAND UNIFIED SCHOOL DISTRICT, permissibly self-insured, administered by
SELF-INSURED SCHOOLS OF CALIFORNIA, *Defendants***

**Adjudication Number: ADJ11111045
Bakersfield 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 further note that, while there is evidence of low back impairment, the evidence preponderates against a specific low back injury as the cause.

We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*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 determination. (*Id.*)

We observe, moreover, it is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].)

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/ JOSÉ H. RAZO, COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 12, 2022

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

**JUANA LLAMAS
LAW OFFICE OF MIGUEL C. LOPEZ
HANNA, BROPHY, MACLEAN, MCALLER & JENSEN**

PAG/pc

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

**Report and Recommendations on
Petition for Reconsideration**

I. Introduction: Applicant Juana Llamas seeks reconsideration of the Findings of Fact & Award of May 24, 2022 to annul the finding that she did not sustain injury to her low back when she injured her right hip, right knee and left elbow when she fell at work.

Applicant Juana Llamas, then 55 years of age, sustained an injury arising out of and in the course of employment to her right hip, right knee and left elbow and claims to have sustained injury to her low back when she fell on July 20, 2017 while employed in McFarland, California as a Custodian (Occupational Group 340) by Defendant McFarland Unified School District. Only July 20, 2017, Defendant McFarland Unified School District was permissibly self-insured for workers' compensation liability. Its program of permissible self-insured is presently administered by Self-Insured Schools of California (SISC).

Following Trial on February 23, 2022 and submission for decision on March 25, 2022, Findings of Fact and Award¹ issued on May 24, 2022. Petitioner was found to have sustained the claimed injury to her right hip, right knee, and left elbow but not the claimed injury to her lower back. 27% permanent partial disability was found with a need for further medical treatment. Compensation consistent with the findings was awarded. *Findings of Fact & Award 5/24/2022 p. 5 (Findings of Fact #1, #6 and #7) p. 5 (Award).*

By timely², verified and properly served petition, Applicant Juana Llamas seeks reconsideration. *Petition for Reconsideration 6/13/2022 p. 5 (verification), p. 6 (Proof of Service).* Petitioner contends that the evidence did not justify the finding of fact, an authorized basis for reconsideration. Lab.C. §5903 {c}. Petitioner states:

The Applicant takes exception to that portion of Judge Norton's Decision in which he found that the Applicant did not suffer a work related back injury. Ms. Llamas contends that her back was injured at work as a result of her fall on July 20, 2017. *Petition for Reconsideration 6/13/2022.*

Defendant has provided a timely,³ verified and properly served Answer to the pending petition. *Answer to Applicant's Petition for Reconsideration 6/22/2022 p. 10 (verification); Proof of Service 6/23/2022.* Defendant argues that the Trial-level finding was well supported by substantial medical evidence, including the

¹ The Trial-level decision is captioned "Findings of Fact & Award & Orders." However, no orders distinct from the Award issued.

² The pending petition was filed on June 13, 2022, the 20th day after the Findings of Fact & Award of May 24, 2022.

³ Defendant's Answer was filed on June 23, 2022, the 10th day after the filing of the pending petition.

histories taken by and expert opinions of Treating Doctor Anna Mendoza, consulting Doctor Gilbert Jody and Qualified Medical Evaluator Hrair Darakjian as well as the diagnostic tests results. *Answer to Applicant's Petition for Reconsideration 6/22/2022 p. 3 line 16 to p. 7 line 25.*

Denial of the pending petition is recommended. Defendant's Answer is correct that the finding that Petitioner probably did not sustain injury to her lower back from her fall on July 20, 2017 was well supported by substantial evidence.

II. Facts: Prior to July 20, 2017, Petitioner sustained an injury to her left hip at home. "This improved completely after 3 weeks without any disability." Petitioner did not have a prior injury to her right hip. *Defendant's Exhibit B: Report of Comprehensive Medical Group (Anna L. Mendoza, M.D.) 7/20/2017 p. 1. Defendant's Exhibit C: QME Report of Hrair E. Darakjian, M.D. 4/05/2018 p. 3*

On July 20, 2017, Petitioner was employed by Defendant McFarland Unified School District as a Custodian. She was stripping wax from a floor at work. The floor was covered in a chemical placed on it to strip the wax. She slipped in the chemical and hyperflexed her right leg. She felt a pop in her right hip and the onset of pain. She fell to the floor, landing on her left side and striking her left elbow. She was unable to rise from her fall and was assisted to her chair with a wheelchair. *Defendant's Exhibit B: Report of Comprehensive Medical Group (Anna L. Mendoza, M.D.) 7/20/2017 p. 1. Defendant's Exhibit C: QME Report of Hrair E. Darakjian, M.D. 4/05/2018 p. 3*

Petitioner obtained medical treatment from her primary care physician. Dr. Anna Mendoza reported a history and inventory of Petitioner's complaints:

She felt a pop in her hip and sudden pain. She landed on her left side and hit her left elbow. Pain in elbow with extension. Denies weakness or numbness in any extremity. Denies any pain in the neck, shoulder, back, left hip or leg. Denies hitting her head. She was unable to get up after fall. She was helped to the car by wheelchair. She had pain with right hip with weight bearing. No prior injury to right hip. *Defendant's Exhibit B: Report of Comprehensive Medical Group (Anna L. Mendoza, M.D.) 7/20/2017 p. 1 (emphasis added).*

Dr. Mendoza carefully examined Petitioner. Among other things, she reported:

MUSCULOSKELETAL: Neck with FROM and nontender. Shoulders with FROM and nontender. Elbows with FROM. Tenderness over right posterior elbow. Joint of wrists and hands are nontender without edema. Thoracic back and low back nontender to palpation. Tenderness over right lateral hip. Decreased ROM,

especially external rotation. She is able to weight bear for short time. *Defendant's Exhibit B: Report of Comprehensive Medical Group (Anna L. Mendoza, M.D.) 7/20/2017 p. 2.*

Petitioner was prescribed crutches, medications, MRI scanning and temporary disability pending re-evaluation. *Defendant's Exhibit B: Report of Comprehensive Medical Group (Anna L. Mendoza, M.D.) 7/20/2017 p. 3.*

Petitioner received further treatment including 10 physical therapy sessions for her right hip and right knee as well as MRI scanning. She was also provided with an orthopedic consultation from Gilbert Jody, M.D. who recommended a return to full duty work rather than surgery. *Defendant's Exhibit C: QME Report of Hrair E. Darakjian, M.D. 4/05/2018 p. 3* MRI scanning revealed a right hip contusion with underlying arthritis and a meniscal tear of the right knee. *Applicant's Exhibit 30: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 1/24/2018 pp. 1-2.*

Petitioner retained legal counsel and initiated the present claim by filing an Application for Adjudication on November 29, 2017. The initial Application included her claim that she had injured her lower back in the fall of July 20, 2017. *Application for Adjudication of Claim 11/29/2017 p. 4 ¶2.*

Defendant accepted liability for the present claim but disputed injury to Petitioner's low back. *Defendant's Exhibit A: Correspondence of Self-Insured Schools of California (Carol Pierce-Notice Regarding Denial of Workers' Compensation Benefit) 12/05/2017.*

Petitioner sought further medical treatment from Richard Scheinberg, M.D. Dr. Scheinberg provided an initial examination report in January 2018. Regarding Petitioner's back, Dr. Scheinberg reported "diffuse tenderness to palpation with limited range of motion of the lumbar spine." He diagnosed "Lumbar myofascial pain" with a need to rule out right lumbar radiculopathy and disc herniation via MRI scanning. *Applicant's Exhibit 30: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 1/24/2018 p. 2.*

Dr. Scheinberg reported again in February 2018. He noted that Petitioner "complains of instability with recent falls" and "tenderness lumbar spine" with a restricted range of motion and "Diminished sensation right L5 and S1 dermatomal distribution." He continued to recommend MRI scanning to rule out disc injury and his lumbar diagnosis changed to "Lumbar spondylosis/facet osteoarthropathy/spondylolisthesis, grade 1." Authorization for knee surgery was also recommended. *Applicant's Exhibit 29: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 2/13/2018 p. 2.*

Dr. Scheinberg did not dispute Defendant's denial that the Petitioner's lower back had been injured in the initial fall but instead opined that Petitioner's

“lumbar spine is a compensatory component, related to compensatory gait over time, then became symptomatic including instability.” *Applicant’s Exhibit 29: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 2/13/2018 p. 3.*

Dr. Scheinberg reported again in March 2018. He noted that his requests for authorization to perform knee surgery and for an MRI of Petitioner’s lumbar spine had been denied. Regarding Petitioner’s lumbar spine, he reported:

Request for MRI lumbar spine remains unapproved on the basis of compensability. Lumbar spine is compensatory, did develop over time due to compensatory gait.

Request for LSO⁴ remains unapproved, lumbar spine is however compensatory. Recall spondylolisthesis L5 on S1. Instability lumbar does result in decline in exercise and activity, approved body parts. *Applicant’s Exhibit 28: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 2/13/2018 p. 2.*

Hrair E. Darakjian, M.D. is serving as a panel-selected Qualified Medical Evaluator in the field of Orthopedic Surgery. He received and reviewed the available medical records, examined Petitioner and provided a report in April 2018. *Defendant’s Exhibit C: QME Report of Hrair E. Darakjian, M.D. 4/05/2018.*

On examination, Petitioner’s “thoracolumbar posture” was noted to be “well-preserved with no splinting” and her gait pattern was concerned “normal” and “non-antalgic.” Palpation from L1 to the tailbone “shows no areas of tenderness over the paraspinal or midline lumbar back or spasm bilaterally.” Range of motion of the lumbar spine was unrestricted without complaints of pain during maneuvers including negative straight leg raising. Dr. Darakjian also reported “There is no evidence of radiating pain to the lower extremities on lumbar motion.” *Defendant’s Exhibit C: QME Report of Hrair E. Darakjian, M.D. 4/05/2018 pp. 7-8.*

Dr. Darakjian noted that the early treatment reports of Dr. Mendoza and Dr. Jody “have no mention of back pain” and did not diagnose back pain. He opined that:

At this point in time, the patient has considerably subjective complaints that are not substantial objectively. It is unclear how the back pain is associated with 07/20/17 injury. It is medically not probable that the back pain is associated with this injury. In any event, I do not find any objective findings to recommend further

⁴ LSO is believed to refer to Lumbar Sacral Orthosis, a clam-shell styled back brace.

evaluation, testing or treatment of the lumbar spine. *Defendant's Exhibit C: QME Report of Hrair E. Darakjian, M.D. 4/05/2018 p. 10.*

Dr. Darakjian also opined that “certainly there will not be any indication” for surgical intervention for the lumbar spine. *Defendant's Exhibit C: QME Report of Hrair E. Darakjian, M.D. 4/05/2018 p. 10.*

Dr. Darakjian provided a supplemental report in May 2018. He was provided with a copy of Dr. Scheinberg's report of March 13, 2018. The QME was asked for his opinion regarding Dr. Scheinberg's recommendation for knee surgery. Dr. Darakjian noted that “the patient does have a torn meniscus and may benefit from arthroscopic surgery” although he was pessimistic regarding “the chances for subjective improvement.” *Defendant's Exhibit D: QME Report of Hrair E. Darakjian, M.D. 5/02/2018 p. 2.*

Dr. Scheinberg was provided with a copy of Dr. Darakjian's QME reports. He noted that the QME “concluded that the patient has considerable subjectivity to her complaints” but nevertheless had agreed with the option of arthroscopic knee surgery. Regarding Petitioner's lumbar spine, Dr. Scheinberg again reported “diffuse tenderness to palpitation with limited range of motion of the lumbar spine” and diagnosed “lumbar myofascial pain” with a need to rule out right lumbar radiculopathy. *Applicant's Exhibit 25: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 5/31/2018 p. 2.*

QME Dr. Darakjian was provided with a Utilization Review report denying right knee surgery and asked for his opinion on that as well as the condition of Petitioner's left elbow and right hip. Dr. Darakjian indicated that:

At this point in time, clearly there is no objective findings of abnormality that could be attributed to the industrial injury given the date of 7/20/17 with regard to the cervical spine, lumbar spine, right hip and elbow. In regard to the right knee, I opined that the patient does have degenerative changes in the media compartment and in light of that, partial meniscectomy will be unlikely to provide any relief. *Defendant's Exhibit E: QME Report of Hrair E. Darakjian, M.D. 7/20/2018 p. 1.*

Dr. Darakjian opined that Petitioner had reached maximum medical improvement “with no impairment with regard to the cervical spine, lumbar spine, right hip and left elbow,” 3% Whole Person Impairment for the right knee with 50% apportionment to degeneration and future medical care limited to “over-the-counter anti-inflammatory medication.” *Defendant's Exhibit E: QME Report of Hrair E. Darakjian, M.D. 7/20/2018 pp. 1-2.*

Dr. Scheinberg reviewed Dr. Darakjian's report regarding Utilization Review the proposed knee surgery. He noted the QME's retraction of his prior recommendation of knee surgery. With surgery denied, he recommended "viscosupplementation" of the right knee. *Applicant's Exhibit 23: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 8/23/2018 p. 2.* The next month, Dr. Scheinberg reported that Petitioner was "P&S" and release her to full duty work "per QME." *Applicant's Exhibit 22: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 9/20/2018 p. 2.*

QME Dr. Darakjian was asked by Petitioner's attorney to review Dr. Scheinberg's Request for Authorization for the disputed knee surgery. Dr. Darakjian returned to his earlier endorsement of the surgery. *Defendant's Exhibit F: QME Report of Hrair E. Darakjian, M.D. 10/05/2018 p. 1.*

Dr. Scheinberg provided a permanent and stationary report in November 2018. He opined that Petitioner was permanent and stationary in light of the denial of knee surgery with 7% Whole Person Impairment of the lumbar spine, 1% impairment of the right knee, both entirely the result of the specific work injury. Further medical treatment including medications and the recommended knee surgery were suggested. *Applicant's Exhibit 21: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 11/01/2018 pp. 2-3.* Later that month, Dr. Scheinberg reported providing Petitioner with "an Orthovisc injection to her right knee." *Applicant's Exhibit 20: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 11/27/2018 p. 2.*

Petitioner's attorney provided QME Dr. Darakjian with MRI scanning reports of her lumbar spine and the results of a functional capacity evaluation. Dr. Darakjian opined that:

Currently, this MRI scan does not show any acute findings that would indicate any industrially caused injury. The findings are all degenerative in nature. There is no disc herniation. There is no fracture. There is no evidence of nerve impingement to suggest any treatment or work disabling injury. *Defendant's Exhibit G: QME Report of Hrair E. Darakjian, M.D. 1/28/2019 p. 2.*

Dr. Darakjian also opined that the functional capacity evaluation was arbitrary and subjective such that if the patient did not participate fully, it would "yield an inaccurate conclusion." *Defendant's Exhibit G: QME Report of Hrair E. Darakjian, M.D. 1/28/2019 p. 2.*

Dr. Scheinberg reported again in March 2019. Petitioner "continues to have relatively severe right knee pain in spite of 3 Orthovisc injections." Dr. Scheinberg renewed his request for authorization to perform right knee surgery. *Applicant's Exhibit 18: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 3/12/2019 p. 1.* Defendant reversed its prior rejection and

authorized Dr. Scheinberg to proceed. *Defendant's Exhibit Q: Certification to Provider from Risico 3/22/2019*. Right knee surgery occurred on April 29, 2019. *Defendant's Exhibit H: QME Report of Hrair E. Darakjian, M.D. 10/30/2019 p. 1*.

QME Dr. Darakjian reevaluated Petitioner in October 2019 and provided report. He noted that Petitioner had been provided with knee surgery and post-surgical physical therapy but "she did not report any improvement" in her knee and also continued to report back pain. Regarding the lumbar spine, Dr. Darakjian again reported that, on examination, Petitioner's "thoracolumbar posture is noted to be well-preserved with no splinting." He reported that "The patient's gait pattern is normal. The patient's gait is non-antalgic." Furthermore, "Lumbosacral palpation from L1 to the sacrum shows no areas of tenderness over the paraspinal or midline lumbar back or spasm bilaterally." Range of motion was normal without complaints of pain at the extremes of motion. There was "no evidence of radiating pain to the lower extremities on lumbar motion." *Defendant's Exhibit H: QME Report of Hrair E. Darakjian, M.D. 10/30/2019 pp. 5-6*.

QME Dr. Darakjian opined that Petitioner was permanent and stationary with no ratable impairment of the lumbar spine or right hip and 1% Whole Person Impairment of the right knee. Recommended further medical care was limited to access to orthopedic evaluation, conservative care and the occasional use of anti-inflammatory medications. *Defendant's Exhibit H: QME Report of Hrair E. Darakjian, M.D. 10/30/2019 pp. 9-10*.

Dr. Scheinberg was provided with a copy of the QME reevaluation. He agreed that Petitioner was permanent and stationary but opined that she had 9% Whole Person Impairment in the right knee and 17% impairment of the right hip with 50% apportionment to degeneration. Dr. Scheinberg suggested further medical treatment including potential further injections and surgery. *Applicant's Exhibit 12: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 12/12/2019 p. 2*.⁵

Dr. Scheinberg received a consultative rating which questioned his assessment of Petitioner's hip impairment. He revised his opinion to indicate 6% Whole Person Impairment for the right hip. *Applicant's Exhibit 11: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 2/24/2020 p. 1*.

QME Dr. Darakjian reviewed Dr. Scheinberg's reports and indicated that he did not "see any basis to amend my opinion given earlier in this matter." *Defendant's Exhibit I: QME Report of Hrair E. Darakjian, M.D. 3/04/2020 p. 2*.

⁵ Notably absent from this report was any discussion of Petitioner's lumbar spine.

Dr. Scheinberg thereafter opined that Petitioner's hip pain might be the result of a lumbar radiculopathy. He recommended MRI scanning to determine if this was the source of "her ongoing leg and hip pain." *Applicant's Exhibit 10: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 3/17/2020 p. 2.* Dr. Scheinberg thereafter reported a tele-medicine examination of Petitioner wherein he opined that "I believe that her hip problem is actually a low back problem, which is radiating pain into the right hip. This was missed by the Panel QME, Hrair Darakjian, M.D., and she should be reevaluated on that basis." *Applicant's Exhibit 09: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 4/28/2020 p. 1.*

An MRI scan was obtained on July 14, 2020. "The MRI scan of the lumbar spine demonstrated multifactorial degenerative changes contributing to moderate spinal canal and mild right neural foraminal stenosis at the L4-5 level." *Applicant's Exhibit 07: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 8/04/2020 p. 1.*

Treating Doctor Scheinberg reported again in September 2020. He indicated that a therapeutic trial of acupuncture has been "only marginally beneficial for her right hip and trochanteric pain" while Petitioner's back pain "has progressively gotten somewhat worse." *Applicant's Exhibit 06: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 9/08/2020 p. 1.*

Dr. Scheinberg also reported that he had received a request from Petitioner's attorney for his opinion regarding industrial causation of Petitioner's low back condition assuming the correctness of a history, to wit:

The patient indicates that she did not have back pain prior to the injury of July 27, 2017, in which she slipped and fell, landing on her left side, popping and injuring her right hip area and back. She indicates she reported to Dr. Mendoza, the primary care physician that she was having back pain related to the injury and he apparently documented it according to the applicant. Since that time, she has had persistent pain with a popping sensation in her low back. On that basis, I believe it is medically probable that she did sustain injury AOE/COE to her low back, which has manifested itself with right hip and sciatic type pain as well. *Applicant's Exhibit 06: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 9/08/2020 pp. 1-2.*

Dr. Scheinberg recommended completion of the therapeutic trial of acupuncture and opined that "She remains permanent and stationary." *Applicant's Exhibit 06: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 9/08/2020 p. 2.*

QME Doctor Darakjian provided a supplemental report. He reviewed the updated MRI scan and Dr. Scheinberg's report. Regarding the MRI findings, he opined:

My interpretation of the MRI scan is remarkable for the lack of any evidence of an industrial injury. The findings are old, degenerative and chronic. There are absolutely no acute findings such disc herniation or extrusion or nerve root impingement. The MRI scan make no mention of any nerve root impingement to explain any sciatic symptoms of radiculopathy. *Defendant's Exhibit K: QME Report of Hrair E. Darakjian, M.D. 10/09/2020 p. 2.*

Regarding the hypothetical history presented to Dr. Scheinberg by Petitioner's attorney, Dr. Darakjian opined:

The patient also according to the records did not mention any back complaints to Dr. Mendoza. The records from Dr. Mendoza make no mention of back pain. Furthermore, no mention of back pain to Dr. Jody on 11/07/17 for an orthopedic consultation. I did examine the patient in person on 10/30/2019. I found her lumbar spine examination to be unremarkable. There was no basis to support any loss in range of motion, spasm or signs of nerve root impingement or sciatica ruling out completely radiculopathy. Based on my negative examination and unremarkable MRI scan, and the lack of documentation in the history, I am of the opinion that an injury to the lumbar spine cannot be documented as being AOE/COE. As stated earlier, the lumbar MRI findings are strictly degenerative in nature and clear are not due to a fall and in fact for a 57-year-old individual the degenerative changes are consistent with naturally progressive degenerative disease and wear and tear of the lumbar spine. *Defendant's Exhibit K: QME Report of Hrair E. Darakjian, M.D. 10/09/2020 p. 2.*

In October 2020, Dr. Scheinberg reported completion of the therapeutic trial of acupuncture with "some temporary relief". He opined that "More aggressive management is not indicated." *Applicant's Exhibit 05: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 10/12/2020 pp. 1-2.*

In January 2021, Dr. Scheinberg reported "No additional treatment is indicated at the present time. It would be premature to recommend a total knee replacement on the right. We will see her on an as-needed basis. *Applicant's Exhibit 04: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 1/4/2021 p. 2.*

In March 2021, Dr. Scheinberg reported his review of interim medical reports and tele-medicine re-examination of Petitioner. Regarding Dr. Darakjian's adverse opinion, Dr. Scheinberg indicated:

It is my understanding the patient's symptoms began as a result of her industrial injury, that she did not have preexisting lumbar pain, and the MRI findings are consistent with degenerative changes, which may have been lit up by her industrial injury; therefore, that would constitute industrial causation. *Applicant's Exhibit 03: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 3/18/2021 p. 2.*⁶

QME Doctor Darakjian reported again in May 2021. He had been asked by Petitioner's attorney whether "a continuous trauma exposure could have been a causative factor" for degenerative changes in Petitioner's right knee, low back and right hip. Dr. Darakjian noted that Petitioner "performed numerous maintenance functions requiring heavy work over a 15-year period" but there was no evidence of complaints of back pain prior to the 7/20/2017 specific injury or other "documentation to confirm the occurrence of the continuous trauma." *Defendant's Exhibit L: QME Report of Hrair E. Darakjian, M.D. 5/07/2021 pp. 1-2.*

Despite this extensive history of detailed guidance from the Treating Doctor and the Qualified Medical Evaluator, the primary parties were unable to settle this case. Following Trial on February 23, 2022 and submission for decision on March 25, 2022, Findings of Fact and Award issued on May 24, 2022. Petitioner was found to have sustained the claimed injury to her right hip, right knee, and left elbow but not the claimed injury to her lower back. 27% permanent partial disability was found with a need for further medical treatment. Compensation consistent with the findings was awarded. *Findings of Fact & Award 5/24/2022 p. 5 (Findings of Fact #1, #6 and #7) p. 5 (Award).*

Whereupon, Petitioner seeks reconsideration.

III. Discussion: Petitioner argues that the undersigned PW CJ should have accepted her Trial testimony that she injured her lower back at the time of her fall and should have been guided by Dr. Scheinberg's opinion that if Petitioner's back had been immediately injured, her work injury most probably includes her lumbar spine. *Petition for Reconsideration 6/13/2022 pp. 2-4; Applicant's Exhibit 06: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 9/08/2020 pp. 1-2.*

The first problem with the argument of the pending petition is that Defendant is correct that the contrary medical reporters are more likely correct regarding Petitioner's history and condition. Treating Doctor Anna Mendoza, Consulting Doctor Gilbert Jody, and Qualified Medical Evaluator Hrair Darakjian independently reported the contemporaneous lack of any history, signs or symptoms indicating lumbar spinal involvement.

⁶ This fallback position is noted to express a medical possibility, not a reasonable medical probability.

Critically, this is not a case of an over-worked paramedical intake clerk at a busy Urgent Care center omitting reported symptoms. Dr. Mendoza was Petitioner's primary care physician, was aware of her prior left hip injury, and provided an intake history and initial examination that is remarkable (and highly credible) for its thoroughness. Dr. Jody and Dr. Darakjian also took and reported careful histories and correlated them with examination results.

The second problem with the argument of the pending petition is that Petitioner's testimony was inconsistent with the diagnostic results. *Defendant's Exhibit G: QME Report of Hrair E. Darakjian, M.D. 1/28/2019 p. 2; Defendant's Exhibit K: QME Report of Hrair E. Darakjian, M.D. 10/09/2020 p. 2.* Likewise, Dr. Scheinberg's speculation that Petitioner's lower back pain might be the compensable consequence of alerted posture or gait from her hip and knee injuries was falsified on examination. *Defendant's Exhibit H: QME Report of Hrair E. Darakjian, M.D. 10/30/2019 pp. 5-6.* And, furthermore, the later theory that Petitioner's hip pain was radicular pain from an industrially injured lower back did not survive examination and testing. *Defendant's Exhibit K: QME Report of Hrair E. Darakjian, M.D. 10/09/2020 p. 2.*

The third problem with the argument of the pending petition is that the contrary opinions of Dr. Scheinberg are migratory, assuming and discarding theories over time as opposed to the consistent-over-time analysis of QME Dr. Darakjian. Initially, Dr. Scheinberg accepted the initial history that Petitioner had not reported an immediate onset of lumbar spinal symptoms but opined that her later symptoms were probably the result of altered posture or gait. *Applicant's Exhibit 29: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 2/13/2018 p. 3; Applicant's Exhibit 28: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 3/13/2018 p. 2.* After posture and gait were noted to be normal on examination, Dr. Scheinberg indicated instead that Petitioner was suffering from myofascial pain with a need to rule out radiculopathy. *Applicant's Exhibit 25: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 5/31/2018 p. 2.* When diagnostic evidence did not support that either, Dr. Scheinberg accepted Petitioner's attorney's hypothetical that if Petitioner's lumbar spine was injured directly in the initial trauma, the present condition would be industrial. *Applicant's Exhibit 06: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 9/08/2020 pp. 1-2.* Finally, in the face of diagnostic evidence of a degenerative condition free of any indication of acute trauma, Dr. Scheinberg raised the medical possibility (not probability) that the specific injury somehow "lit up" the degenerative condition. *Applicant's Exhibit 03: Report of Scheinberg Orthopedic Group (Richard D. Scheinberg, M.D.) 3/18/2021 p. 2.*

It is important to note that, in this context, "migratory" does not mean dishonest. To the contrary, it is admirable when an evaluating physician discards a previously-expressed assessment that is no longer viable in light of newly received examination or diagnostic testing. That said, there does come a point

where a migratory analysis is less probably correct than a contrary and consistent assessment that did not need to change as new information became available.

Finally, the fourth problem with the argument of the pending petition is that it is well-settled law that the substantial opinion of a single physician is a sufficient basis for a WCAB decision, even if other physicians disagree.

IV. Recommendation: The finding that Petitioner injured her right hip, right knee and left elbow but not her lower back in her workplace fall on July 20, 2017 was well supported by substantial medical evidence. Therefore, it is recommended that the pending petition be denied.

DATE: June 28, 2022

Robert Norton
PRESIDING WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE