WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

NICK MARKERT, *Applicant*

vs.

DRIVEN PERFORMANCE BRANDS and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants*

Adjudication Number: ADJ10079862
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on April 7, 2021, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and in the course of employment (AOE/COE) to his left knee.

Defendant contends that the reports from physical medicine and rehabilitation qualified medical examiner (QME) Michael C. Post, M.D., and internal medicine QME Jonathan C. Green, M.D., are substantial evidence that applicant did not sustain injury AOE/COE to his left knee.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from applicant.

We have considered the allegations in the Petition for Reconsideration (Petition) and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, which we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed injury to his back, lower extremities including his left knee, and his digestive system, while employed by defendant as a welder/fabricator during the period ending June 2, 2015.

Applicant had previously sustained a non-industrial motocross accident injury on December 13, 2012. As a result of that injury applicant underwent several left knee surgeries and in January 2013, Maury K. Harwood, M.D., became applicant's treating physician. (See Def. Exh. A1, Dr. Post, September 6, 2016, pp. 7 - 13, record review.) Dr. Harwood's treatment of applicant included additional left knee surgeries. (See Def. Exh. A1, pp. 34 – 39, treatment history; Def. Exh. F, Dr. Harwood, various dates.)

QME Dr. Post evaluated applicant on July 28, 2016. Dr. Post examined applicant, took a history, and reviewed the medical record. He diagnosed applicant as having numerous left leg/left knee conditions and regarding the cause of applicant's condition, Dr. Post stated:

> If Mr. Markert continues to profess that he had a specific industrial injury on 6/2/15 as he described in his deposition, failed to relate to me, and was never documented in any medical records provided, that is a factual dispute that needs to be addressed by the Trier of Fact. ¶ What is also notable is that the problem related to the left knee when he presented to Dr. Harwood was not related to a biomechanical problem … but rather an infection. … ¶ … Turning attention back to the ingrown toenail, I cannot state with medical probability that wearing leather boots resulted in the ingrown toenail. ¶ The cause of Mr. Markert's chronic left knee pain is related to his pre-existing left knee condition and subsequent joint infection. Although I acknowledge that the cause of infections is outside the scope of my expertise, based on the history presented, and after very careful review of the available medical records, I am unable to find industrial any causation.
> (Def. Exh. A1, pp. 44 – 45.)

In his supplemental report, Dr. Post stated:

> [B]ased on the available information, I cannot state with medical probability that his work activities from 6/2/14 to 6/2/15 caused or contributed to his left knee condition or need for medical treatment.
> (Def. Exh. A2, Dr. Post, November 30, 2016, p. 10, underlining in original.)

QME Dr. Green evaluated applicant on July 14, 2017. After examining applicant, taking a history, and reviewing the medical record, Dr. Green concluded there was no evidence that applicant had an ingrown toenail related to wearing boots while working for defendant. (Def. Exh. B3, Dr. Green, July 29, 2017, p. 15.)

In response to a question asked from applicant's counsel, treating physician, Dr. Harwood submitted correspondence addressing the issue of whether wearing rigid work boots was a cause of applicant's left knee condition. Dr. Harwood stated:

> I believe ultimately the fate of his knee was a direct result of the severity of trauma he sustained with his original injury. He was destined to have significant arthritis and complications involving his knee from the start. However with that being said, he had returned to full duty, was functioning in a full capacity, and was doing quite well until such time as the work boots became mandatory. It was very clear that once he was required to work in the boots his symptoms worsened, and his knee took a tum for the worse. Seemingly therefore his industrial exposure more likely than not had a negative effect on his left knee. (App. Exh. 2, Dr. Harwood, October 1, 2019, p. 2.)

On January 14, 2020, Dr. Harwood's deposition was taken. (App. Exh. 3, Dr. Harwood, January 14, 2020, deposition transcript.) His testimony included the following:

> A. [I] can clearly recall the issue with the boots and shoes, and the concessions that were made, and then were taken back and there is no doubt that as soon as he started having to wear the boots and went to work with the boots, that's when his knee took a turn for the worse. I can say that with no hesitancy. (App. Exh. 3, p. 18.)

> A. [M]ore importantly, because of the weight of the boot and the stiffness of the boot and what it does to your biomechanics, in terms of your gait, when you have a knee that's been filleted like Nick's and crumbled, it puts an extra amount of stress on it. ¶ It's very common for me, after knee surgery when I take care of people that have to go back into steel toe boots or work boots, to have to work with the employer, to ease them in or not have them use work boots. I do it with Costco and everybody that has to wear work boots. This is not all that atypical for me. And it may have been that it was the stress of the boot which had as much or more to do with him getting this issue with his knee. (App. Exh. 3, p. 20.)

Referring to the October 1, 2019 supplemental report (App. Exh. 2, p. 2) counsel asked Dr. Harwood:

> Q. With these sentences right here, are you telling the parties that you believe that at least one fraction of a percentage of his work contributed to the knee injury he sustained in May of 2015?
> A. Yes.
> Q. And does that continue to be your opinion?
> A. It does.
> (App. Exh. 3, p. 22.)

QME Dr. Green was given a copy of Dr. Harwood's deposition transcript. After reviewing the deposition, he submitted a supplemental report wherein he reiterated his opinion that there is

no evidence that applicant had an ingrown toenail nor that an ingrown toenail would have contributed to his left knee infection. (Def. Exh. B3, Dr. Green, July 9, 2020, pp. 2 – 3.)

QME Dr. Post was also given a copy of Dr. Harwood's deposition transcript to review. In his supplemental report, Dr. Post concluded that, "Review of the aforementioned medical records does not lead me to alter any of my prior opinions." (Def. Exh. A3, Dr. Post, August 13, 2020, p. 17, emphasis in original removed.)

The parties proceeded to trial on December 8, 2020. The stipulations and issues were stated and the matter was continued. (Minutes of Hearing and Summary of Evidence (MOH/SOE), December 8, 2020.) At the March 23, 2021 trial applicant testified and the matter was submitted for decision. (MOH/SOE, March 23, 2021.) The issues submitted included injury AOE/COE as to applicant's left knee. (MOH/SOE, December 8, 2020, p. 4.)

DISCUSSION

An award, order, or decision of the Appeals Board must be supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500].)

Here, there is no dispute that applicant's motocross accident caused severe injury to his left leg and he underwent a long and complex course of treatment as a result of that injury. However, the acceleration, aggravation or 'lighting up' of a preexisting condition "is an injury in the occupation causing the same." (*Tanenbaum v. Industrial Acc. Com.* (1935) 4 Cal.2d 615, 617 [1935 Cal. LEXIS 590]; *Zemke v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358]; *Reynolds Electrical & Engineering Co. v. Workers' Comp. Appeals Bd. (Buckner*) (1966) 65 Cal.2d 438 [31 Cal.Comp.Cases 421].) An aggravation of a pre-existing condition is an industrial injury. (*Argonaut Ins. Co. v. Industrial Acc. Comm. (Harries)* (1964) 231 Cal.App.2d 211 [29 Cal.Comp.Cases 279].)

As noted above, in his October 1, 2019 correspondence Dr. Harwood stated it was very clear that once applicant "was required to work in the boots his symptoms worsened." (App. Exh. 2, p. 2.) Also, at his deposition Dr. Harwood explained that the weight and stiffness of applicant's work boots effected the biomechanics of his gait, and put an extra amount of stress on his left knee. (App. Exh. 3, p. 20.) He then said it was common for him to work with his patient's employers to

allow his patients not to wear work boots after having a knee surgery. (App. Exh. 3, p. 20.) Dr. Harwood later reiterated his opinion that applicant's work with defendant was a factor, (i.e. a cause) of applicant's knee injury. (App. Exh. 3, p. 22.) For the purpose of meeting the causation requirement in a workers' compensation injury claim, it is sufficient if the work is a contributing cause of the injury. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd*. (2015) 61 Cal.4th 291, [80 Cal.Comp.Cases 489].)

It is well established that the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence and the Appeals Board may rely on the medical opinion of a single physician unless it is "based on surmise, speculation, conjecture, or guess." (*Place v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525]; *Market Basket v. Workers' Comp. Appeals Bd*. (1978) 86 Cal.App.3d 137 [46 Cal.Comp.Cases 913; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Review of the record indicates that Dr. Harwood is an orthopedic surgeon, that as applicant's treating physician he performed several left knee surgeries, and that he was well aware of applicant's long term treatment history. Further, as noted above, he stated that it was not uncommon for him to deal with the effects of his patients wearing work boots after having undergone knee surgery. Thus, it is clear that his opinions as to the cause of applicant's injury are not based on surmise speculation or guess, and in turn, constitute substantial evidence.

In her Report the WCJ states that applicant's "credible testimony" was substantial evidence "that the cumulative trauma injury ending on 6/2/2015 occurred in the course of employment." (Report, p. 8.) It is well known that a WCJ's opinions regarding witness credibility are entitled to great weight. (§§ 5903, 5952; *Garza v. Workmen's Comp. App. Bd. supra*; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635-637 [35 Cal.Comp.Cases 16].) The WCJ then states that the medical evidence in the trial record "meets the test for sustaining his burden of proof that the cumulative trauma injury ending on 6/2/2015 arose out of employment." (Report, p. 8.)

Having reviewed the trial record and the applicable case law, we concur with the WCJ's analysis and we see no reason to disturb the F&A.

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact and Award issued by the WCJ on April 7, 2021, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 21, 2021

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

NICK MARKERT
OFFICES OF NADEEM MAKADA
LAURA G. CHAPMAN & ASSOCIATES

TLH/*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 ON PETITIONS FOR REMOVAL AND RECONSIDERATION

A. INTRODUCTION

1. IDENTITY OF PETITIONER: Defendant

2. TIMELINESS: Petition timely filed.

3. VERIFICATION: Verification is in FileNet.

4. DATE OF INJURY (DOI): CT ending 6/2/2015

5. MECHANISM OF INJURY: Wearing steel-toed boots at work

6. BODY PARTS INJURED: Claimed: Left Knee

7. OCCUPATION AT DOI: Production Welder

8. PETITIONER'S CONTENTIONS: The WCJ erred by finding that applicant sustained injury arising out of and in the course of employment to his left knee.

B. DISCUSSION – RESPONSE TO DEFENDANT'S CONTENTION

Defendant has filed a Petition for Reconsideration disputing the WCJ's decision finding AOE/COE for applicant's left knee.

The response to defendant's contentions in his Petition for Reconsideration were set forth in my Opinion on Decision (after a bit of tweaking) set forth below:

OPINION ON DECISION

I. Issues – AOE/COE

The following issues were listed at trial to be determined in this case:

1. Did the injury to applicant's left knee arise out of and in the course of employment?
2. Parts of body injured. Whether the left knee is industrially injured. All other body parts are deferred at this time.
3. Defendant requests dismissal of the claim for lack of medical evidence supporting injury.

II. Procedural History

The following description of the mechanism of applicant's injury, is culled from applicant's credible testimony at trial, as well as the voluminous medical reports which I have ordered into evidence.

For the sake of reference, Dynan was the name of defendant's company before it was acquired by Driven Performance, which is the name it currently does business under.

Mr. Nick Markert was 29 years old on 6/2/2015, when his knee "locked up" while working as a production welder for defendant. During his 8 hour workday, he stood on his feet about 95% of the time building and fitting "after market auto parts," such as exhaust pipes, etc.

Aside from standing, the remainder of applicant's time at work was primarily spent walking from the booth where he performed his job duties to the center of the room to retrieve tools that he needed. The length of this walk was about 25-35 feet, which he was required to do approximately 20-30 times per day. There were times when he was able to sit down to perform specific job tasks, but those opportunities were rare.

In December of 2012, after working for defendant over two years, applicant was injured in a non-industrial motorcycle accident. He required hospitalization for these injuries and remained in the hospital for less than1 month, during which time he underwent several surgeries.

After being released from the hospital, applicant would go to his physical therapy appointments every day. At these appointments, he worked with his physical therapist to strengthen his leg muscles and flexibility. His condition improved and he was eventually able to return to work full duty in August of 2013. After returning to work, he continued his daily physical therapy visits during his lunch hour as the location was in close proximity to his work.

Dr. Harwood, his treating physician, released applicant to return to work full duty provided that certain work restrictions were met. His supervisors agreed to accommodate as they were eager to have him return to work.

The primary restriction imposed by Dr. Harwood, was that applicant was required to wear comfortable shoes, (such as some sort of tennis shoe,) to allow his legs to improve their mobility. Thin, flexible shoes allowed mobility of his leg joints that a stiff work boot would prohibit. Applicant tried several types of shoes and determined that a Nike running shoe with a thin flexible sole was the ideal work shoe for him given his injury. In addition, the top portion of the shoe is soft mesh, which allowed for maximum flexibility and breathability of the foot.

Because of his ability to use this soft sole shoe and because of his ability to perform daily physical therapy exercises, applicant's left leg condition steadily improved and he was able to perform his full job duties eight hours a day without any problems at all.

Applicant's condition had improved to such a degree that Dr. Harwood suggested applicant undergo an Allograft procedure. The procedure entailed retrieving live bone from a deceased donor and replacing applicant's tibia plateau with this donor bone.

His private insurance company approved applicant for the procedure in June of 2014. However, as a good donor match was essential to the success of this procedure, applicant was told that he would have to wait for the procedure to occur until such a donor match was located. He was also told that when the donor match was found, he would have to have the surgery immediately for obvious reasons.

Applicant notified the HR department of his employer that he would be scheduling this procedure as soon as a donor match was located. Once the procedure was performed he alerted the HR department that he would have to take time off from work for the surgery and the following recovery period.

Unfortunately, the Allograft procedure that might have saved applicant's knee never occurred.

Everything at work was going well for applicant until April of 2015. At that time, he was told that his work restriction with regard to his footwear would no longer be accommodated. He was instructed that he needed to replace his comfortable shoes with steel toed boots while performing his work duties.

Applicant complied with this demand by his supervisors, as this was his only alternative. From that point on, applicant wore the very uncomfortable steel toed boots while he performed his usual and customary job duties. Unfortunately, that mandate caused deterioration of applicant's left knee. Instead of the steady improvement applicant had enjoyed prior to wearing the boots, his left leg took a drastic turn for the worse.

The boots were extremely uncomfortable and painful to wear. This resulted in pin point swelling to the inside of the knee. Applicant complained many times to his supervisors, but he was told he would be written up if he didn't continue to wear the boots.

Applicant continued to go to his physical therapy appointments during each of his lunch hours. However, he was no longer physically able to perform the strength training exercises he had done before to increase mobility and structure around the knee. Instead, because of the damage done to his leg by the

steel toed boots, he was forced to spend his entire lunch hour putting ice on entire left lower extremity to attempt to reduce the swelling and pain.

A couple of months later, on 6/2/2015, applicant was in the process of welding exhaust tips at work. When he stood up to reach his hammer, his left knee popped. The area around his knee swelled up and he experienced excruciating pain. His supervisor was nearby when it happened, and immediately rushed over to help.

Applicant went directly to Dr. Harwood's office who drained the knee and ordered an Xray. The Xray results were devastating for applicant. The entire joint surface had broken off the inside of his left knee and the tibia plateau had completely deteriorated. With the knee joint completely destroyed, he was told that Allograft procedure to restore function in his left knee was no longer an option.

Later that night his fever rose to a dangerously high level. The next day applicant went to the Emergency Room. The attending trauma physician informed him that the infection in his knee triggered septic shock. He had arrived at the hospital in the nick of time. If he had waited any longer, he would have died.

When he was released from the hospital after nine days, he was referred to a bone specialist at Stanford, Dr. Lowenburg. This doctor told applicant that multiple surgeries were now required. The first surgical procedure would involve removing the infected bone. Next, they would have to cure the infection. After that was done, they would have to figure out a way to rebuild the knee joint in steps to allow him the ability to walk again.

After talking to Dr. Lowenburg about his medical condition, applicant then notified Tracy Lewis, the head of HR that he would need to file a claim for workers' compensation benefits for the work injury to his knee. He had not requested workers' compensation benefits prior to that time, since the motorcycle accident had caused a non-industrial injury to his knee.

However, the non-industrial injury to his knee was steadily improving, UNTIL he was required to wear steel toed boots at work. Based on the medical records in evidence and the credible testimony of applicant, it is clear that applicant has sustained an industrial injury to his left knee in the course of employment, due to the work mandate to wear these boots.

The issue at hand is not **causation of disability**. The non-industrial motorcycle incident will most likely be responsible for some of the permanent disability to the left knee when it becomes time to decide apportionment between industrial versus non-industrial factors. However, that is not the issue. The current issue is **causation of injury** for which applicant has sustained his burden

of proof. See legal analysis below of the distinction between causation of injury and causation of disability.

The following is the parties' joint stipulated chronology of events:

Date	Description of Event

STIPULATED CHRONOLOGY OF EVENTS:

03/2010	Applicant begins working for Driven Performance as a welder/fabricator.
12/2012	Applicant sustained nonindustrial motorcycle accident requiring several surgeries to repair his left knee/left leg. Surgeries are performed by Dr. Maury Harwood.
04/2015	Supervisors at Driven Performance start to enforce a shop rule requiring applicant to wear leather hard-soled boots while at work.
06/02/2015	Applicant's knee locks up while standing up at work. He immediately presents to South Valley Orthopedics & Sports Medicine with complaints of severe left knee pain and swelling. (See Applicant's Exhibit 1, page 1.)
06/03/2015	Applicant presents to Natividad Emergency Department and has emergency surgery to flush out the infection in his left knee.
06/2015 -10/2015	Applicant has multiple surgeries and procedures to repair his left knee after his injury from 6/2/2015.
08/14/2015	Claim denied by defendant.
10/27/2015	Applicant's deposition taken by defendant.
07/28/2016	PQME Dr. Michael Post unable to find industrial causation but suggests ingrown toenail may have contributed to an infection.
11/30/2016	PQME Dr. Post issues supplemental report with no changes to his causation opinions.
07/14/2017	Internal medicine PQME Dr. Jonathan Green issues report finding no medical basis of toe infection causing subsequent knee infection/injury.
02/20/2019	Applicant's attorney files Substitution of Attorney/Dismissal of Attorney.
02/25/2019	Matter set for trial with discovery left open for applicant's attorney to get report from Dr. Harwood.
05/30/2019	Trial reassigned from WCJ Lehmer to WCJ Casey.
09/09/2019	WCJ Casey continued the trial for further reporting from Dr. Harwood.
10/01/2019	Dr. Harwood issues a report indicating that applicant's work boots had a negative effect on his left knee. (See Applicant's Exhibit 2, top of page 2)

11/13/2019	Trial taken OTOC at defendant's request for further discovery.
01/14/2020	Defendant takes deposition of Dr. Harwood. Dr. Harwood maintains his opinion that applicant's work boots contributed to the worsening of his knee condition. (Exhibit 3)
07/06/2020	Supplemental report from PQME Dr. Green, internal medicine, no changes to his opinion.
08/15/2020	Supplemental report of PQME Dr. Post, physical medicine and rehabilitation, no changes to opinion.
08/21/2020	Defendant files Petition to Dismiss.
09/14/2020	Parties appear for MSC; matter set for trial on AOE/COE for left knee and defendant's petition for dismissal in the alternative.

III. Legal Analysis

A. PTP Dr. Harwood reports and deposition testimony constitute substantial medical evidence upon which to make a finding of AOE/COE

Applicant's position that his knee injury was caused by industrial factors is supported by the substantial medical evidence in the form of the medical reports (Exhibit 1 & 2) and deposition testimony of the primary treating physician, Dr. Maury Harwood taken on 1/14/2020. (Exhibit 3)

At page 2 of Dr. Harwood's report of Oct 10, 2019, Dr. Harwood states the following:

> "Roughly in May 2015 it became mandatory that he [applicant] were rigid work boots as part of his uniform. Immediately, this had an effect on his knee, with increased pain, swelling, and difficulty with his work function. We tried to appeal the use of his boots, however this was unavailable. He was seen frequently in my office over the next several months, at which time it was noted he was struggling with work as well as his activities of daily living.
>
> On 6/02/2015 he stood up at work and felt his knee lock. He immediately was unable to weight-bear. He presented to my office for evaluation at which time he had a significant effusion, inability to weight-bear on his left lower extremity, significant crepitus with range of motion. Radiographs obtained at that time revealed that the bone. Of his proximal medial tibial plateau, and the small remaining hardware had changed versus his last radiograph….
> **….Seemingly therefore his industrial exposure more than not had a negative effect on his left knee." (Emphasis added.)**

At his deposition, page 22, line 8, (Exhibit 3) Dr. Harwood concludes that the injury arose of employment:

> **My question is: With these sentences right here, are you telling the parties that you believe that at least one fraction of a percentage of his work contributed to·the knee injury he sustained in May of 2015?**
>
> Answer of Dr. Harwood: Yes.
>
> **Question: And does that continue to be your opinion today?**
>
> Answer: It does.

B. What Are the Elements of Substantial Medical Evidence

LC §4628 and 8 CCR §10682 (formerly §10606) set forth the following list of items that must be included in a medical-legal report in order for it to be considered "Substantial Medical Evidence" upon which an evaluating physician may rely for his or her determination: LC §4628

(1) A complete history.
(2) A Review and summary of prior medical records.
(3) An explanation of the conclusions of the report.

Regulation 8 CCR §10682: (b) Medical reports should include where applicable:

Nonmedical records relevant to determination of the medical issue and:

(1) The date of the examination;
(2) The history of the injury;
(3) The patient's complaints;
(4) A listing of all information received in preparation of the report or relied upon for the formulation of the physician's opinion;
(5) The patient's medical history, including injuries and conditions, and residuals thereof, if any;
(6) Findings on examination;
(7) A diagnosis;
(8) Opinion as to the nature, extent and duration of disability and work limitations, if any;
(9) Cause of the disability;
(10) Treatment indicated, including past, continuing and future medical care;
(11) Opinion as to whether or not permanent disability has resulted from the injury and whether or not it is stationary. If stationary, a description of the disability with a complete evaluation;
(12) Apportionment of disability, if any;

(13) A determination of the percent of the total causation resulting from actual events of employment, if the injury is alleged to be a psychiatric injury;
(14) The reasons for the opinion; and
(15) The signature of the physician.

The reports and deposition testimony of Dr. Harwood in this case have met all of the requirements listed above. Therefore, applicant has met his burden of proving that his left knee injury is industrial.

C. Applicant's Credible Testimony

In order to sustain his burden of proving that his injury is industrial, applicant must prove that the injury arose out of employment and occurred in the course of employment with defendant (Labor Code section 3600). The issue of AOE (injury arising out of employment) is primarily a medical issue. The issue of COE (course of employment) is primarily legal issue. Applicant credible testimony summarized above meets the test for sustaining his burden of proof that the cumulative trauma injury ending on 6/2/2015 occurred in the course of employment. The medical evidence summarized below meets the test for sustaining his burden of proof that the cumulative trauma injury ending on 6/2/2015 arose out of employment.

IV. Case Law Supports a Finding of Industrial Causation

In the case of ***South Coast Framing v. WCAB*** (Clark),) (2015) 80 Cal Comp Cases 489, the California Supreme Court stated, "All that is required [to prove industrial injury] is that the **employment be one of the contributing causes** without which the injury would not have occurred." Emphasis added. As discussed above, applicant's employment with defendant involved strenuous activity by applicant on a daily basis clearly contributed to his injury to his left knee. It is true that his 2012 motorcycle accident has contributed to his knee injury, but that is an issue for **causation of disability** and apportionment. We are currently concerned only with **causation of injury** and applicant has met his is deemed industrial.

The overwhelming evidence in this case indicates that applicant's work duties with defendant was one of the contributing causes of his left knee injury. Therefore, applicant has met his burden of proving that his injury arouse out of employment and has occurred in the course of employment.

V. Medical Treatment

Consistent with the PTP's reports medical treatment will be needed for this applicant and supports an award of further medical treatment. In the case of ***Granado v. WCAB***, (1968) 33 CCC 647, the California Supreme Court made it clear that with regard to an analysis of "**causation of injury**," the evaluating

physician may not apportion liability for medical treatment or for temporary disability. This is still the law today.

VI. All Other Issues Deferred

All other issues (including, but not limited to, permanent disability, apportionment, attorney's fees, sanctions and penalties) are deferred at this time, with WCAB jurisdiction reserved in the event that the parties are unable to resolve this issue amongst themselves.

C. RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the petition for reconsideration filed by defendant herein should be **DENIED** on the merits.

DATE: 5/4/2021
Colleen S. Casey
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE