

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

**JOSE LUIS RODRIGUEZ, *Applicant***

**vs.**

**JB WHOLESALE ROOFING and SAMSUNG FIRE AND MARINE INSURANCE  
COMPANY; administered by BROADSPIRE, *Defendants***

**Adjudication Number: ADJ10393358  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Supplemental Findings of Fact (Findings) issued by the workers' compensation administrative law judge (WCJ) on May 5, 2022, wherein the WCJ found that applicant sustained injury arising out of and in the course of his employment (AOE/COE) to his lumbar spine, right knee, and left shoulder.

Defendant contends that applicant sustained a right knee injury in 1997, not during the cumulative period as claimed, and that the reports from orthopedic physician Edwin Haronian, M.D., and chiropractic qualified medical examiner (QME) Nader Farsar, D.C. are not substantial evidence that applicant sustained injury to his left shoulder and/or right knee.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We did not receive an Answer from applicant.

We have considered the allegations in the Petition, 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, left shoulder, left arm, left leg, left knee, right knee,

and in the form of a hernia, while employed by defendant as a roofer, driver, dispatcher, and sales representative during the period from June 1, 1988, through February 10, 2014.

Shiva Drakhshani, D.C., initially treated applicant on November 13, 2015. (App. Exh. 1, Dr. Drakhshani, November 13, 2015.) His “Initial Assessment” included that applicant had chronic low back, left shoulder, left knee, and right knee pain, and he noted that the, “Caustion of the patient’s present disabilities is industrial.” (App. Exh. 1, p. 4.)

Dr. Haronian evaluated applicant regarding his left shoulder, low back, and right knee on June 10, 2016. The diagnoses were left shoulder impingement, lumbosacral radiculopathy, and right knee tendonitis/bursitis. (Def. Exh. D, Dr. Haronian, June 10, 2016, p. 7.) Dr. Haronian noted that applicant’s:

Right knee exhibits healed incisions at the site of the arthroscopy. There is patellar crepitus on flexion and extension with pain on patellar compression. Tenderness is noted at both the medial and lateral joint lines and positive McMurray's [tears in the meniscus] can be elicited both medially and laterally. (Def. Exh. D, p. 8.)

QME Dr. Farsar evaluated applicant on July 21, 2017. Dr. Farsar examined applicant, took a history, and reviewed the medical record. He concluded that applicant sustained a cumulative injury to his left shoulder, lumbar spine, and right knee, while employed by defendant. (Joint Exh. X1, Dr. Farsar, July 21, 2017, pp. 11, 13 – 14, and 17 – 19.)

The parties proceeded to trial on May 9, 2018. Applicant claimed injury to his back, left shoulder, left arm, left leg, left knee, and in the form of a hernia. The only issue identified was injury AOE/COE. (Minutes of Hearing and Summary of Evidence (MOH/SOE), May 9, 2018, p. 2.) The matter was continued and at the July 30, 2018 trial the May 9, 2018 MOH/SOE were edited to include applicant’s claim of injury to his right knee, and the matter was submitted for decision. (See MOH/SOE, July 30, 2018, pp. 1 - 2.) The WCJ issued an Order Rescinding the August 2, 2018 Findings of Fact.

The parties again proceeded to trial on July 10, 2019. Additional exhibits were admitted into the record and the matter was submitted. (MOH/SOE, July 10, 2019.) Defendant sought reconsideration of the July 11, 2019 Findings of Fact and in his Report the WCJ stated that:

For the reasons stated above, it is respectfully recommended that the Petition for Reconsideration be GRANTED, in part, to amend the Findings of Fact dated 7/11/2019 to delete "left knee, left shoulder and left arm" from Findings of Fact

No. 1, and add Findings of Fact No.2 deferring "additional body parts" as an issue to be decided in subsequent proceedings, and in all other respects be DENIED.

(Report, August 1, 2019, p. 6; capitalization in original.)

Based on our review of the record we agreed with the WCJ's recommendation. In our September 30, 2019 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration we amended the Findings of Fact to find that applicant sustained injury to his lumbar spine, that he did not sustain an injury to his neck, and to defer the issue of injury to any additional body parts.

At the May 4, 2022 trial no testimony was taken and no additional exhibits were offered. The issue submitted for decision was, "Injury to left shoulder, left arm, and right knee." (MOH/SOE, May 4, 2022, p. 2.)

## **DISCUSSION**

We first note that in his Report, the WCJ stated:

Drs. Haronian, Drakshani, and Farsar all agreed that the employee has sustained cumulative trauma to the left shoulder and right knee as well as the low back. (Report, p. 2.)

The physicians received accurate histories and made identical findings of injury, need for care and disabilities. Hence the preponderance of evidence supports the finding of injury to the left shoulder and right knee.

(Report, p. 3.)

Having again reviewed the trial record, we agree with the WCJ that the reports from Drs. Haronian, Drakshani and Farsar constitute substantial evidence that applicant sustained a cumulative injury AOE/COE to his left shoulder and right knee.

As to defendant's argument that applicant actually sustained his right knee injury in 1997, the WCJ explained that:

All physicians were told about the prior right knee surgery many years earlier. So the histories received by the physicians herein were correct. What may likely result in apportionment issues later on in the litigation does not negate the opinion on causation put forth by all three physicians in this matter.

(Report, p. 3.)

Finally, defendant argues that since no new testimony or medical evidence was presented at the May 4, 2022 trial, "it is difficult to see how" the WCJ "could have now found the applicant

credible in relation to the claim for a left shoulder injury.” (Petition, p. 10.) In his August 1, 2019 Report, the WCJ stated:

The undersigned admits that the litigation herein centered on Applicant's low back. ... The discussion of knees and shoulders was limited at best.... ¶ ... The undersigned therefore agrees with Petitioner [defendant] that injury to the shoulder(s) or knee(s) is significantly in doubt. And, as pointed out above, those body parts were not the thrust of the trial. ...  
(Report, August 1, 2019, p. 5.)

As noted above, the WCJ recommended that we amend the July 11, 2019 decision to defer the issue of injury to disputed body parts “an issue to be decided in subsequent proceedings.” The WCJ did not recommend, nor did we order, further development of the record. The WCJ’s basis for recommending that the matter be sent back with the issue of the injured body parts deferred, was the fact that he had not fully analyzed the knee and shoulder issues. He subsequently reviewed the trial medical record and provided a detailed explanation of his analysis and his conclusions based thereon. Thus we see no reason for disturbing the Findings.

Accordingly, we deny reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the Supplemental Findings of Fact issued by the WCJ on May 5, 2022, is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



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

**JUNE 29, 2022**

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

**JOSE LUIS RODRIGUEZ  
EQUITABLE LAW GROUP  
TROVILLION, INVEISS & DEMAKIS**

*TLH/pc*

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

**REPORT AND RECOMMENDATION ON  
PETITION FOR RECONSIDERATION**

**I. INTRODUCTION**

The injured employee is a 46 year old roofing supply dispatcher, roofer, driver and sales representative who sustained injuries at work during the period 1988 through 2/10/2014 to his low back, left shoulder and right knee.

The Petitioner is the Defendant who claims that the undersigned erred by finding injury to the left shoulder and right knee.

This matter was originally tried in 2018 and 2019 as the result of priority hearings on the issue of injury.

Thereafter injury to the low back was found. The only issues at this trial were injury to the left shoulder and right knee.

**II. STATEMENT OF FACTS**

The claim by the Applicant was for injury by way of cumulative trauma during his 26 years of employment with the Defendant. Two prior trials established that the employee sustained injuries from 1988 to 2/10/214 to his low back. Dr. Nader Farsar acted as the PQME in this case (Court's Exs. X-1 – 4). Dr. Shiva Drakshani first saw the patient on an attorney referral on 11/13/2015 (App's Ex. 1). Dr. Edwin Haronian saw the patient on an orthopedic referral from Drakshani on 6/10/2016 (Df's Ex. D). Applicant testified at trial on 7/30/2018 that he developed right knee, low back and left shoulder complaints while working (Minutes of Hearing, 7/30/2018, p.3, line 3).

Drs. Haronian, Drakshani and Farsar all agreed that the employee has sustained cumulative trauma to the left shoulder and right knee as well as the low back.

In prior hearings there were significant disputes as to date of injury, body parts and job duties. These disputes were resolved by the Decision After Reconsideration dated 9/30/2019. At that point the findings of fact found that injury was to the low back. Injury to other body parts was deferred.

The trial conducted on 5/4/2022 was solely on the issue of injury to the left shoulder and right knee. No new evidence was proffered.

Based upon the opinions of Drs. Farsar, Haronian and Drakshani the undersigned found that the Applicant herein did sustain injury to his left shoulder and right knee. No other issues were before the Court.

**III. DISCUSSION**

A finding of injury must be based upon substantial medical evidence. The evidence must be sufficient so that a reasonable mind might find the evidence to be adequate to support a medical conclusion. *Braewood Convalescent Hospital v. WCAB (Bolton)* (1983) 48 CCC 566. Such opinions must be credible and not based on inadequate medical histories, surmise, conjecture or guess. *Place v. WCAB* (1970) 35 CCC 575.

A finding of fact must also be based on a review of all the evidence and not simply upon an isolated fact that disregards the entire record. *Bracken v. WCAB* (1989) 54 CCC 349.

In this case the Petitioner urges a finding that the evidence is not substantial to support the finding of injury to the right knee or left shoulder.

The basis of the appeal on the left shoulder is that the Applicant's testimony in deposition is inconsistent with regards to the left shoulder claim.

The basis for the appeal of the right knee is based upon the claim that Applicant previously had undergone right knee surgery 20 years earlier.

#### Left Shoulder

There was inconsistent testimony on the shoulder claim in the deposition. However the undersigned took note of Dr. Farsar's report (Ex. X-1) which noted that this unsophisticated claimant told him that he had right shoulder complaints *but pointed to his left shoulder* (Ex. X-1, p.4).

More importantly, the complaints to Drs. Drakshani and Haronian were to the left shoulder. Applicant's testimony indicated complaints in the left shoulder. Even more importantly, the findings by all doctors were in the left shoulder. Dr. Farsar found range of motion abnormalities in the left shoulder (Ex. X-1, p.6). There were no findings on the right shoulder. In fact Dr. Farsar declared Applicant P&S with 5% wpi in the left shoulder.

Dr. Haronian received a history of left shoulder complaints (Ex. D, p.3). His conclusions were that Applicant suffered from an impingement of the left shoulder (p.8).

So while there may have been confusion, the preponderance of the evidence by the physicians clearly favors a finding of injury to the left shoulder. The lack of any findings on the right shoulder dispels the theory that injury was on the right.

#### Right Knee

All physicians were told about the prior right knee surgery many years earlier. So the histories received by the physicians herein were correct. What may likely

result in apportionment issues later on in the litigation does not negate the opinion on causation put forth by all three physicians in this matter.

Dr. Farsar found pain, loss of strength, loss of range of motion and arthrogram abnormalities to substantiate the findings of injury to the right knee (Ex. X-1, p. 9).

Dr. Haronian's right knee exam is in agreement with Dr. Farsar (Ex. D, p.7).

The Applicant worked in an occupation from 1988 to 1997 that would be considered very arduous. Thereafter the evidence supported the finding that Applicant worked until 2014 performing similar physical activities on a lessor extent due to a change of jobs. The physicians received accurate histories and made identical findings of injury, need for care and disabilities. Hence the preponderance of evidence supports the finding of injury to the left shoulder and right knee.

#### **IV. REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

Based upon the arguments above, it is respectfully recommended that the Petition for Reconsideration be DENIED.

DATE: 5/27/2022

Dean Stringfellow  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE