

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

DAVID LUJAN GONZALEZ (DEC'D), *Applicant*

vs.

**PENSKE HONDA ONTARIO;
TRISTAR ROSEVILLE, *Defendants***

Adjudication Numbers: ADJ9000687; ADJ17432107

Santa Ana 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.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 14, 2023

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

**DAVID LUJAN GONZALEZ (DEC'D)
GLAUBER BERENSON VEGO
PEARLMAN, BROWN & WAX, L.L.P.**

AS/mc

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

1. Applicant's Occupation: Automobile Porter, Occupational Group Number 250
Applicant's Age: Deceased 9/1/2022 per Verified Petition for Reconsideration
Applicant's Date of Birth: 11/8/1952
Date of Injury: 4/15/2013
Admitted Parts of Body Injured: cervical spine and head
Fulcrum Issue Before the Court for Trial: Petition To Reopen, additionally claiming lumbar spine, right shoulder, hypertension, coronary artery disease.
2. Identity of Petitioner: Applicant David Lujan Gonzalez (hereinafter "Petitioner")
Timeliness: Timely
Verification: Verified
3. Date of Issuance of Findings & Order: 10/20/2023
4. Petitioner's Contentions: 1. By the Findings and Order, the WCJ acted without or in excess of his powers. 2. The evidence does not justify the findings of fact. 3. The findings of fact do not support the order, decision, or award.

PROLOGUE

The Applicant filed an Application For Adjudication of claim alleging an injury of 4/15/13 to his back, legs, arms, sleep, hips, knees, feet, elbows, shoulders, and psyche. (Opinion On Decision 10/20/23, page 6.) The claim was settled 11/15/2016 by Stipulations with Request for Award, with Award thereon. (Stipulations with Request for Award received 11/15/2016, EAMS Doc ID#62020179; Award 11/15/2016, EAMS Doc ID#62020176). In Paragraph 9 of the Stipulations, the Applicant dismissed all body parts and injuries except the neck and head.

3/12/2018 the Applicant filed a timely Petition to Reopen.

9/1/2022 the Applicant passed away.

This matter proceeded to trial 9/12/2023, with Petitioner seeking accrued permanent disability benefits and attorney fees allegedly resulting from new and further disability. The alleged new and further permanent disability involved new body parts (lumbar spine, right shoulder, hypertension, coronary artery disease).

The matter stood submitted for decision 9/22/2023. This court issued its Findings and Order and Opinion on Decision 10/20/2023.

Petitioner has filed a timely, verified 10-page Petition for Reconsideration (hereinafter “Petition” or “Petition For Reconsideration”) which includes references to evidentiary matters and trial exhibits. The Petition lacks citations to the trial record, in violation of Title 8, California Code of Regulations Section 10945 (b.)

The essence of the Petition is: 1) The WCALJ found applicant has not sustained his burden of proving a right to reopen; 2) The WCALJ erroneously relied on the medical findings of the PQMEs (Dr. Hannani and Dr. Caren) rather than those of the Primary Treating Physician (Dr. Haronian) and Secondary Physician (Dr. Majcher); 3) The WCALJ should have concluded that the medical findings of the Primary Treating Physician and Secondary Physician (Dr. Haronian and Dr. Majcher) were more persuasive than the medical findings of the PQMEs and Consulting Neurologist (Dr. Hannani, Dr. Caren & Dr. Aminian).

I

INTRODUCTION

As noted in this court’s Opinion on Decision, the “...fulcrum issue was whether Applicant suffered new and further disability such that he is entitled to reopen this case...” (Opinion On Decision 10/20/2023, page 5.) Upon this fulcrum issue, the court determined Applicant bore the burden of proof and that Applicant did not sustain his burden of proving a right to reopen. (Opinion On Decision 10/20/2023, page 7.) In reaching this determination, the court relied upon the findings of Panel Qualified Medical Evaluators Kambiz Hannani (Orthopedics) and Jeffrey Caren (Internal Medicine). The court found the medical reporting of Drs. Caren and Hannani to be substantial, reliable, well-reasoned and persuasive. Drs. Caren and Hannani concluded the Applicant did not suffer new and further disability.

At trial, the parties stipulated that Drs. Hannani and Caren were the duly selected Qualified Medical Evaluators. (MOH/SOE 9/12/2023, page 2:23-24.) Dr. Kevin Aminian served the parties as a Secondary Consulting Physician in Neurology. Medical reports of Drs. Caren, Hannani and Aminian were admitted into evidence without objection or comment by the Petitioner.

Dr. Edwin Haronian served as the employee-selected primary treating physician. Dr. Stanley Majcher served as a secondary consulting physician in Internal Medicine, upon referral from Dr. Haronian. (Petition For Reconsideration, page 2:16-24.)

II FACTS

This matter proceeded to trial with Petitioner asserting a right to reopen an admitted specific injury of 04/15/2013. No testimony was offered on behalf of either party.

The parties stipulated that Applicant, while employed on 4/15/2013 as an Automobile Porter by Ontario Automotive LLC doing business as Penske Honda Ontario (hereinafter “Penske”) sustained injury arising out of and in the course of employment to the cervical spine and head (consisting of headaches and vertigo). (MOH/SOE 9/12/2023, page 2:5-8.)

The parties stipulated that the Applicant died 9/1/2022. (MOH/SOE 9/12/2023, page 2:19-20.)

A principal issue was whether Applicant suffered new and further disability such to entitle him to reopen his claim of injury of 4/15/2013. Petitioner sought accrued Permanent Disability allegedly the result of new and further disability.

The Defendant employer in this proceeding is Ontario Automotive, LLC dba Penske Honda Ontario (hereinafter “Penske”). The Applicant began working for Penske on 10/29/2010. (Exhibit J.) The Applicant’s injury occurred 4/15/2013 while an employee of Penske. The Applicant’s employment as an automobile porter with Penske technically ended 4/15/2013; however, he kept his uniforms, lock box keys and alarm remote. (Exhibit J.) He transitioned to employment through a company called Parking Corporation, performing the same duties in the same uniform with the same keys and alarm remote.

The Applicant worked through Parking Corporation from May 2013 to January 2015. His work duties for Parking Corporation continued to be those of an automobile porter. His duties included washing and detailing vehicles, vacuuming the interior on these, driving vehicles to different dealerships to trade, and parking vehicles in the lot. These activities required extensive standing and walking, as well as constant maneuvering of his hands and arms, driving, bending, stooping, squatting, twisting, turning, pushing, and pulling, gripping, and grasping, reaching to all levels, lifting, and carrying buckets of soap and water weighing up to 30 pounds. (Ex. I, Medical Report of Dr. Edwin Haronian 2/8/2016, Records of SCIF, page 10 of 223)

In approximately January 2015, the applicant’s employment with Parking Corporation ended. (Exhibit O.)

In approximately September 2015, the Applicant began subsequent employment performing warehouse work. He worked as a warehouseman until Mid-December 2015 when he was laid off. (Ex. I, Medical Report of Dr. Edwin Haronian 2/8/2016, Records of SCIF, page 10 of 223).

2/26/2016 the Applicant filed a cumulative trauma injury claim against Parking Corporation, insured by State Compensation Insurance Fund, alleging a cumulative trauma over the period 1/22/2014-1/22/2015 to the neck, back, shoulder, lower extremity, and body systems. (Exhibit O.) In the cumulative trauma claim against Parking Corporation, as in the instant case against Penske, the Primary Treating Physician was Dr. Edwin Haronian. (Exhibit O.)

September 2016, the Applicant secured employment as a general laborer for a gardening company working in the City of San Fernando. He worked full-time trimming trees and bushes. He had to pick up leaves, debris, and trash. He would clear drainage systems of debris and leaves. His duties as a general gardening laborer required lifting and carrying up to about 20 pounds, prolonged standing, walking, repetitive bending, twisting, reaching, gripping, and grasping, fine manipulation and precarious positioning. (Exhibit I, records of SCIF, Medical Report of Dr. Roger Sohn 4/17/23, page 45 of 223.)

On 11/15/2016 this specific injury claim against Penske was settled via stipulated Award for 29% permanent disability related to the head and neck. The stipulated Award was based in part upon the opinions of Drs. Aminian and QME Hannani. In the stipulated Award, the Applicant dismissed all body parts originally alleged except the neck and head. (Stipulations With Request for Award/Award 11/15/2016, EAMS Doc ID #62020176 and EAMS Doc ID #62020179.)

2/1/2018 the claim of cumulative trauma against Parking Corporation was settled by way of Compromise and Release for \$44,000. (MOH/SOE 9/12/2023, page 2:20-23.)

Three weeks later (2/20/2018) the Applicant filed a Petition to Reopen against Penske, seeking to reopen the 2013 specific injury stipulated Award. This was five years after Applicant's employment with Penske ended; three years after the Applicant was last employed as an automobile porter for Penske/Parking Corporation; two and one-half years after the Applicant worked as a warehouseman; 17 months after the Applicant worked as a full-time general laborer trimming trees; and, 3 weeks after the Applicant settled the cumulative trauma claim against Parking Corporation for \$44,000.

In August of 2018, the Applicant entered into a Student Enrollment Agreement for a course of study at Computer Institute of Technology to become an Office Software Specialist. The start date for the program was 10/1/2018. (Exhibit I, Computer Institute of Technology Student Enrollment Agreement dated 8/15/2018, page 188-191 of 223.)

In July 2022, Dr. Haronian noted the Applicant to be working full duty. (Exhibit 8, Permanent and Stationary Report of Primary Treating Physician dated 7/11/2022, pages 2-3.)

Between 11/15/2016 (the date of the stipulated Award in this case) and 2/1/2018 (the date of the \$44,000 settlement of the cumulative trauma case against the subsequent employer), the Applicant continued to be seen and treated by Dr. Edwin Haronian. Records of SCIF (Exhibit I) reflect visits and treatment by Dr. Haronian during this period (2016-2018) which were attributed by Dr. Haronian to the cumulative trauma injury claim against Parking Corporation. February 1, 2018, the cumulative trauma claim was settled against Parking Concept. February 18, 2018, the Petition to Reopen was filed in this case. Between March 2018 and Dr. Haronian's last medical report, the doctor attributed his services to this specific injury claim. (Exhibit I, Records of SCIF, pages 1-223.)

This court's trial record included:

1) Four medical reports from Dr. Kambiz Hannani, the duly selected QME in Orthopedics (Exhibits B-E);

2) Multiple medical reports from Dr. Edwin Haronian, the employee-selected Primary Treating Physician (Exhibits 1-9);

3) Four medical reports from Dr. Stanley Majcher, a Secondary Treating Physician in Internal Medicine (Exhibits 10-13);

4) Two reports of Dr. Kevin Aminian, a Consulting Physician in Neurology (Exhibits G and H);

5) A report from Dr. Jeffrey Caren, the QME in Internal Medicine/Cardiology (Exhibit F).

No objection to the medical reporting of Dr. Hannani, Dr. Caren or Dr. Aminian was tendered by the Petitioner at trial. The medical reports of these three doctors were entered into evidence without objection.

The parties were provided a 10-day window period following trial within which to submit post-trial briefs setting forth their contentions. No brief was submitted on behalf of applicant.

Petitioner listed no challenges to the medical reporting of doctors Hannani, Caren or Aminian in their Pretrial Memorandum of Stipulations and Issues. (Third Amended Joint Pre-Trial Conference Statement received 5/3/2023, EAMS Doc ID #46228852.) The Petitioner tendered no objections to entry into evidence of the medical reporting of Drs. Caren, Hanani or Aminian at trial. The Petitioner offered no arguments or contentions at trial challenging the medical reporting of Dr. Caren, Hanani or Aminian. Petitioner was provided an opportunity to set forth any contentions in a post-trial brief. No post-trial brief was submitted by Petitioner.

Defendants did challenge the substantiality of the reporting of Dr. Majcher, contending "...he still has an inaccurate history and has not acknowledged or discussed applicant's subsequent employment, injury, or employment thereafter. Furthermore, there is no analysis regarding his

opinions on causation..." ((Exhibit P, Correspondence Pearlman, Brown Encino dated 1/21/2021.) Defendants' challenge at trial had long been known to Petitioner and clearly enunciated as early as January of 2021 in correspondence from the defense to Petitioner.

III **DISCUSSION**

The court finds the medical reporting of the QMEs Dr. Hanani and Dr. Caren, and Secondary Consulting Physician Aminian to be substantial, well-reasoned, based on reasonable medical probability, and persuasive. The court finds the medical reporting of Drs. Haronian and Majcher to be significantly flawed and consequentially less persuasive.

The following are Petitioner's Contentions in the Petition For Reconsideration and the court's observations thereon:

PETITIONER’S CONTENTION a. WCJ erroneously relied on PQME Hannani’s 03/02/19 re-evaluation report since his physical examination of Applicant did not comply with the AMA Guides.

Petitioner contends without citation to the record that Dr. Hannani did not take necessary measurements. This contention is first advanced by Petitioner in this Petition for Reconsideration.

The Petitioner has not previously challenged Dr. Hannani’s reporting on this or any other ground. The Petition is populated with factual and medical contentions, all made without any supporting citations to the trial record or to the AMA guides.

Petitioner contends that Dr. Hannani provided only one measurement for the cervical spine, lumbar spine and each shoulder. (Petition For Reconsideration, page 3:9-11.) Without citation either to the record or the Guides, Petitioner contends that the “...Guides require that the physician examiner take the average of three readings to determine the impairment rating...” (Petition For Reconsideration, page 5:4-6.)

Dr. Hannani provided measurements and his measurements were similar to those of Dr.

Haronian. The Guides, however, do not categorially *require* that the physician examiner take three readings in all situations. By way of example, measurements of passive range of motion may not be required at all.

The Guides acknowledge that “...In determining the range of motion of individual joints, the examiner must evaluate both the active and the passive motion. Active or voluntary motion is that performed by the active contraction of the governing muscles and is evaluated first. When a person has full active joint excursion, passive motion values need not to be taken because a joint that has full active excursion will have a full passive range as well...” (Guides To the Evaluation of Permanent Impairment, 5th Ed., page 451.)

Dr. Hannani examined Applicant’s shoulders and found the range of motion entirely within normal limits (right/left forward flexion 180; Extension 50; Abduction 180; Adduction 50; External Rotation 90; Internal Rotation 90; all compared to normal and found normal). (Exhibit

B, Medical Report of Dr. Kambiz Hannani, 4/29/2015, page 4.) Given these entirely normal findings, passive measurements are not required.

It is also noteworthy that Dr. Hannani found the shoulders to be nonindustrial body parts but still provided measurements. (Exhibit B, Medical Report of Dr. Kambiz Hannani, 4/29/2015, page 4.)

The court is mindful that, when commenting upon measurements of various body parts to determine consistency, the Guides indicate the physician “should” take measurements. Dr. Hannani did take measurements. The Guides note that “...repeating measurements may decrease error and result in a measurement that is closer to average function...” (Guides To the Evaluation of Permanent Impairment, 5th Ed., page 20.) The physician may of course disregard the measurements. The AMA Guides specify that “...measurements, such as one that checks the individual’s lumbosacral spine range of motion (Section 15.9) are good but imperfect indicators of people’s efforts. The physician must use the entire range of clinical skill and judgment when assessing whether or not the measurements or tests results are plausible and consistent with the impairment being evaluated...” (Guides To the Evaluation of Permanent Impairment, 5th Ed., page 19.)

Dr. Hannani’s reporting reflects him having taken measurements of the subject body parts and utilized the range of his clinical skill and judgment to assess the applicant.

The Petitioner urges error in regard to measurements of the lower back. With regard to the lower back, however, there is complete Orthopedic agreement. Both Dr. Hannani and Dr. Haronian concur that the lower back was not injured as a result of the specific injury which is the subject of this Petition to Reopen. Dr. Haronian attributes 60% of the applicant’s lower back condition to a cumulative trauma working for a subsequent employer and 40% to nonindustrial factors. (Exhibit 1, Follow Up Report of A Primary Treating Physician, records of SCIF page 180 of 223.) Dr. Hannani likewise finds the lower back nonindustrial, noting: “...He is claiming his low back, as well as his shoulders; however, the documentation at Kaiser for about one year following the injury does NOT document any low back complaints. ...Furthermore, the only documentation of shoulder complaints appears to be a radiating pain to the shoulders, as documented by physical therapy in March and April 2014. Therefore, given the fact that his examination was very benign as it relates to his shoulders at the present time there is no indication that he sustained an industrial

exposure to his low back or shoulders with reasonable medical probability...” (Exhibit B, Medical Report Dr. Kambiz Hannani 4/29/2015, page 27.)

Despite unanimity of opinion that the lower back is nonindustrial as it may relate to this specific injury, Dr. Hannani still conducts and provides low back measurements. (Exhibit B, Medical Report of Dr. Kambiz Hannani 4/29/15, page 5.)

The Petitioner urges the adoption of the findings of Dr. Haronian over those of Dr. Hannani. Conspicuously absent, however, is any comparison by Petitioner of Dr. Hannani’s measurement protocols to those of Dr. Haronian. A comparison reveals both Orthopedists took similar measurements, employing similar measurement protocols.

In Dr. Hannani’s report of 4/29/2015 (Exhibit B), three pages are devoted to summarizing the measurements he conducted. Measurements were taken by Dr. Hannani related to Applicant’s arms, forearms, thighs, calves, grip strength, cervical spine, bilateral shoulders, bilateral elbows, bilateral wrists, lumbar spine, lower extremities, upper extremities, and neurologic testing/measurements including sensation and motor examination. (Exhibit B, Medical Report of Dr. Kambiz Hannani, MD dated 4/29/2015, pages 3-5.) Dr. Hannani personally performed the evaluation. (Exhibit B, Medical Report of Dr. Kambiz Hannani, MD dated 4/29/2015, page 28.)

In a report dated 3/12/2019, Dr. Hannani notes “...I previously evaluated the patient on April 29, 2015, and provided maximum medical improvement report...Since that time, he has been following up with Dr. Haronian...The patient has explained to me that his symptoms have essentially not changed since he stopped working in January of 2015... He has been sent to me for determination of reopening the case...” (Exhibit D, Medical Report of Dr. Kambiz Hannani, MD dated 3/12/2019, page 2.)

In his report of 3/12/2019, Dr. Hannani again conducts measurements and testing, consistent with the mission of evaluating the body parts alleged in his Petition to Reopen. Dr. Hannani conducts and summarizes his measurements and testing in two pages devoted to that summarization. Dr. Hannani’s measurements and testing in this report relate to the lumbar spine, right shoulder and cervical spine. (Exhibit D, Medical Report of Dr. Kambiz Hannani, MD dated 3/12/2019, pages 3-4.) Under the rubric “CAUSATION” Dr. Hannani opines “...I have been asked to comment on reopening his case. He has explained to me that his pain essentially has remained

unchanged since he stopped working...his symptomology has remained essentially stable, based on what he has described to me, and there is no indication that he sustained a new or further disability from his specific industrial exposure with reasonable medical probability..." (Exhibit D, Medical Report of Dr. Kambiz Hannani, MD dated 3/12/2019, page 6.)

Dr. Hannani authored a further supplemental report, dated 5/24/2019, generated at the request of Petitioner. In that report, Dr. Hannani advised "...Having reviewed the newly submitted medical records, I have not been provided any new or additional information that would lead me to alter or change my opinion as previously expressed..." (Exhibit E, Medical Report of Dr. Kambiz Hannani, MD dated 5/24/2019, page 10.)

Treating physician Dr. Haronian authored a report of 5/7/19 (Exhibit 2). This report contains no measurements conducted by Dr. Haronian.

Dr. Haronian authored a report of 5/14/2019 (Exhibit 3). This report contains no measurements conducted by Dr. Haronian.

Dr. Haronian authored a report of 8/20/2019 (Exhibit 4). This report contains no measurements conducted by Dr. Haronian.

Dr. Haronian authored a report of 6/18/2020 (Exhibit 5). This report contains no measurements conducted by Dr. Haronian.

Dr. Haronian authored a report of 1/30/2022 (Exhibit 6). This report contains no measurements conducted by Dr. Haronian.

Dr. Haronian authored a report of 4/20/2022 (Exhibit 7). This 35-page report contains no measurements conducted by Dr. Haronian.

Dr. Haronian authored a Permanent and Stationary report of 7/11/2022 (Exhibit 8). This report contains range-of-motion measurements, sensory and motor testing. (Exhibit 8, Permanent and Stationary Report of a Treating Physician Dr. Haronian dated 7/11/2022, pages 4-7.) The range of motion measurements and sensory and motor testing performed by Dr. Haronian are similar to the range of motion, sensory and motor testing and measurement performed by Dr. Hannani. (Exhibit B, Medical Report of Dr. Kambiz Hannani, MD dated 4/29/2015, pages 3-5; Exhibit D, Medical Report of Dr. Kambiz Hannani, MD dated 3/12/2019, pages 3-4.)

Petitioner had ample opportunity to develop a record challenging the substantiality of Dr. Hannani's reporting prior to reconsideration but did not do so. There is evidence in the Exhibits of a cross-examination of Dr. Haronian. There is evidence in the Exhibits of Petitioner sending records to Dr. Hannani and requesting a supplemental report. There is evidence in the record that Dr. Hannani provided the supplemental reporting requested by Petitioner. There is no evidence in the trial record suggesting that Petitioner ever challenged or objected to the findings or conclusions of Dr. Hannani.

The court has reviewed Petitioner's first contention on reconsideration. For reasons set forth in this court's opinion and in this Report, the court continues to find the medical reporting of Dr. Hannani to be well-reasoned, based on reasonable medical probability, substantial and more persuasive than that of Dr. Haronian.

PETITIONER'S CONTENTION b. WCJ erroneously relied on PQME Hannani's 03/02/19 re-evaluation report since his opinions and findings are based on pure speculation and inaccurate history.

In support of this contention, without citation to the record, Petitioner asserts:

"...In Dr. Hannani's reevaluation report dated 03/02/19, under History of Present injury, he noted that Applicant sustained his original injury on 4/15/13 and his condition worsened until Applicant stopped working in January of 2015. As the WCJ pointed out in his Findings and Opinion, Applicant actually stopped working for Penske on 04/03/13. At which time he was transferred to an employment agency and continued working for Parking Corporation through 1/22/15. Clearly, Dr. Hannani did not have

an accurate understanding of Applicant's employment history..." (Petition For Reconsideration, page 5:17-23.)

This contention raises a distinction without a difference and lacks relevance to the Petition to Reopen. The Defendant employer in this proceeding is Ontario Automotive, LLC dba Penske Honda Ontario (hereinafter "Penske"). The Applicant began working for Penske on 10/29/2010. (Exhibit J.) The only injury which is the subject of Petitioner's Petition to Reopen is Applicant's specific injury which occurred 4/15/2013. Although the Applicant's employment as an automobile porter with Penske technically ended 4/15/2013, he kept his uniforms, lock box keys and alarm remote. (Exhibit J.) He transitioned to employment with a company called Parking Corporation performing the same duties at the same site.

The Applicant worked through Parking Corporation from May 2013 to January 2015. His work duties for Parking Corporation continued to be those of an automobile porter. His duties included washing and detailing vehicles, vacuuming interiors, driving vehicles to different dealerships to trade, and parking vehicles in the lot. His activities continued to require extensive standing and walking, as well as constant maneuvering of his hands and arms, driving, bending, stooping, squatting, twisting, turning, pushing, and pulling, gripping, and grasping, reaching to all levels, lifting, and carrying buckets of soap and water weighing up to 30 pounds. (Ex. I, Medical Report of Dr. Edwin Haronian 2/8/2016, Records of SCIF, page 10 of 223)

The Petitioner seeks to reopen an Award which was issued in 2016. The Applicant's condition relating to his 2013 injury at Penske was quantified in November 2016. On 11/15/2016 this specific injury claim against Penske was settled via stipulated Award providing for 29% permanent disability related to the head and neck. All other body parts were dismissed. Petitioner seeks to reopen the Award based on new and further disability occurring after November 2016 (when the Award issued).

Petitioner argues without citing to the record that Dr. Hannani incorrectly believed Applicant last worked for Penske in January 2015 when in fact Applicant last worked for Penske in April 2013. Petitioner omits that the Applicant continued to perform the same duties at the same site, arguably with Penske as a dual employer. Hence, a distinction without a difference. The Petitioner fails to set forth how this distinction is other than entirely harmless and irrelevant to this proceeding to reopen an Award of November 2016.

Petitioner's contention that Dr. Hannani's opinions are based on pure speculation and inaccurate history, due to the noted discrepancy in employment dates, is hyperbolic advocacy.

Whether or not Applicant was last technically an employee of Penske in January 2013 or April 2015, his duties and assignment remained the same. More to the point, QME Hannani clearly understood his responsibilities with regard to the issues in this case: "...I have been asked to comment on reopening his case. He has explained to me that his pain essentially has remained unchanged since he stopped working..." (Exhibit D, Medical Report of Dr. Kambiz Hannani dated 3/12/19, page 6.)

The evidence leads the court to conclude that the applicant last worked for Penske 4/15/2013, and thereafter for Parking Corporation at Penske until January or April 2015, performing the same duties as an automobile porter. Any shared misapprehensions by physicians as to whether the Applicant technically stopped working for Penske in January 2013 or April 2015, is harmless, inconsequential and lacks relevance to the issues before this court or the court's findings thereon. The focal period is the period from the November 2016 Award and thereafter.

Petitioner contends that "...defendant did not submit any updated records from Kaiser (where Applicant treated on a private basis) for Dr. Hannani to review. Dr. Hannani merely reviewed Dr. Haronian's reporting..." (Petition For Reconsideration, page 5:25-26.) Petitioner refers to Kaiser records, without citation to the trial record. No Kaiser records (updated or otherwise) were offered or admitted into evidence.

Without citation to the record, Petitioner contends that Dr. Hannani did not explain why he did not find any new and further injury of the cervical spine, lumbar spine or either shoulder. (Petition For Reconsideration, Page 6:4-6.)

Petitioner's contention is unsupported by the trial record. Dr. Hannani does explain why he did not find new and further injury of the cervical spine, lumbar spine, and shoulders.

Dr. Hannani notes in his report of 12/15/2015 "...He is claiming his low back, as well as his shoulders; however, the documentation...for about one year following the injury does NOT document any low back complaints...Furthermore, the only documentation of shoulder complaints appears to be a radiating pain to the shoulders, as documented by physical therapy in March and April 2014. Therefore, given the fact that his examination was very benign as it relates to his shoulders at the present time... There is no indication that he sustained an industrial exposure to his

low back or shoulders with reasonable medical probability...” (Exhibit C, Medical Report Dr. Kambiz Hannani 12/15/2015, page 2.)

Dr. Hannani found no injury AOE/COE to the low back and shoulders.

In his report of 3/12/2019, Dr. Hannani evaluated the applicant’s low back, neck, and shoulders, and reported that Applicant’s “...symptomology has remained essentially stable, based on what he has described to me, and there is no indications that he sustained a new or further disability from his specific industrial exposure...” (Exhibit D, Medical Report Dr. Kambiz Hannani 3/12/2019, page 6.)

In his report of 5/24/2019, after having been provided extensive additional records to review, Dr. Hannani opined that “...Having reviewed the newly submitted medical records, I have not been provided any new or additional information that would lead me to alter or change my opinion as previously expressed...” (Exhibit E, Medical Report Dr. Kambiz Hannani 5/24/2019, page 10.)

With regard to non-orthopedic complaints, Dr. Hannani recommended the Applicant be evaluated in internal medicine and neurology. The Applicant was evaluated in Internal Medicine by QME Jeffrey Caren and in Neurology by Secondary Consulting Physician Kevin Aminian in relation to the Petition to Reopen.

Dr. Caren served the parties as the duly selected PQME in Internal Medicine and Dr. Kevin Aminian in Neurology. When earlier settling the case-in-chief by Stipulations with Request for Award, the parties specified the settlement to be based in part on Dr. Aminian’s findings.

QME Dr. Caren in his report of 8/10/2021 provides a diagnosis of Hypertension and Coronary artery disease whose causation is Diabetes. Dr. Caren concludes that “...on a reasonably medically probable basis, diabetes has been a pre-existing, non-industrial condition that has not been caused, aggravated, or accelerated by the April 15, 2013, injury or its effects...” (Medical Report Dr. Jeffrey Caren 8/10/2021, page 52.)

In his report of 2/9/2021, Dr. Aminian concluded that there was no “...evidence of new and further neurological disability as a result of industrial injury of April 15, 2013...” (Exhibit G, Medical Report of Dr. Kevin Aminian 2/9/2021, page 26.)

PETITIONER’S CONTENTION c. WCJ erroneously relied on PQME Hannani’s 03/02/19 re-evaluation report since Dr. Haronian reporting is more persuasive medical evidence.

Petitioner contends without citation to the record that “Dr. Haronian’s reporting is more persuasive medical evidence...” (Petition For Reconsideration, page 6:12-14.) Petitioner contends “...The history taken by Dr. Haronian is more accurate than Dr. Hannani...” (Petition For Reconsideration, page 6:15-16.)

The court found Dr. Haronian’s medical reporting to contain inaccuracies and omissions of significance. As noted, above, on 2/26/2016 the Applicant filed a cumulative trauma injury claim against Parking Corporation alleging a cumulative trauma over the period 1/22/2014-1/22/2015 to the neck, back, shoulder, lower extremity, and body systems. (Exhibit O.) The court found it instructive to compare the reports of Dr. Haronian submitted in the cumulative trauma case to those submitted in this case.

In Dr. Haronian’s 7/11/2022 Permanent and Stationary report to this court in this case, he mentions under the rubric “Prior/Subsequent Injuries” that the applicant has only a prior 2012 injury to the head, face, and nose. (Exhibit 8, Medical Report Dr. Edwin Haronian 7/11/2022, pages 3-4.)

This recitation by Dr. Haronian of prior and subsequent injuries as of 2022 is flawed and incomplete. As of 2022, the Applicant had prosecuted and settled for \$42,000 the cumulative trauma case against Parking Corporation. (MOH/SOE 9/12/2023, page 2:20-23.).

The subsequent injury/cumulative trauma claim would logically be memorable to Dr. Haronian. In medical reporting submitted by Dr. Haronian in relation to the cumulative trauma case, he opines that while working for subsequent employer Parking Corporation “...the pain to his neck, right shoulder, and lower back, gradually worsened, due to his work duties,

involving washing and detailing vehicles, vacuuming the interior on these, driving vehicles to different dealerships to trade, and parking vehicles in the lot. The precise activities required entailed extensive standing and walking, as well as constant maneuvering of his hands and arms, and some driving, bending, stooping, squatting, twisting, turning, pushing, and pulling, gripping, and grasping, reaching to all levels, lifting, and carrying buckets of soap and water weighing up to 30 pounds. The patient worked in pain and on full duty through January 22, 2015 ...” (Ex. I, Medical Report of Dr. Edwin Haronian 2/8/2016, Records of SCIF, page 10 of 223).

Dr. Haronian in the cumulative trauma case attributes 60% of the applicant’s lower back condition to his cumulative trauma and 40% to nonindustrial factors. (Exhibit 1, Follow Up Report of A Primary Treating Physician, records of SCIF page 180 of 223.) The lower back is asserted in Applicant’s Petition to Reopen as being a body part giving rise to new and further disability.

Petitioner submitted a report of Dr. Haronian dated 7/11/2022 in this case, which indicated the Applicant does not drink and smoke. (Exhibit 8, Medical Report Dr. Edwin Haronian 7/11/2022, pages 3-4.)

The Applicant has a substantial history of smoking and drinking.

A report of 4/14/11 describes the Applicant as smoking and consuming six-packs of beer, and being “uncontrolled” and noncompliant. (Exhibit 10, Medical report of Dr. Stanley Majcher dated 1/13/2020, page 5.) Dr. Haronian referred the Applicant to Dr. Majcher, in whose reporting Applicant is described as smoking and consuming six-packs of beer. (Exhibit 10, Medical report of Dr. Stanley Majcher dated 1/13/2020, page 5.) In the medical reporting dated 1/13/2020, Dr. Majcher noted that, as of 1/13/2020, the Applicant had a history of having

smoked for 12 ½ years. (Exhibit 10, Medical report of Dr. Stanley Majcher dated 1/13/2020, page 3.)

In Dr. Haronian's 7/11/2022 report to this court, he indicates the Applicant has no known history of heart disease or high blood pressure. (Exhibit 8, Medical Report Dr. Edwin Haronian 7/11/2022, pages 3-4.)

This recitation is flawed. As of 2022, the Applicant had a longstanding history of heart disease and high blood pressure dating to before 20210.

The applicant was referred to Dr. Majcher. In his 2020 report, Dr. Majcher opined that Applicant suffered hypertensive cardiovascular disease and serious high blood pressure preexisting his 2010 date of hire at Penske. (Exhibit 13, Medical Report of Dr. Stanley Majcher 12/1/2020, pages 3-5.)

Dr. Jeffrey Caren MD (a Diplomate of the American Board of Internal Medicine: Cardiovascular Disease and a Fellow of the American College of Cardiology) served the parties as The lower back is asserted in Applicant's Petition to Reopen as being a body part giving rise the Panel QME in Internal Medicine. (Medical Report Dr. Jeffrey Caren 8/10/2021, page 1.)

Dr. Caren in his report of 8/10/2021 provides a diagnosis of Hypertension and Coronary artery disease whose causation is Diabetes. Dr. Caren concludes that "...on a reasonably medically probable basis, diabetes has been a pre-existing, non-industrial condition that has not been caused, aggravated, or accelerated by the April 15, 2013, injury or its effects..." (Medical Report Dr. Jeffrey Caren 8/10/2021, page 52.) As to coronary artery disease, Dr. Caren opines "... in my opinion, it is reasonably medically probable that the causes of his coronary artery disease are age-related vascular changes, the non-industrial diabetes, and the non-industrial hypertension..." (Medical Report Dr. Jeffrey Caren 8/10/2021, page 53.)

The court detected further inconsistency in Dr. Haronian's 7/11/2022 Permanent and Stationary report. In that report, Dr. Haronian pronounces the applicant incapable of gainful employment. Elsewhere in the same report, Dr. Haronian notes the applicant to have returned to full duty.

In Dr. Haronian's Permanent and Stationary report (Exhibit 8) he opines that "...from a realistic point of view, the patient is unlikely to have the ability to return back to the workforce as he is not amenable to vocational rehabilitation..." (Exhibit 8, page 9 of 13.) Inconsistently in the same report (under "Current Work Status") Dr. Haronian notes that Applicant has returned to the workforce: "...The Patient is currently working on full duty, but limits from any strenuous activities..." (Exhibit 8, Permanent and Stationary Report of a Primary Treating Physician, date of service 7/11/2022, page 2-3.)

Dr. Haronian describes Applicant as having once been in need of surgery, but with the passage of time, no longer in need of surgery. Otherwise stated, an improvement in Applicant's condition inconsistent with his conclusion of new and further disability.

In a report of 10/2/2018, Dr. Haronian notes "...patient was declared permanent and stationary in 2015 and to date, there has been no active discussion regarding the possibility of surgical intervention...in light of the fact that the surgery has not been performed and the patient has continued to receive conservative treatment, it would be my opinion that most likely the cervical fusion will not be needed..." (Exhibit 1, Collective Medical Reports Dr. Edwin Haronian dated 10/2/2018, exhibit page 16 of 61.)

In a report of 11/26/2018, Dr. Haronian notes "...We are recommending to avoid operative intervention. The patient is agreeable with the above. He can continue with home exercises and use of nonopioid anti-inflammatory medications. He has been relatively stable..." (Exhibit 1, Collective Medical Reports Dr. Edwin Haronian dated 11/26/2018, exhibit page 24 of 61.)

In a report of 5/6/2019, Dr. Haronian notes "...The patient is not interested in proceeding with any type of injections nor surgical intervention..." (Exhibit 1, Collective Medical Reports Dr. Edwin Haronian dated 5/6/2019, exhibit page 35 of 61.)

In a report of 6/17/2019, Dr. Haronian advises "...we would like to reiterate that we do not have any plans for aggressive treatment..." (Exhibit 1, Collective Medical Reports Dr. Edwin Haronian dated 10/2/2018, exhibit page 38-39 of 61.)

Dr. Haronian, in his report of 3/7/2022 notes applicant "...does not need a follow-up appointment at this juncture..." (Exhibit 1, Follow-Up Report of a Primary Treating Physician, page 56 of the exhibit.)

In May 2022, applicant advises Dr. Haronian that his neck, back and shoulder condition has not significantly changed.

In a report of 5/23/2022, in commentary concerning applicant's neck, back and right shoulder, Dr. Haronian acknowledges the Applicant's statement "...that not much has changed with these complaints..." (Exhibit 1, collective medical reports of Dr. Haronian, page 59 of exhibit.)

The medical reporting of Dr. Haronian between 2018 and 2022 paints a stable and in some ways improving clinical picture in relation to the effects of Applicant's specific injury of 2013.

The above-noted examples were emblematic of internal inconsistency in Dr. Haronian's reporting.

Petitioner contends without citation to the record that Dr. Haronian's reporting is more persuasive medical evidence. (Petition For Reconsideration, page 6:12-14.) For reasons set forth

above, and in this court's Findings and Opinion, this court disagrees. The court continues to find the medical reporting of QME Hannani substantial, well-reasoned, based on reasonable medical probability—and more persuasive than that of Dr. Haronian for reasons above-stated.

PETITIONER CONTENTION d. WCJ Erroneously relied on Dr. Caren’s reporting because case law has established that the reporting of a secondary treater may still be admissible even though the primary treating physician did not incorporate a secondary treater’s findings.

Petitioner contends, without citation to the trial record, that “...the WCJ provided Dr. Majcher’s reporting cannot be relied on because it was not incorporated by Primary Treating Physician (PTP) Dr. Haronian...” (Petition For Reconsideration, page 7:26-28.)

Petitioner adds “...the appeals board held that reports of secondary treating physicians were admissible even if they were not reviewed and incorporated by the primary treating physician...” (Petition For Reconsideration, page 7:17-19.)

Petitioner concludes “...the fact that Dr. Majcher’s findings were not incorporated does not obviate the admissibility of Dr. Majcher’s reporting, especially because it was reviewed by Dr. Haronian...” (Petition For Reconsideration, page 8:11-14.)

Contrary to Petitioner’s contention, the court did not rely on the findings of Dr. Caren, either in whole or in part, because it questioned the inadmissibility of Dr. Majcher’s reporting for failure of incorporation. To the contrary, Dr. Macher’s reporting was entered into evidence. Dr. Majcher’s reporting was carefully weighed, considered, and commented upon by this court.

The court did make note of Dr. Haronian’s disparate commentary relating to two other Secondary Consulting Physicians vs. his commentary related to Secondary Consulting Physician Dr. Majcher. The court’s commentary related to the court’s duty to weigh the evidence not to any issue of admissibility.

In weighing the reporting of Dr. Majcher against that of QME Caren, this court observed that Dr. Haronian concurred with the findings of Dr. Aminian and Dr. Hinze and adopted them as his own. Petitioner concedes that “...the preferred method is for the primary treating physician to review and incorporate the reports of secondary treating physicians...” (Petition For Reconsideration, page 7:18-22.) The court observed that Dr. Haronian neither expressly concurs with nor adopts Dr. Majcher’s findings as his own.

In his report of 10/18/2021, Dr. Haronian advises “...The patient was seen by the neurologist Dr. Aminian. I reviewed his report dated March 23, 2015. I concur with his opinions and regard those opinions as my own. I have also reviewed the permanent and stationary report of Dr. Hinze

who is a psychologist. The report was dated September 29, 2014. I concur with those opinions and regard those opinions as my own...” (Exhibit 1, Collective Medical Reports Dr. Edwin Haronian dated 10/18/2021, exhibit page 53 of 61.)

Dr. Haronian provided a full-throated adoption of the findings of secondary physicians Hinze and Aminian, adopting them as his own. He did not similarly adopt the findings of Dr. Stanley Majcher. (Exhibit 7, Permanent and Stationary Medical Report of Dr. Edwin Haronian dated 4/20/2022, page 32 of 35.)

The basis upon which the court found the reporting of Dr. Caren to be more persuasive than that of Dr. Majcher was entirely unrelated to any issue of admissibility of Dr. Majcher’s reporting.

PETITIONER’S CONTENTION e: WCJ erroneously relied on Dr. Caren’s reporting because his opinions are predicated on an inadequate medical history.

In support of this contention, Petitioner asserts “...Dr. Caren’s opinions are based on incomplete information because there were no records reviewed prior to Applicant’s employment at Penske establishing use of hypertensive medications and dosage...” (Petition For Reconsideration, page 8:21-24.)

The Applicant began working for this employer on or around 10/20/10. (Petition For Reconsideration, page 2:3-5). The Petitioner contends a right to reopen this claim of specific injury of 4/15/13. (Petition For Reconsideration, page 2:5-7.) A basis upon which the Applicant asserts a right to reopen is injury to additional body parts, including hypertension and coronary artery disease.

Petitioner contends that QME Dr. Caren’s opinions are flawed because he did not review records predating 2010. Petitioner contends the conclusions of Dr. Stanley Majcher (an internist) are more substantial than those of Dr. Caren (Diplomate, American Board of Internal Medicine and Cardiovascular Disease).

The court respectfully disagrees. Dr. Caren conducted and provided an extensive 42-page record review, which included a review of each other’s reporting.

Dr. Caren’s reporting included a 42-page record review section. The records which were provided to both Dr. Caren and Dr. Majcher included medical records pre-dating the 2013 injury and records pre-dating the Applicant’s 2010 commencement of employment with Penske. Both Dr. Caren and Majcher concluded that Applicant had a longstanding history of diabetes and cardiovascular disease predating Applicant’s employment with Penske.

The Applicant worked for this employer for a period of approximately 3 years prior to his 2013 injury. Applicant's employment with Penske commenced on or around October 2010. The medical records reviewed by Dr. Caren include records from Medical Consultants of Southern California, Inc., dating to February 2010. This would have been 8 months or so prior to the Applicant's commencement of employment with this employer. These February 2010 records include findings of hypertensive pathology. (Exhibit F, Medical Report of Dr. Jeffrey Caren dated 8/10/2021, page 16.)

Dr. Caren reviewed a Prescription Form dated 5/19/2010 speaking to hypertensive retinopathy. (Exhibit F, Medical Report of Dr. Jeffrey Caren dated 8/10/2021, page 16.)

Dr. Caren's records review contains a heading "Schedule of Records." The records reviewed include: Workers' Compensation Appeals Board Deposition Edwin Haronian, M.D., Chino Hills Healthcare Center, Ramiro Futralan, M.D., Ralph Bloch, M.D., Pomona Valley Hospital Medical Center, Richard Dorosh, M.D., David Payne, M.D., Physical Therapy Woodru Rehabilitation, Alison Biacsi, P.T., First Care Industrial Medicine Center, Roman Shulze, D.O., Employers Direct, Rehab90, Medical Consultants of Southern California, Inc., Ramin Monshizadeh, M.D., East Valley Community Health Center, Erica Gomez, PA-C, Christy Tan, N.P., Cindy Frasure, N.P., Joseph Nguyen, D.O., Julie Alcid, N.P., Lucia Padilla, PA-C, Arvin Anabo, PA-C, Quest Diagnostics, Kaiser Permanente, Daniel Houssiere, D.O., Sudha Sidhar, M.D., Aster Mahmood, M.D., Walker Felix, M.D., Amarilda Christensen, M.D., Jerome Tsai, M.D., Peyman Andalib, M.D., Socal Penske Dealer Group, U.S. HealthWorks Medical Group, Marcelo Burciaga, D.O., Karen DelahoussaYe, PA., Laura Mandell, P.T., David Gilbert, M.D., Vision Specialist Robert Innocenzi, D.O., Corvel Medtox Laboratories, Julian Yniguez, M.P.T., Edwin Haronian, M.D., Heath Hinze, Ph.D., Physical Medicine Institute, B. Sam Tabibian, M.D., A. Kevin Aminian, M.D., Centrelake Imaging & Oncology, Amber Hsiao, M.D., Synapse Medical Group, Edwin Haronian, M.D., Maria Katz, P.T., Kambiz Hannani, M.D., State Compensation Insurance Fund, East Valley Audiology and Hearing Aids, Roger Sohn, M.D., Precision Occupational Medical Group, Inc., Jeffrey Ho, D.O., Sports Ortho. P.T., Savina Kollmorgen, P.T., Jonathan Kohan, M.D., Los Angeles County Fire Department, Emanate Health, Augusto Cigliano, M.D., Miguel Garcia, M.D., Jonathan Tye, M.D., Khwaja Ahmed, M.D., Stanley Majcher, M.D., Bassam Mouazzen, M.D., and State of California. (Ex F, Medical Report of Dr. Jeffrey Caren dated 8/10/2021, pages 7-9.)

Dr. Caren's Record Summary commences with commentary regarding his review of Workers' Compensation claims records dated February 17, 2000. Dr. Caren comments on records from Chino Hills Healthcare Center, beginning with a Doctor's First Report dated 2/23/1999. Dr. Caren reviews medical records from Pomona Valley Hospital Medical Center dating to March 1999. Dr. Caren reviews medical records from David Payne MD dating to 1999. Dr. Caren reviews medical records from First Care Industrial Medicine Center dating to 2007. Dr. Caren reviews extensive medical records from Medical Consultants of Southern California dating to months before the Applicant began his employment with Penske, speaking to cardiovascular and hypertensive symptomology. Dr. Caren reviews medical records of East Valley Community Health Center, dating to 2011, 2012 and 2013, all prior to the specific injury which is before this court. (Ex F, Medical Report of Dr. Jeffrey Caren dated 8/10/2021, pages 9-42.)

A multitude of records pertaining to preexisting hypertension and cardiovascular problems predating the Applicant's injury of 2013 form the basis for the similar diagnoses reached both by Dr. Caren and Dr. Majcher. The trial record entirely supports the physicians' conclusions that the applicant suffered from cardiovascular and circulatory issues prior to his 2013 specific injury.

The contention by Petitioner that Dr. Caren's reporting is tainted because he did not review records pre-dating Applicant's 2010 Penske employment is at the same time inaccurate and irrelevant. The specific injury occurred in 2013, not 2010. There is an abundance of records reviewed by Dr. Caren predating 2013.

The diagnostic determinations of Dr. Caren and Dr. Majcher do not significantly differ. The court has again reviewed the 58-page medical reporting of Dr. Jeffrey Caren, which includes but is not limited to a detailed and extensive history and 42-page record review. As in its earlier decision, the court finds the reporting of Dr. Caren to be reliable, substantial, well-reasoned and based on reasonable medical probability. The court has again reviewed the reporting of Dr. Stanley Majcher and finds it less persuasive and significantly flawed.

Dr. Majcher acknowledges applicant's serious problems with high blood pressure prior to his hire by this employer, including severe hypertension in the form of retinopathy and retinal vein occlusion of the right eye. (Exhibit 13, Medical Report of Dr. Stanley Majcher dated 12/1/2020, page 3.)

Dr. Majcher acknowledges that the Applicant's blood pressure six months after his date of hire in 2010 by Penske was uncontrolled, and that the Applicant was noncompliant and with a history of smoking. (Exhibit 13, Medical Report of Dr. Stanley Macher dated 12/1/2020, page 3.)

In Dr. Majcher's report of 12/1/2020, he concludes the Carotid artery atherosclerosis condition is due to nonindustrial atherosclerosis which began in childhood and there is no industrial contribution. (Exhibit 13, Medical Report of Dr. Stanley Macher dated 12/1/2020, page 3.)

In Dr. Majcher's report of 12/1/2020, he concludes the diabetes condition is totally nonindustrial. (Exhibit 13, Medical Report of Dr. Stanley Macher dated 12/1/2020, page 3.)

In his report of 12/1/2020 Dr. Majcher opines that the Applicant's hypertensive cardiovascular disease was a pre-existent condition prior to Applicant's specific injury during employment at Penske Honda Ontario, but nonsteroidal anti-inflammatory drugs raise blood pressure, and applicant therefore sustained industrial aggravation of an underlying nonindustrial disease condition. Dr. Majcher opined that hypertension accelerates atherosclerosis, therefore Applicant's hypertension is in part industrially related. (Exhibit 13, Medical Report of Dr. Stanley Majcher dated 12/1/2020, pages 6-8.)

Dr. Majcher's reporting lacks foundational support for this conclusion.

Dr. Majcher failed to discuss the role of Applicant's intervening cumulative trauma injuries in relation to Applicant's use of NSAIDs. The Applicant had settled his claim of cumulative trauma 2/1/18 for \$44,000. Dr. Majcher's report of 1/13/2020 reflects under the rubric "Prior Workers Compensation Claims" that there were "none recalled." (Exhibit 10, Medical Report Dr. Stanley Majcher dated 1/13/2020, page 3.) In his deliberations, Dr. Majcher appears to have been unaware of the cumulative trauma claim and the associated extensive treatment for the CT over the period 2016-2018.

Dr. Majcher reviewed records pertaining to a prior 2012 injury suffered by Applicant. (Exhibit 10, Medical Report of Dr. Stanley Majcher dated 4/20/20, page 11.) This 2012 injury was sufficiently serious that four years later, the applicant was still under treatment for the 2012 injury. (Exhibit I, Records of SCIF page 12, Medical Report of Dr. Edwin Haronian 2/8/2016, page 4 of 13.) The Applicant was under a golf cart, which hit him the face and dragged him. (Exhibit B, Medical report Dr. Kambiz Hannani 4/29/2015, page 3.) A note reviewed by Dr. Majcher of April 2013 finds Applicant complaining of memory problems and dizziness and "...he had similar injury with a head concussion in 2012..." (Exhibit 11, Medical report Dr. Stanley Majcher 4/20/20, page

4.) As with the cumulative trauma, Dr. Majcher failed to discuss the role of this 2012 injury in relation to Applicant's use of NSAIDs.

The court found Dr. Majcher's report of 8/31/2020 troubling (Exhibit 12). In that report, Dr. Majcher demands "...authorization within 14 days that I will receive payment of \$2026.22 within 30 days of this correspondence...If not agreeable, kindly transfer this patient to another specialist and advise accordingly..."

This court found and continues to find the medical conclusions of QME Internist Jeffrey Caren more persuasive than those of Dr. Majcher.

PETITIONER CONTENTION f: WCJ erroneously relied on Dr. Caren's reporting because his opinions are predicated on incorrect legal theory.

In support of this contention, Petitioner contends that "...An employee is entitled to workers' compensation if the injured worker sustains a new injury or aggravation as a result of medical care for an industrial injury, regardless of whether the doctor is furnished by the employer, insurance carrier or selected by the employee..." (Petition For Reconsideration, page 9:11-14.)

It is axiomatic that the burden of proof rests upon the party holding the affirmative of the issue. California Labor Code section 3202.5 states: "All parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law..." (California Labor Code section 3202.5)

In the instant case, the Applicant seeks to reopen his previous Award. It is Applicant who bears the burden of proving his right to do so.

Counsel for Petitioner contends that Applicant suffered a heart attack occurring while receiving treatment at Dr. Majcher's office 1/13/2020. Counsel infers that the heart attack occurred at Dr. Majcher's office and therefore the court must conclude that it was caused by treatment. Causation of a heart attack, however, is a conclusion which must be supported by expert medical opinion. There is medical reporting that notes the occurrence of a heart attack. There is no medical reporting that indicates the heart attack was caused, aggravated, or accelerated by medical treatment.

Noting the Applicant suffered a heart attack, Dr. Caren specifically finds Applicant's cardiovascular condition was not industrially caused, aggravated[,] or accelerated.

Counsel contends in the Petition for Reconsideration, without any citation to the record:

“Dr. Majcher indicated in his 01/13/20 initial consultation report, that approximately an hour after he had taken Applicant’s history, there was a significant change in his electrocardiogram, developed chest pain and paramedics were called to take him to a hospital. Dr. Majcher diagnosed Applicant at the time with “probable acute myocardial infarction”. Dr. Caren confirmed that Applicant suffered an “acute coronary event” while he was having an internal medicine consultation with Dr. Majcher. Not only was this consultation at the behest of PTP Dr. Haronian, it was also authorized by the defendant. Caselaw is extremely clear that the defendant is responsible for any injuries that occur in the course of medical treatment. Here, Applicant was literally at Dr. Majcher’s office and had to leave due to a heart attack. Even if the underlying hypertension is deemed nonindustrial, the coronary event occurred during medical treatment and should be found industrial. Thus, Dr. Caren’s opinion that the heart attack is nonindustrial does not constitute substantial medical evidence because it is based on incorrect legal theory.” (Petition For Reconsideration, page 9:19-10:4.)

Petitioner’s stated opinions on causation of the heart attack, offered without citation to the record, are unsupported by the trial record.

The court has already noted its reasons for finding Dr. Majcher’s reporting unsubstantial. Indulging however in an assessment of Dr. Majcher’s reporting as it relates to the heart attack, he does not specify that the heart attack was caused, aggravated, or accelerated by any industrial condition or treatment. A causative nexus between any industrial condition and the heart attack is left by Dr. Majcher to the surmise of the reader.

In his Permanent and Stationary report of 12/1/2020 (Exhibit 13), Dr. Majcher has reviewed the records of Emanate Health of Cardiologist Tye, concerning an admission 01/13/2020. (Exhibit 13, Medical Report of Dr. Stanley Majcher 12/1/2020, page 5.) In that same Permanent and Stationary report, Dr. Majcher expresses his opinions regarding Causation, Disability Status and Apportionment under the general heading “COMMENT.” Dr. Majcher renders diagnoses of Hypertensive cardiovascular disease, atherosclerotic heart disease with history of myocardial infarction and status post angioplasty with insertion of stent, Diabetes, history of smoking, Hyperlipidemia (cholesterol abnormalities). Under the sub-heading “Causation,” Dr. Majcher concludes that applicant suffered an injury in 2013, he took NSAIDs which raised his blood pressure, and therefore he sustained industrial aggravation of an underlying nonindustrial disease condition.

He does not comment on the heart attack or its causation nor does he comment on the relationship of the heart attack to impairment. Dr. Majcher does not comment upon or mention the heart attack at all in his discussion of causation, apportionment, or impairment. (Exhibit 13, Medical Report of Dr. Stanley Majcher 12/1/2020, page 5-6.)

This court found Dr. Majcher's reporting to be internally inconsistent, unreliable, and unsubstantial as noted, supra. In relation specifically to the heart attack, Dr. Majcher does not indicate that the infarct was the result of NSAIDs or treatment. Dr. Majcher does not indicate what and the non-industrial hypertension. Based on reasonable medical probability, the CAD was not caused, aggravated, or accelerated by the April 15, 2013, injury, or any effects of that injury..." (Exhibit F, Medical Report of Dr. Jeffrey Caren dated 12/15/2015, page 53.)

In commenting upon the Applicant's coronary artery disease, Dr. Caren notes: "...Mr. Lujan-Gonzalez has recovered from his heart attack and angioplasty. He is asymptomatic. The condition is not likely to change substantially in the next year and can be considered to be at maximal medical improvement/a permanent and stationary status on the date of this evaluation, August 10, 2021. He was not employed for several years before the heart injury; the issues of TTD and work restrictions are moot..." (Exhibit F, Medical Report of Dr. Jeffrey Caren dated 12/15/2015, page 54.)

Petitioner has failed in its burden of proving whether the infarct was caused, aggravated, or accelerated as a result of treatment for the admitted industrial injury. The court found the reporting of Dr. Majcher to be unreliable, inconsistent, and insubstantial. The court found the QME reporting of Dr. Caren to be substantial, reliable, based on reasonable medical probability, and well-reasoned.

IV **RECOMMENDATION**

The Court recommends that the Petition for Reconsideration be denied.

DATE: November 9, 2023

Nate Halprin
WORKERS' COMPENSATION JUDGE