

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

**SALVADOR QUINTERO, *Applicant***

**vs.**

**MORRISON LANDSCAPE INC. dba EARTHCO COMMERCIAL LANDSCAPE,  
and CALIFORNIA CONTRACTORS NETWORK administered by  
ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ15383862**

**Santa Ana District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on August 15, 2023, wherein the WCJ found in pertinent part that on September 9, 2021, applicant sustained an injury arising out of and occurring in the course of employment (AOE/COE) to his right knee, that the injury caused 11% permanent partial disability, and that "There is no legal apportionment." (F&A, p. 2.)

Defendant contends that the opinions of orthopedic qualified medical examiner (QME) Ramy Elias, M.D., as stated in his January 23, 2023 report, are substantial evidence that 80% of applicant's right knee permanent partial disability is the result of pre-existing degenerative changes, and based thereon applicant is entitled to an award of 2% permanent partial disability, after apportionment.

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

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will deny reconsideration.

## BACKGROUND

Applicant claimed injury to his right knee while employed by defendant as a landscaper on September 9, 2021.

QME Dr. Elias evaluated applicant on June 9, 2022. Dr. Elias examined applicant, took a history, and reviewed the medical record he was provided. The doctor diagnosed applicant as having “Right knee internal derangement” and he deferred assigning whole person impairment (WPI) pending his review of the right knee MRI that he requested. (Joint Exh. C, Ramy Elias, M.D., June 9, 2022, p. 4.) After reviewing the October 4, 2022 MRI, Dr. Elias stated that applicant had chondromalacia (damage to the cartilage) of the medial, lateral, and patellofemoral compartments of his right knee, and that there was no evidence of meniscus or ligamentous injury. (Joint Exh. D, Ramy Elias, M.D., January 23, 2023, p. 1.) Dr. Elias concluded that applicant sustained an injury to his right knee on September 9, 2021, that applicant’s right knee condition caused 5% WPI, and “Due to the fact that the main MRI findings are degenerative in nature I would apportion 80% to the underlying preexisting degenerative changes of the right knee, 20% should be apportioned to the industrial injury.” (Joint Exh. D, pp. 1 - 2.)

The parties proceeded to trial on July 24, 2023. The issues submitted for decision included injury AOE/COE, permanent disability, and apportionment. Minutes of Hearing and Summary of Evidence, July 24, 2023, p. 2.)

## DISCUSSION

A medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not simply his or her conclusions i.e., a mere legal conclusion does not furnish a basis for a finding. (*Granado v. Workers' Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647] (); *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794, pp. 799, 800–801 [33 Cal.Comp.Cases 358].) In order to constitute substantial evidence as to the issue of apportionment, the medical opinion must disclose the reporting physician’s familiarity with the concepts of apportionment and must identify the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board *en banc*).) If as here, the doctor states that a portion of the injured worker’s disability is caused by a degenerative condition, the physician must explain the nature of the degenerative disease, how and

why it is causing permanent disability at the time of the evaluation, and how and why it is responsible for the percentage of the disability assigned by the physician. (*Id.* at 621.)

As quoted above, Dr. Elias stated that he “would apportion 80% to the underlying preexisting degenerative changes of the right knee, 20% should be apportioned to the industrial injury.” (Joint Exh. D, p. 2.) Clearly, Dr. Elias did not explain the nature of the degenerative disease, or how and why it is causing permanent disability at the time of the evaluation. Nor did he explain how and why it is responsible for 80% of applicant’s right knee permanent disability. Thus, his opinion does not constitute substantial evidence regarding the issue of apportionment.

It is well established that an award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Universal City Studios, Inc. v. Workers' Compensation Appeals Bd. (Lewis)* (1979) 99 Cal.App.3d 647 [44 Cal.Comp.Cases 1133].) The defendant in a worker’s compensation litigation has the burden of proof to establish apportionment of permanent disability to non-industrial factors or previous industrial injuries with substantial evidence. (Lab. Code § 3202.5; *Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1114-1115 [71 Cal. Comp. Cases 1229]; *Escobedo v. Marshalls, supra*, at 607.) As discussed above, the January 23, 2023 report from Dr. Elias is not substantial evidence pertaining to the issue of apportionment. Therefore, defendant did not meet its burden of proof and we agree with the WCJ that applicant is entitled to an un-apportioned award of 11% permanent partial disability.

Accordingly, we deny reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the Findings and Award issued by the WCJ on August 15, 2023, is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ NATALIE PALUGYAI, COMMISSIONER**



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

**October 30, 2023**

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

**SALVADOR QUINTERO  
LAW OFFICES OF JESSE MARINO, APC  
DIETZ, GILMOR & CHAZEN, APC**

**TLH/mc**

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