

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

**STANLEY CONLEY, *Applicant***

**vs.**

**CITY OF STOCKTON, Permissibly Self-Insured, *Defendant***

**Adjudication Numbers: ADJ7085341, ADJ7699285  
Stockton District Office**

**OPINION AND ORDER  
DENYING PETITION FOR RECONSIDERATION**

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact, Award and Orders of September 14, 2023, wherein, as relevant to the instant Petition, it was found in case ADJ7085341<sup>1</sup> that "The applicant did not sustain injury AOE/COE to his bilateral hips, circulatory/heart/high blood pressure" and "Applicant sustained no new and further disability against the [sic] City of Stockton." In case ADJ7699285, it was found that "Applicant did not sustain injury AOE/COE to his left hip."<sup>2</sup> In these matters, in a Stipulated Award of November 1, 2011, it was found that during a cumulative period ending July 31, 2006 in case ADJ7085341, while employed as a code enforcement officer, applicant sustained industrial injury to his back, causing permanent disability of 8%. In a concurrently issued Stipulated Award in case ADJ7699285, it was found that while employed during a cumulative period ending September 14, 2009, applicant sustained industrial injury to his back, causing permanent disability of 6%.<sup>3</sup> On January 15, 2014, applicant filed a Petition to Reopen.<sup>4</sup>

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<sup>1</sup> The applicant only lists ADJ7085341 to his Petition for Reconsideration.

<sup>2</sup> New and further disability was found to other body parts not at issue here.

<sup>3</sup> Confusingly, it appears that there may have been clerical errors in the stipulations, given that from the rest of the record it appears that the case numbers in the Stipulations with Request for Award are flipped and ADJ7699285 is actually the 2006 injury and ADJ7085341 is the 2009 injury. The Stipulations themselves are contradictory, with the main body of the stipulations displaying the incorrect dates, and the "Other Stipulations" field containing the correct dates.

<sup>4</sup> The Petition to Reopen contains only case ADJ7085341 in its caption.

Applicant contends that the WCJ erred in not finding new and further disability with regard to the hips. We have received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated by the WCJ in the Report, which we adopt, incorporate, and quote below, we will deny applicant's Petition.<sup>5</sup>

It is presumed that the agreed medical evaluator has been chosen by the parties because of their expertise and neutrality. "[W]orkers' compensation law favors agreed medical [evaluators] in resolving medical disputes fairly and expeditiously." (*Green v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 1426, 1444 [70 Cal.Comp.Cases 294].) Therefore, an agreed medical evaluator's opinion should ordinarily be followed unless there is good reason to find that opinion unpersuasive. (*Power v Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114]; *Los Angeles Unified School Dist. v. Workers' Comp. Appeals Bd. (Steele)* (2000) 65 Cal.Comp.Cases 300, 301 [writ den.]; *Siqueiros v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 150, 151 [writ den.]

Although applicant argues that agreed medical evaluator orthopedist Joel W. Renbaum, M.D.'s opinions did not constitute substantial medical evidence, as the party with the burden of proof, it was applicant's burden to procure substantial medical evidence standing for the proposition that applicant sustained industrial hip injury. "The applicant for workers' compensation benefits has the burden of establishing the 'reasonable probability of industrial causation'" (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] citing *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660]; Lab. Code, §§ 3202.5, 5705.) Thus, especially given the time applicant has been afforded to develop the record, and the multiple reports and deposition sessions from the AME, even if Dr. Renbaum's opinions were not substantial, applicant's Petition would still be unavailing. The applicant had multiple opportunities – which he availed himself of – to question Dr. Renbaum regarding his opinions. Ultimately after 15 pages of deposition transcripts questioning Dr. Renbaum about causation of the hip injury, applicant's counsel admitted, "I guess

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<sup>5</sup> The WCJ suggests in the Report that we grant reconsideration to amend certain typographical errors. However, it appears that the errors are in the Minutes of Hearing and Summary of Evidence rather than in the decision subject to reconsideration.

you're not going to change your opinion, and I'm out of questions, so I'm done." (June 2, 2022 deposition transcript at p. 17.)

We otherwise deny the Petition for the reasons stated in the Report:

### **INTRODUCTION**

This is a timely filed and verified petition for reconsideration by Defendant, of a final order of 9-14-23. The finding of no injury AOE/COE to bilateral hips is a threshold issue and properly the subject of a petition for reconsideration.

The case was submitted 8-14-23.

Applicant's Attorney's petition for reconsideration is filed in case ADJ7085341.

I decided that there was substantial evidence that the Applicant did not sustain injury arising out of and in the course of employment to his bilateral hips in case ADJ7085341.

Applicant's Attorney challenges that finding asserting the opinions of AME Dr. Renbaum did not rise to the level of substantial evidence. Specifically, there were significant medical reports not reviewed by AME Dr. Renbaum.

As stated, I disagree.

### **RECOMMENDATIONS**

Applicant's petition for reconsideration should be denied.

The WCAB should grant reconsideration to correct the following exhibit as typo's.

- Applicant's 3 from Dr. Renbaum 9-26-16 to - Dr. Gary Alegre 9-26-16
- Applicant's 4 from Dr. Renbaum 9-26-16 to -Dr. Gary Alegre 3-28-17.

### **DISCUSSION**

#### **FACTS - ADJ7085341**

Applicant, Stanley Conley, worked for the City of Stockton as a graffiti abatement specialist where he initially filed a claim of cumulative trauma injury to his low back through 8/14/2009. That case settled by way of Stipulations with

Request for Award on 11/1/2011 (ex. X) based on the AME reporting of Dr. Joel Renbaum dated June 9, 2010.

Applicant's Petition to Reopen for New and Further was timely and is dated 12-20-2013.

The case came to trial on 1-12-23. Stipulations and issues were listed. Minutes of Hearing and Summary of Evidence 1-12-23 pages 2 &3. Case was submitted for decision 1-12-23.

Exhibits admitted were as follows.

- JOINT EXHIBIT 100:** Dr. Renbaum AME Report dated June 9, 2010.
- JOINT EXHIBIT 101:** Dr. Renbaum AME Report dated August 15, 2016.
- JOINT EXHIBIT 102:** Dr. Renbaum AME Report dated October 21, 2019.
- JOINT EXHIBIT 103:** Dr. Renbaum AME Report dated August 16, 2020.
- JOINT EXHIBIT 104:** Dr. Renbaum AME Report dated February 23, 2021.
- JOINT EXHIBIT 105:** Dr. Renbaum AME Report dated September 28, 2021.
- JOINT EXHIBIT 106:** Dr. Renbaum AME Report dated 4- 9-22.
- JOINT EXHIBIT 107:** Deposition of AME Dr. Renbaum, dated 4-22-20.
- JOINT EXHIBIT 108:** Deposition of AME Dr. Renbaum, dated June 2, 2022.
- JOINT EXHIBIT 109:** Dr. Barzaga QME Report (left knee) dated 12-11-14.
- APPLICANT'S EXHIBIT 1:** Dr. Alegre's First Report dated 8-26-2016.
- APPLICANT'S EXHIBIT 2:** Report of Dr. Alegre dated 9-6-2016.
- APPLICANT'S EXHIBIT 3:** Dr. Renbaum AME Report dated 9-26-2016.
- APPLICANT'S EXHIBIT 4:** Dr. Renbaum AME Report dated 9-26-2016.
- APPLICANT'S EXHIBIT 5:** Dr. Renbaum AME Report dated 3-28-2017.
- APPLICANT'S EXHIBIT 6:** Report of Dr. Wisner dated May 20, 2017.
- APPLICANT'S EXHIBIT 7:** Report of Dr. Wisner dated June 8, 2017.
- APPLICANT'S EXHIBIT 8:** Report of Dr. Wisner dated 6-23-2017.
- APPLICANT'S EXHIBIT 9:** Report of Dr. Wisner dated 7-7-2017.
- APPLICANT'S EXHIBIT 10:** Report of Dr. Wisner dated 8-4-2017.
- APPLICANT'S EXHIBIT 11:** Report of Dr. Wisner dated 9-1-2017.
- APPLICANT'S EXHIBIT 12:** Report of Dr. Wisner dated 9-10-2017.
- APPLICANT'S EXHIBIT 13:** Report of Dr. Wisner dated 10-20-2017.
- APPLICANT'S EXHIBIT 14:** Report of Dr. Wisner dated 10-9-2017.
- APPLICANT'S EXHIBIT 15:** Report of Dr. Wisner dated 10-13-2017.
- APPLICANT'S EXHIBIT 16:** Report of Dr. Wisner dated 10-17-2017.
- APPLICANT'S EXHIBIT 17:** Report of Dr. Wisner dated 10-20-2017.
- APPLICANT'S EXHIBIT 18:** Operative Report of Dr. Wisner dated 9-26-2017, for a left (hip) total arthroplasty.
- DEFENDANT'S EXHIBIT A:** Medical Report of Dr. Sam Sobol dated 2-17-2016.

Applicant's Attorney facts are correct on page 4 lines 1-17, Applicant's Attorney's Recon dated 10-3-23.

An Order Vacating Submission issued on 3/7/2023 and brought the parties back for a Status Conference on 3/27/2023. By agreement of the parties the case was submitted again.

Findings of Fact, Award, Orders, and Opinion on Decision issued on 5/30/2023. Defendant, City of Stockton, filed a Petition for Reconsideration on June 22nd, 2023. An Order Rescinding Findings, Award, and Order of Setting MSC on 6/23/2023. Applicant filed his own Petition for Reconsideration on 6-23-23.

The parties appeared at a Mandatory Settlement Conference on 7/3/2023, at which time Applicant's counsel was ordered to provide the parties and the Court with the testing reports which Applicant wanted to forward to Dr. Renbaum. Applicant's counsel did so.

The parties met at the Mandatory Settlement Conference on 8/14/2023 with the case being resubmitted for decision, noting a correction of a mathematical error in rating as raised by the Defendant City of Stockton's Petition for Reconsideration, and was to address the issue substantial medical evidence as raised in Applicant's 6/23/2023 Petition for Reconsideration. See order submitting for decision on stips and issues minutes of hearing 1-12-23, dated 8-22-23.

Findings of Fact, Award, Orders and Opinion on Decision thereafter issued on 9/14/2023.

A correction of the submitted case numbers for decision was needed. On 9-22-23 the Order issued.

The current Findings of Fact, Award, Orders and Opinion on Decision issued on 9/14/2023. This decision, in part, is the subject of Applicant's Attorney's petition for reconsideration.

## **DISCUSSION**

This report is prepared per 8 CCR 10962 and Haywood v. WCAB (1996) 61 CCC 509

### **Substantial evidence**

Substantial Evidence is both codified and developed in case law. See LC5952, 5953, 4628 and 8 CCR 10682.

Its definition has been said to be evidence which, if true and correct, is sufficient to support a reasonable mind to accept and support a conclusion on a given issue.

Reasonable in nature credible and of solid value. *Braewood Hospital v. WCAB (Bolton) (1983) 48 CCC 566, 568*

In practice, when reviewing medical opinions, the Court confirms that a complete and thorough examination of Applicant has occurred, a complete review of all relevant medical and non-medical records was done, an accurate and complete history was obtained and finally the opinions are explained.

Dr. Renbaum's opinions meet all factors. He is the AME both at the time of the previous stipulations with request for award but also currently. He evaluated Applicant multiple times and had his deposition taken twice. The AME reviewed Applicant's two depositions, Joint 101 pages 6-10.

Applicant's statement of facts regarding the reporting and depositions of the AME Dr. Renbaum are accurate though the Court does disagree with Applicant's Attorney's assessment of substantial evidence.

Applicant's reconsideration petition page 3 lines 5-24.

*"Dr. Renbaum issued a supplemental report on 9/28/2021 where he finally reviewed medical records regarding Applicant's left hip. At that time, Dr. Renbaum concluded that the hip pathology stemmed from Applicant's work activities, assigned a 15% whole person impairment and apportioned 10% to nonindustrial factors (Joint Exhibit 105).*

*Responding to a letter from Defendant, City of Stockton, but not being provided with any additional medical records, Dr. Renbaum then issued a 4/9/2022 supplemental report where he noted that the first mention of left hip problems was May 2017. Given that the Applicant stopped working for the City of Stockton in 2012 and stopped working for Bittle Plumbing following his injury in 2013, Dr. Renbaum concluded that the left hip was non-industrial (Joint Exhibit 106).*

*Dr. Renbaum was again deposed on 6/2/2022 in regards to his change of opinion in terms of causation (Joint Exhibit 108). Dr. Renbaum noted that he would expect hip problems to begin within a year or two following the end of employment (page 5 lines 6-9), noting that, at the time, there were complaints of sciatica but no reference to Applicant's hip or groin (page 5 lines 13-17). Dr. Renbaum noted that hip arthritis could increase low back symptoms but that, again, since there were no symptoms until 2017, he didn't feel it made sense to blame either employer (page 9 lines 15-25 I page 6 lines 1-9). Noting that Dr. Wisner was the first to identify left hip symptoms, Dr. Renbaum explained that arthritis could have developed 6 to 12 months prior to the X-rays but that it would be hard to say that arthritis developed 4 years prior to those X-rays (page 10 lines 17-25 I page 11 lines 1-21). Dr. Renbaum advised that arthritis can develop out of nowhere and that he was not able to say that low back problems contributed to the development of left hip arthritis. "*

As to the AME's depositions it is the 6/2/22 deposition and the questions regarding Applicant's left hip are pressed. Joint 108 pages 4-17. All the information cited in Applicant's reconsideration petition was at hand at this deposition and pressed to the AME. The problem here is that the answers given by the AME, Dr. Renbaum, were reasonable and persuasive in my opinion. However, the Applicant's Attorney's opinion is the opposite, the AME's answers were not reasonable or sufficient to support substantial evidence on the left hip causation question.

Dr. Renbaum reviewed Dr. Barzaga's report of 7/21/16 which discusses the 7/7/10 report, page 3, paragraph 1. Joint 105.

Other than the substantial evidence supporting the decision there are other issues.

- The records discussed by Applicant's Attorney were in existence for over a year before this case Stipulated. No explanation is given.

- In addition, Applicant's Attorney does not explain why it took until 8-29-17 to amend in the left hip when the very records put forward by Applicant's Attorney existed in July 2010. Someone had notice of the potential left hip injury in July of 2010 and needed to file a claim LC5400.

Be that as it may, there was substantial evidence supporting the finding there was no industrial injury to Applicant's left hip.

## **RECOMMENDATIONS**

Applicant's petition for reconsideration should be denied.

For the foregoing reasons,

**IT IS ORDERED** that Applicant's Petition for Reconsideration of the Findings of Fact, Award and Orders of September 14, 2023 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER  
CONCURRING NOT SIGNING



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

**December 4, 2023**

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

**STANLEY CONLEY  
MASTAGNI HOLSTEDT  
HANNA, BROPHY, MacLEAN, McALEER & JENSEN**

**DW/oo**

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