WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MICHAEL WILLIAMS, *Applicant*

vs.

UNIFIED GROCERS; OLD REPUBLIC INSURANCE; administered by CONSTITUTION STATE SERVICES, *Defendants*

Adjudication Number: ADJ17872943
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.

We have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. *(Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) As explained in the WCJ's Report, the WCJ's conclusion that applicant did not sustain injury arising out of and in the course of employment was based on the credible testimony of defendant's witness, Edward Chavez. Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id*.)

We note that former Labor Code[1] section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

[1] All further statutory references are to the Labor Code, unless otherwise noted.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on March 11, 2025 and 60 days from the date of transmission is Saturday, May 10, 2025. The next business day that is 60 days from the date of transmission is Monday, May 12, 2025. (See Cal. Code Regs., tit. 8, §10600(b).)[2] This decision is issued by or on Monday, May 12, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on March 11, 2025, and the case was transmitted to the Appeals Board on March 11, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

were provided with the notice of transmission required by Section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 11, 2025.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 12, 2025

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

SPECTRUM MEDICAL GROUP
LAW OFFICES OF LOUIS B. PAPELL

DLM/oo

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

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

1.	Applicant's occupation	:	CDL Driver Applicant's
	Age	:	38
	Date of Injury	:	January 1, 2020 through May 1, 2023
	Parts of Body Injured	:	Back and Psyche
	Manner in which it occurred	:	Continuous trauma
2.	Identity of Petitioner	:	Spectrum Medical Group
	Timeliness	:	Petition is timely
	Verification	:	Petition is verified
3.	Date of Order	:	February 3, 2025

4. Petitioner contends that the WCJ erred in finding that:

   a) The medical opinion of Dr. Amin Nia, D.C., was non-substantial medical evidence, and
   b) The applicant did not sustain an injury in the course of employment to the lumbar spine as a result of his employment.

II. PROCEDURAL BACKGROUND

On June 26, 2023, the applicant, Michael Steve Williams, filed an Application for Adjudication alleging injury arising out of and in the course of employment to his back and psyche. [Footnotes omitted]

The case in chief was settled by Compromise and Release with Order Approving Compromise and Release on June 25, 2024.

The case matter was settled with the acknowledgment that the defendant had denied the claim AOE/COE and that there was a bona fide dispute over whether or not the applicant sustained an industrial injury.

The matter proceeded on the record on November 13, 2024, on the issues of injury arising

out of and in the course of employment, post-termination, the lien of Spectrum Medical Group, for med-legal and treatment, in the amount of $3,690.66, reasonableness and necessity of medical treatment, reasonableness of charges, and penalties and interest.

The Undersigned Judge issued his Findings and Award on February 3, 2025. The Undersigned Judge found that the applicant did not sustain an injury arising out of and in the course of employment to his back and psyche.

The Undersigned Judge found that Spectrum Medical Group performed a medical-legal evaluation on April 15, 2024, and was entitled to $2,552.95 plus a $255.29 penalty and 7% per annum beginning on May 3, 2024, through the date of payment.

The Undersigned Judge further found that Spectrum Medical Group was not entitled to payment for the medical treatment provided to the applicant.

Spectrum Medical Group filed a Petition for reconsideration on February 25, 2025, asserting that the undersigned Judge errored in finding that the applicant did not sustain an injury in the course of employment to the lumbar spine and that Spectrum Medical Group was not entitled to payment for the medical treatment provided to the applicant.

III.

DISCUSSION

INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT

Spectrum Medical Group asserts that the Undersigned Judge errored in finding that the applicant did not sustain an injury to the lumbar spine during the course of employment.

Specifically, Spectrum Medical Group asserts that the Undersigned Judge's reliance on the testimony of Edward Chavez as a basis for denying industrial causation was unsubstantiated and that Dr. Amin Nia, D.C.'s report was substantial medical evidence, as there was no contending medical record to the contrary.

The defendant called Edward Chavez as a witness. Mr. Chavez was the manager of the department in which the applicant worked. Mr. Chavez was very familiar with the applicant's duties.

According to Mr. Chavez, the applicant was not required to load products onto the truck. The applicant was required to unload the products; however, he was provided with an electric pallet jack.

According to Mr. Chavez, the applicant's job did not require heavy lifting. The applicant was not required to lift weights between 70 to 100 pounds multiple times a day, perform repetitive lifting or carrying, and was not required to do repetitive twisting or prolonged walking.

As a truck driver, Mr. Chavez stated that he has had to do twisting and heavy lifting. However, he used a pallet jack when loading was required. Mr. Chavez acknowledged that sometimes, he had to load multiple times in a day. However, when he would have done it by himself, he would have had a pallet jack or hand truck.

Mr. Chavez testified that he did not work side by side with the applicant. Mr. Chavez was not part of the termination process, and he does not recall if he was involved in any of the applicant's write-ups.

The applicant did not testify to his job duties.

Cal Lab Code § 3202.5 provides that "[a]ll 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. "Preponderance of the evidence" means that evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence."

As such, the lien claimant, Spectrum Medical Group, had the burden of proof to establish injury arising out of and in the course of employment.

To meet this burden, Spectrum Medical Group submitted the medical report of Dr. Amin Nia, D.C.

Dr. Amin Nia D.C. saw the applicant as an elected primary treating physician. The applicant reported to Dr. Nia that he began working for Unified National Food, Inc. in 2019 as a CDL Driver. The applicant's job duties included operating a motor vehicle to make deliveries on long routes, loading and unloading products, arranging any fallen boxes, re-stacking them, wrapping products/pallets, etc. The applicant reported working 10-14 hours per day, 5-6 days a week.

The applicant reported that his physical requirements consisted of heavy lifting (70-100 lbs. several times a day), repeated fine finger manipulation, repeated gripping, repeated grasping, repetitive hand movement, repeated twisting, some bending, some squatting, some stooping, prolonged sitting, repeated lifting, repeated carrying and prolonged walking.

The applicant reported that his pain began on 01/06/2021 when he was involved in a motor vehicle accident while he was en route to make his delivery. He reported the injury but received no medical treatment.

Dr. Nia diagnosed the applicant with a lumbar spine injury.

Dr. Nia stated that the applicant's reported job duties reportedly involved heavy lifting, repeated twisting, bending, lifting, prolonged sitting, and carrying, supporting a continuous trauma mechanism to the lumbar spine. Dr. Nia states that the objective findings and diagnostic studies corroborate the reported industrial injury.

The Undersigned Judge found Mr. Chavez a credible witness.

The lien claimant asserts that Mr. Chavez's testimony has limited value and does not constitute substantial evidence in that Mr. Chavez admitted that he did not work side by side with the applicant on a day-to-day basis. The lien claimant asserts that Mr. Chavez's testimony was generalized statements about the applicant's job duties that failed to account for the full scope of the physical requirements, particularly the exertion necessary to maneuver heavy loads with the pallet jack.

The Undersigned Judge disagrees that Mr. Chavez's testimony failed to account for the full scope of the physical requirements and the exertion necessary to maneuver heavy loads with the pallet jack.

Mr. Chavez testified that the applicant was required to unload the products but was provided with an "electric" pallet jack.

Mr. Chavez also testified that the applicant's job did not require heavy lifting. The applicant was not required to lift weights between 70 to 100 pounds multiple times a day, perform repetitive lifting or carrying, and was not required to do repetitive twisting or prolonged walking.

No other first-hand knowledge of the applicant's job duties was submitted that was contrary to Mr. Chavez's testimony.

Based on the evidence submitted, the undersigned Judge found that the applicant's job duties did not involve heavy lifting, repetitive lifting or carrying, repetitive twisting, and/or prolonged walking as was stated to Dr. Nia.

As such, Dr. Nia did not have an accurate history of the applicant's employment duties. The considered opinion of a physician, though inconsistent with other medical opinions,

can constitute substantial evidence. However, medical reports and opinions are not

substantial evidence if they are based on surmise, speculation, or conjecture or if they are known to be erroneous or based on inadequate medical histories and examinations.

Furthermore, when the Board relies upon the opinion of a physician in making its determination, the Board may not isolate a fragmentary portion of his report or testimony and disregard other portions that contradict or nullify the portion relied on.

The Undersigned Judge understands that the policy of liberal construction for the purpose of extending benefits for the protection of persons injured in the course of their employment is predicated upon there being a person who is "injured in the course of employment", and does not aid in deciding the threshold question of whether the employee was injured in the course of their employment.

With an inadequate history, Dr. Nia's medical reporting was not substantial evidence and could not be the basis for a finding of industrial injury.

The lien claimant, citing *McAllister v. Workmen's Comp. Appeals Bd. (1968) 69 Cal.2d 408* asserts that the Workmen's Compensation Appeals Board is bound to uphold a claim in which the proof of industrial causation is reasonably probable, although not certain or convincing. The lien asserts that the Workmen's Compensation Appeals Board must do so even though the exact causal mechanism is unclear or even unknown.

In *McAllister*, the widow of a fireman alleged that her husband had contracted lung cancer caused by years of work-related smoke inhalation. The Court noted that the record contained evidence that the smoke that the firemen inhaled contained the same substances as in air pollution or cigarette smoke. A consulting physician testified that smoke from burning tar or creosote may well contain the same type of carcinogen found in cigarette smoke, and evidence was introduced that the fires that the decedent fought involved creosote. The defendant in *McAllister* introduced no evidence whatever to suggest that the smoke inhaled by firemen is always or usually benign.

The facts in the matter submitted to the undersigned Judge are not in line with the facts in *McAllister v. Workmen's Comp. Appeals Bd. (1968) 69 Cal.2d 408,* in that the defendant did submit credible evidence disputing the mechanism of injury that was reported to Dr. Nia.

Dr. Nia relied on inaccurate information in forming his opinion regarding the mechanism of injury. As Dr. Nia's relied upon inaccurate information to form his opinions and report, Dr. Nia's determinations were not supported by the evidence, thereby making Dr. Nia's report unsubstantial evidence.

With no evidence of industrial injury, the lien claimants have not met their evidentiary burden.

Based on the above, the Undersigned Judge was not in error in finding that the applicant did not sustain injury to his back and psyche as a result of his employment with United Natural Foods, Inc. during the period of January 1, 2020 through May 1, 2023.

As the applicant did not sustain injury to his back and psyche as a result of his employment with United Natural Foods, Inc. during the period of January 1, 2020 through May 1, 2023, the Undersigned Judge was not in error in finding that Spectrum Medical Group was not entitled to payment for the medical treatment provided to the applicant.

IV.
RECOMMENDATION

For the reasons stated above, it is respectfully recommended that Spectrum Medical Group's petition for reconsideration be denied.

Notice is hereby given that this matter was transmitted to the Reconsideration Unit on the below date.

DATE: March 11, 2025

Oliver Cathey

WORKERS' COMPENSATION JUDGE