WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JUAN MORENO, *Applicant*

vs.

CITISTAFF SOLUTIONS INC.;
OLD REPUBLIC INS. CO/ GALLAGHER BASSET, *Defendants*

Adjudication Number: ADJ18384896
Los Angeles 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, as quoted below, and for the reasons discussed below, we will deny reconsideration.

I.

Preliminarily, 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.
>
> (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.

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

> (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 November 17, 2025 and 60 days from the date of transmission is January 16, 2026. This decision is issued by or on January 16, 2026, so that we have timely acted on the petition as required by 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 November 17, 2025, and the case was transmitted to the Appeals Board on November 17, 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 were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on November 17, 2025.

II.

The WCJ states the following in the Report:

FACTS

The Applicant's Prior Injury Claims

> As the applicant's earlier claims are material to the outcome here, I will begin by briefly summarizing the information of record regarding these earlier claims.

As noted in his deposition testimony summarized by PQME Schwartz, the applicant sustained an earlier industrial injury in approximately 2013 due to a sea urchin incident at a seafood company. This led to near amputation of one of his fingers and a $17,000.00 settlement. (Exh. B, p.13.)

As noted in the earlier reporting reviewed by Dr. Schwartz, the applicant also received treatment for a cumulative trauma injury for the period from 6/29/15 to 6/29/16. In connection with this earlier CT claim, the applicant received treatment from a Dr. Kim Torres, whose 2016 reports, as reviewed by Dr. Schwartz, disclosed complaints of "severe throbbing low back pain: "severe throbbing left shoulder pain," right hand and right wrist pain, "moderate to severe right elbow pain and stiffness," "left shoulder pain and stiffness," "bilateral feet pain, stiffness," and "radiation of pain at times to lower extremities." Dr. Soheil Aval, who evaluated the applicant on 7/21/17, found ratable impairment based on this earlier CT to the left shoulder, right wrist and lumbar spine. (Exh. B., pp, 3-5.)

In PQME Schwartz's 8/6/24 report, the applicant presents three different versions of this earlier injury claim: First, and most prominently, that it arose from a dramatic incident mentioned nowhere in Dr. Schwartz's review of the earlier treatment records where a stack of folding wooden chairs suddenly fell on him; second, that it arose from a specific strain incident while lifting chairs, and third that it arose from cumulative trauma from 6/29/15 to 6/29/16. (See generally Exh. B, pp. 2, 12 and 14; Exh. 1, p. 1.)

The applicant admitted at trial herein that his earlier injury claim or claims "involved the same body parts" and/or affected "pretty much 'the same body parts'" as the present claim herein. (MOH, 9/16/25, p, 4.)

Current Injury Claim; Treatment by Dr. Scott Rosenzweig:

As noted in the 5/24/24 deposition summarized by Dr. Schwartz, the applicant [sic] that he worked for Citistaff Solutions from 2/28/15 to 8/4/23 [] His job consisted of unloading clothing from a semi-truck trailer. Although the applicant asserted to Dr. Rosenzweig that he worked "8 hours daily, 6-7 days a week," and worked "approximately 16 hours of overtime," his wage statement indicated that during his last year of employment, he worked an average of 38.24 hours per week. (See Exh. A, p. 14; Exh. 1, p. 1.)

The exact circumstances under which the applicant left his job with defendant herein are unclear, although according to the history provided to PQME Schwartz, "he stopped working of his own decision because of the persistent back pain when performing the heavy work." Ex. B, p. 2.)

For entirely unexplained reasons, the applicant never sought medical treatment for this persistent pain while he worked for defendant, nor for almost ten weeks after he left his position, … During that period of time…, per his 2024 deposition testimony, [he] regularly went to UCLA Harbor Hospital for "colds, and other medical needs." (Exh. B, pp. 14,15.)

After leaving his position on or about 8/4/23, the applicant first sought medical attention for his orthopedic issues through self-selected primary treating physician (PTP) Dr. Scott Rosenzweig, M.D. on 10/10/23[]. Despite years of prior medical inattention, the applicant suddenly presented at this evaluation symptoms of "throbbing," "sharp" "stabbing" pain affecting some six different areas of his body. This led Dr. Rosenzweig to diagnose some 11 different medical disorders and carry out a course of care through repeated office visits over the next 13 months. There is little dissimilarity among the ten "progress" reports submitted over this period of time. It appears the applicant made no progress of substance at all, as his subjective complaints were essentially reported to be the same in each report, with minor fluctuations as to the degree of pain and discomfort in the affected body parts.

Per MTUS guidelines "physical therapy, manipulation and other physical treatment methods" "are to be tried for at most 5 to 6 appointments. A lack of clear functional improvement indicates the treatment should be changed markedly or stopped altogether." (Website, California MTUS: Low Back Disorders - ACOEM - MDGuidelines.) However, Dr. Rosenzweig persisted in sequentially sending the applicant for acupuncture, physical therapy and chiropractic treatment without documenting any improvement of substance. Dr. Rosenzweig explained why he persisted with these ineffective treatments, nor did he consider, per MTUS guidelines, the possibility of other "red flags" such as psychiatric issues, tumors or systemic diseases. (See MTUS Guidelines cited supra.)

During the time period of Dr. Rosenzweig's care, the applicant went back to work as a forklift driver from March to July 2024, after which, per the history he gave Dr. Schwartz, he "was dismissed from employment due to his work restrictions." (Exh. B, p. 2.)

Dr. Rosenzweig pronounced the applicant permanent and stationary (P&S) on 11/21/24. Interestingly, the applicant's subjective complaints as described in this report were, on the whole, no more relieved than as documented at Dr. Rosenzweig's initial treatment visit of 10/10/23. Dr. Rosenzweig's P&S report nonsensically stated both that "Mr. Moreno is completely unable to do self-care, personal hygiene, physical activity, sensory function, non-specialized hand activities and all other activities of daily living," and that the applicant "is able to return to full duty as of November 21, 2024." (Exh 3, pp. 3, 5.)

The shoulder MRI studies reviewed by Dr. Rosenzweig showed various degenerative changes in both shoulders. Any positive findings in the low back MRI were limited to "a small disc bulge at L4-L5." Despite the lack of any anatomical pattern of dysfunction in the lower extremities or other evidence of nerve root impingement, Dr. Rosenzweig diagnosed sciatica in both lower extremities.[]

Based almost entirely on asserted losses of motion documented in the office visit, Dr. Rosenzweig found overall whole person impairment of 31% affecting both shoulders, both wrists and the low back.

The back impairment was based on the Range of Motion method. The sole asserted rationale for using this method was "because of the repeat [sic] injury . . . ."[]

Reporting of PQME Dr. Steven Schwartz

Orthopedist Dr. Schwartz saw the applicant on one occasion on 8/6/24. He noted the applicant's history of prior 2016 injury, variously explained as noted above. Dr. Schwartz noted that after this earlier injury, the applicant was given work restrictions but that the employer evidently misconducted itself by ignoring these restrictions. (See Exh. B., p. 1.)

As noted above, Dr. Schwartz reviewed various treatment records from the applicant's earlier 2016 CT claim, citing symptoms and impairments to largely the same body parts as those asserted herein. In all, Dr. Schwartz reviewed a total of 53 documents, including 2017 and 2024 deposition transcripts, and treatment records pertaining to Dr. Rosenzweig's care up through the time of PQME Schwartz's 8/6/24 evaluation.

Dr. Schwartz was assisted in his evaluation by a duly certified Spanish interpreter, Dolores Pena Vaca, certification No. 004925 throughout the visit. (Exh. C, p. 1.) Dr. Schwartz stated in his report, "The patient answers all questions only through the Spanish Language interpreter and with highly vague, incomplete, and sometimes incongruous answers. Most questions must be put to the patient multiple times before any understandable answer is provided." (Id. at p. 16.)

Dr. Schwartz performed a thorough physical evaluation and noted "minimal abnormality in any area." Nevertheless, he sought diagnostic testing before finalizing his conclusions in order to see whether they would confirm his preliminary impressions. (Exh. D, p. 12.)

Dr. Schwartz subsequently reviewed MRI studies of both shoulders and the low back which showed various degenerative changes but, as to the back, no indication of disc herniation or nerve root impingement. Dr. Schwartz attributed

any residual impairment the applicant might have to the applicant's earlier injury, variously reported, among other explanations, to Dr. Schwartz as a specific incident of some type in July 2016. While Dr. Schwartz's final report contained some inconsistent statements, he stated at page two of this report (Exh. C) that "All of the evidence indicates there is no foundation for continuous trauma in this case."

Dr. Schwartz's 5/5/25 Deposition

During over 50 minutes of questioning by applicant's attorney, Dr. Schwartz maintained his conclusion that the applicant had not sustained a new cumulative trauma injury over and above any prior impairment.

Dr. Schwartz repeatedly shared his impression of the applicant's poor credibility. He noted that while the treating physician, Dr. Rosenzweig, might have noted some abnormalities in Dr. Rosenzweig's office evaluations, the PQME assigned little value to these as "The patient's symptoms and reports of symptoms are completely unreliable." (Exh. D at p. 11.)

Dr. Schwartz further described applicant as "an extremely poor historian," "not a good historian," an individual who presented "issues of veracity," and as a patient to whom "questions must be put to the patient multiple times before any understandable answer is provided," which Dr. Schwartz attributed to "issues of veracity." (Id. at pp. 12, 16, 25.)

Dr. Schwartz reiterated that the applicant disclosed no significant physical abnormalities on evaluation.

Dr. Schwartz maintained his conclusion that the applicant's ability to perform his prior job for years on end without impairment indicated that this job gave rise to no further injury than that arising from the 2016 incident. Dr. Schwartz acknowledged there was some loss in his lower back range of motion but stated that "Loss of lumbar motion is a common finding in many normal patients who have never had any history of trauma." (Id. at p. 17.) He further stated that "A large number of patients, maybe the majority of patients in his age group, have the same restriction and work without restriction and without symptoms." (Id. at p. 25.)

Dr. Schwartz' deposition performance was far from ideal. He was dismissive and impatient at times. At various instances, he provided conclusory responses, merely referring the questioner to other sources and such as the undersigned's own presiding judge. When asked whether he wanted to review additional reports from PTP Dr. Rosenzweig, in addition to those already reviewed providing the same diagnosis, Dr. Schwartz responded that he did not think such review "will make any difference" in his findings. ([Id. at] p. 10.)

Nevertheless, as noted above, Dr. Schwartz did explain repeatedly and in some detail that he grounded his conclusions on the applicant's lack of objective abnormalities in his physical examination and diagnostic testing, as well as his lack of veracity.

Applicant's Testimony at Trial

Trial in this matter was on two dates rather than one mainly because of applicant's attorney's failure to arrange for an interpreter for the afternoon of the first trial date.

At the first trial date of 8/18/25, the applicant testified briefly in the morning session that he worked for the employer eight or nine years, where he loaded and unloaded products weighing from 30 to 90 pounds.

At his second trial date, the applicant provided further detail that he would unload material from containers and put it on pallets, either by hand or with the use of a pallet jack. He would also clean and pick up trash at the end of the day. He only reported any pain or discomfort on the very last day of his job, when he mentioned this to a supervisor named "Sandra." Sandra did not provide him with a claim form.

In his trial testimony, the applicant assigned the same pain level of 4 on a scale of 10 to over 20 different body parts, including both shoulders, both hands, all his fingers, both feet and his low back. During his testimony, I observed nothing that would suggest any pain or discomfort in any of these body parts. In my opinion on decision, I described this recitation of his symptoms as "robotic."[] (See generally MOH 9/16/25, pp. 2-3.)

On cross examination, the applicant agreed that his earlier injury claim involved "pretty much 'the same body parts as the current claim." The applicant stated that he received a paper documenting work restrictions arising from his prior injury yet never provided this information at any time to defendant herein.[] (Id. at pp, 3-4.)

On 10/14/25 I issued a "take nothing" finding that the applicant had failed to sustain his burden of proving an industrial injury in this case. The applicant's reconsideration petition followed.

DISCUSSION

Reasons for my Findings as Set Forth in My Opinion on Decision

In my opinion on decision, I set forth my reasons for my findings in some detail, which I believe are largely responsive to applicant's current contentions on

reconsideration. For that reason, I believe it appropriate to set forth this discussion as follows:

It is well-settled that, even under liberal construction mandates, the applicant bears the burden of proving his claim of injury by a preponderance of substantial evidence that is reasonable, credible and of solid value. (See, e.g., *Braewood Convalescent Hospital v. WCAB* (C/A) 48 CCC 566.) A preponderance of evidence "means that evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth." (LC sec. 3203.5)

The evidence presented by the applicant is that he worked what may well have been a physically demanding job, then left the job for the ostensible reason of systemic injuries throughout his body. While he claimed to various doctors that he worked 48-56 hours per week, up to 7 days a week, with up to 16 hours of overtime as asserted at his deposition, the wage statement in evidence shows a total of 1988.38 regular and overtime hours during his last year there, which works out to an average of less than 40 hours a week. [H]e took no steps whatsoever to seek any form of medical attention for a disturbing array of systemic symptoms until almost ten weeks after his last date of employment, after he sought legal counsel for his claimed injuries.

Despite years of prior medical inattention, he suddenly presented symptoms of "throbbing," "sharp" "stabbing" pain affecting some six different areas of his body. This, of course, led … treater Scott Rosenzweig MD. to diagnose some 11 different medical disorders which proved entirely impervious to any form of treatment throughout over a dozen visits over a period of well over a year, after which Dr. Rosenzweig described him as "completely unable to do self-care, personal hygiene, physical activity, sensory function, non-specialized hand activities and all other activities of daily living." Somehow, these highly disabling symptoms did not keep him from securing another job as a forklift driver during this course of care.

Throughout this litigation, the applicant seemed to have … forgotten that he presented a virtually identical cumulative trauma claim seven years earlier producing virtually identical symptoms. Instead, the applicant attributed his earlier impairments to a specific incident on an unspecified date, causing one to question whether he is any more credible in asserting a current cumulative injury than he was in connection with his earlier claim of cumulative injury that he now seeks to disavow.

While the applicant asserted to PQME Schwartz that he was forced to do work in violation of his prior medical restrictions, he admitted at trial that, for unexplained reasons, he never presented any such paperwork to the defendant employer herein.

Dr. Schwartz, for his part, described an applicant who provided "highly vague, incomplete and sometimes incongruous answers to his questions."

My impression of the applicant at trial was not entirely dissimilar. Without any visible sign of pain, discomfort or impairment, he robotically assigned the same level of four on a scale of 10 to literally 21 different body parts when one counts both knees, both feet, ten fingers, etc. All this, of course, was asserted to be present over two years after claimed injuries which did not even lead to a doctor's visit until more than two months of his last date of employment with the defendant.

Perhaps, the applicant suffers from some unusual systemic pain disorder which somehow escaped the attention of over half a dozen providers who have seen him in this case. What seems more likely to this judge is that the applicant believed these answers would be likely to lead to a significant monetary award.

While I was not "on all fours" with Dr. Schwartz's reasoning process, I see no fundamental reason to question his conclusion that the applicant's impairment, if any, is no greater than it was at the time of his well-documented earlier course of care for his 2016 CT claim. Dr. Schwartz did a thorough physical evaluation, reviewed two depositions of the applicant, and reviewed and duly summarized some 53 medical reports prepared over a period of almost eight years. He prudently held off on his conclusions pending MRI studies which did not, in his view, present any notable findings. I do not think it can reasonably be asserted that he did not take his job seriously or that he was working from a fount of incomplete information.

I have duly considered applicant's 6/30/25 motion to strike Dr. Schwartz's reporting but I do not find the arguments therein meritorious.

While Dr. Schwartz did document a loss of spinal motion, he also stated at deposition that "the patient's symptoms and reports of symptoms are completely unreliable." Applicant asserts that the loss of spinal motion presented to Dr. Schwartz is ratable under the AMA guides Range of Motion (ROM) method. The problem with this argument is that no special circumstances that support the use of ROM are present here, such as demonstrable disc herniations, spinal fusions, or other alterations of motion segment integrity.

Applicant also takes as a fait accompli that any physical job automatically creates permanent physical impairment and takes the doctor to task for suggesting otherwise. Applicant presents no support for this assertion. Applicant also fails to explain any meaningful difference between the plethora of complaints documented in the 2016-2017 medical reports and those in the 2023-2024 reports.

Applicant also asserts that the PQME's opinions must be rejected because he only reviewed 53 reports which did not include a handful of those prepared more recently than those Dr. Schwartz reviewed and summarized. Given that most of the reports in evidence strike me as carbon copies of one another, I do not find it unreasonable for Dr. Schwartz to assert they would be unlikely to change his opinions.

Of course, applicant had ample opportunity to send these reports for Dr. Schwartz for his review. Instead, applicant appears to have gambled that his failure to do this will cause the judge to instead completely reject the findings of a PQME that are unfavorable to his claim. Obviously, if there is any error in Dr. Schwartz's failure to review these reports, it was invited by the applicant's own inaction. (See, e.g. *Telles Transport v. WCAB (Zuniga)* 66 CCC 1290.)

Dr. Schwartz was obviously impatient with some of the questioning and was, at times, more dismissive than might be ideal. However, applicant cannot meet his burden of proof here simply by complaining about the demeanor of the sole independent forensic expert in this case. For the reasons explained above, I find that this burden has not been met here.
[]

Further Responses to Applicant's Arguments on Reconsideration While I believe my opinion quoted above is largely responsive to applicant's assertions in his reconsideration petition, I believe it would be proper to also specifically respond, at this time, to any such additional concerns as presented in the petition.

a. Credibility of Applicant

To my understanding, judges are not required to credulously accept every assertion of a workers' compensation claimant in a disputed case. Indeed, the Legislature has repeatedly expressed concerns about minimizing fraud and abuse of the workers compensation system. See, e.g. *City of Oakland v. WCAB (Gullet*) (C/A published Opn.) 67 CCC 705; *American Psychometric v. WCAB (Hurtado*) (C/A published Opn.) *60 CCC 559*; SB 899 (2004), sec. 49.)

….

Obviously, it strikes me as implausible that an individual who regularly treated at a nearby facility (Harbor UCLA Hospital) would fail to do so in the face of "severe, throbbing" pain affecting multiple body parts, even for over two months after this ostensibly led to complete cessation of his employment….

There is also the matter of an alleged systemic disorder equally affecting over 20 body parts with no plausible explanation provided by any medical expert, as well as the failure of over a year of treatment to affect his condition in any significant way.

One may also reasonably wonder why, if the applicant was laboring under work restrictions, he never reported these to his employer. On reconsideration, applicant certainly has the right to dismiss of all this as "minor discrepancies or improper speculation." However, he has presented nothing that would reasonably and credibly explain these events, statements and circumstances.

The petitioning affiant, who was not present at trial, asserts that the applicant "credibly testified" at trial, while conveniently ignoring that the applicant provided three different explanations of his prior injury claim, gave testimony at trial inconsistent with his prior assertions to Dr. Schwartz about his disclosing his restrictions to his employer, and exaggerated his working hours to both medical experts. I am not seeing how, with a record presenting this many inconsistencies, I am expected to take every trial assertion of the applicant at face value. Moreover, I found his demeanor, which the petitioner/affiant never observed, to be entirely inconsistent with his assertions of body wide pain.

b. Credibility of Dr. Rosenzweig

For multiple reasons, I found PTP Dr. Rosenzweig no more credible than the applicant, or perhaps even less so.

Ostensibly, an orthopedic expert qualified to handle workers' compensation treatment, Dr. Rosenzweig entirely ignored the MTUS guidelines and repeatedly prescribed various forms of physical therapy even where this proved entirely ineffective throughout the entirety of his care. Almost 100 pages of reports are entirely bereft of any explanation of this, or why the applicant was simply shuttled from one ineffective modality of care to another. His treatment costs of $26,755.14 are accompanied by no discernible improvement in the applicant's symptoms.

Petitioner provides no support for his assertion that the "small disc bulge" at one level of his lumbar spine and other degenerative changes supports 31% impairment. Petitioner seems to have overlooked that even Dr. Rosenzweig found no need for any work restrictions despite the applicant's ostensible severe impairments.

….

Two aspects of Dr. Rosenzweig's final report have led me to believe that this expert, at least in the context of this case, is almost completely lacking in credibility.

First is his glib assertion that use of the ROM method is supported by the fact of a "repeat injury" to the back. [A] "repeat injury" only allows for use of ROM "where there is recurrent radiculopathy caused by a new (recurrent) disc

herniation or a recurrent injury in the same spinal region." (AMA Guides p. 380, emphasis added.) The AMA guides define "radiculopathy" as "Any pathological condition of the nerve roots." The reporting is bereft of any discussion of an actual nerve root disorder supported by dysfunction in an anatomical pattern or any MRI or other evidence of nerve root impingement. Such discussion or evidence is lacking not only in the present matter but also in the records (never reviewed by Dr. Rosenzweig) of treatment for the applicant's prior industrial injury or injuries.

….

My second reason to severely discount Dr. Rosenzweig's findings is his willingness to assign apportionment to the applicant's acknowledged earlier injuries without reviewing an iota of documents pertaining to this case or even asking to review such documents before rendering an opinion on this. This, to me, reveals such a lack of scientific rigor as to seriously question all of Dr. Rosenzweig's other conclusions.

c. PQME Schwartz's Findings

In my view, Dr. Schwartz credibly based his conclusions on both the applicant's lack of credibility (and concomitant ability to present nonexistent symptoms in an office examination) and the lack of significant true objective findings in Dr. Schwartz's office evaluation.

Applicant asserts, as he did in his trial brief, that 1) the applicant must have hurt himself at work because he had a heavy job; 2) the loss of spinal motion found by Dr. Schwartz is prima facie evidence of impairment.

However, as Dr. Schwartz repeatedly explained in his cross examination, a heavy job does not automatically translate into injury, and loss of spinal motion, in the absence of other objective signs of injury, does not automatically translate into impairment or a restricted ability to compete in the open labor market. (As to the latter, it should be remembered that even PTP Rosenzweig returned the applicant to full duty. (Exh. 3, p. 5.)

Essentially, petitioner is asking us to substitute our own medical opinions for those of a board-certified orthopedist duly qualified to evaluate workers' compensation claimants. However, "the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence.'" (*Place v. Workmen's Comp. App. Bd,.* (C/A published Opn.) 35 CCC 525.)

I would agree that Dr. Schwartz's performance at deposition was less than ideal. Particularly after prolonged questioning, he became dismissive and impatient.

In many instances he provided glib, uninformative responses, referring the questioner to the asserted findings of other legal or medical experts.

It did not behoove Dr. Schwartz's stature as an expert to declare that unreviewed treatment reports from the PTP would not have made any difference in his findings. (Exh. D, p. 10.) On the other hand, viewed in the context of the questioning, this response may not have been entirely unreasonable. Dr. Schwartz was presented with an assertion that these reports would have documented "ongoing symptoms and treatment requests" from Dr. Rosenzweig. However, Dr. Schwartz was presumably quite familiar with these based on his review of several of Dr. Rosenzweig's highly repetitive earlier reports. Also, Dr. Schwartz also could reasonably have discounted any findings based on the applicant's symptoms based on his well-considered opinion that "the patient's symptoms and reports of symptoms are completely unreliable." (Id. at p. 11.)

Perhaps if it were defendant's burden to disprove an injury rather than applicant's burden to prove an injury, there might be a basis for further relief here. However, that is not how the law works.

Certainly, Dr. Schwartz can hardly be faulted for not being completely clear about the applicant's prior injury history when it was the applicant who provided three different versions of this. I do not think that the Legislature intended that an individual could present a noncredible claim in hopes that the poor performance of an independent doctor at a deposition might give him a second chance to present the same-noncredible claim. Viewed as a whole, I am satisfied that Dr. Schwartz provided sufficient reasons for his findings and that the applicant has not sustained his burden of proving injury.

RECOMMENDATION

It is respectfully recommended that applicant's reconsideration petition be denied.

(Report, at pp. 2-16, footnotes omitted.)

The employee bears the initial burden of proving injury arising out of and in the course of employment (AOE/COE) by a preponderance of the evidence. (Lab. Code, § 5705; *South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 3600(a).) Moreover, it is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term

'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) A medical opinion is not substantial evidence when based on incorrect facts, history or legal theory, or surmise, speculation, conjecture or guess. (*Place v. Workers' Comp Appeals Bd*. (*Place*) (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls (Escobedo*) (2005) 70 Cal.Comp.Cases 604, 620-621.)

In this case, we agree with the WCJ that applicant did not meet his burden of proof through substantial medical evidence that he sustained a cumulative injury through August 4, 2023. Dr. Schwartz, the panel qualified medical evaluator (PQME), found applicant had reached maximum medical improvement with regard to the previous July 2016 cumulative injury but that there was no evidence of cumulative trauma through August 4, 2023, as claimed herein. (Dr. Schwartz' 9/19/24 report, at p. 2. Defendant's Exhibit C.) The opinion of primary treating physician (PTP) Dr. Rosenzweig was not based on an adequate history because he failed to review any medical records pertaining to the prior 2016 cumulative injury. This fact alone renders his opinion not substantial medical evidence, making further analysis of his opinion unnecessary.

In addition, 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].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id*.)

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/ JOSÉ H. RAZO, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 16, 2026

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

JUAN MORENO
WCA LAW GROUP
SLATER ASSOCIATES

PAG/mt

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