applicant was not entitled to TD based upon the stipulation by the parties that the applicant made no claim for such benefit. Because Dr. Navani's one report failed to review any medical records, and because the applicant failed to provide any history whatsoever of his extensive back injuries, this court concluded it could not form the basis for any findings.

The applicant filed a timely verified Petition for Reconsideration dated July 14, 2023. The Petition points out a mistake by the undersigned in its finding that the applicant suffered no temporary disability and suffered no permanent disability, both referencing finding of fact #3. Due to the scrivener's error, the undersigned issued an Amended Findings of Fact & Order to perfect such on July 17, 2023.

The Petition also argues that the PQME reports do not constitute substantial evidence because the PQME evaluated the applicant only once (despite the fact that Dr. Navani conducted only one evaluation as well) and that the conclusions are flawed (despite the PQME being the only doctor who reviewed all medical records), and that the applicant should now, or in the future, be allowed to litigate the issue of temporary disability (despite his representation that there was no claim for TD).

III. DISCUSSION

The applicant sustained a low back injury while employed with Medline when he was driving his stock picker, where he was secured by a four-point harness, when he struck a metal pillar at approximately 5 mph. The employer sent him for medical care and he treated. Noted nowhere in the medical reports from any treating physicians is the extensive history of low back pain and injuries for eight years prior to the injury as discussed both above and below. His deposition testimony denied any prior back injuries and his answer on the day of trial was that he misunderstood the question and that he forgot about his prior treatment.

PETITONER'S FIRST CONTENTION – SUBSTANTIAL EVIDENCE

Great weight should be afforded to the trial judge's findings because of the opportunity and ability to observe witness demeanor and weigh their statements in connection with their manner on the stand. *Power v, WCAB (1986) 179 CA3d 775, 51 CCC 114; Garza v. WCAB (1970) 35 CCC 500; Western Electric Co. v. WCAB (Smith) (1979) 99 Cal.App.3d, 44 CCC 114*

Furthermore, medical evidence that is known to be erroneous or is based on inadequate medical history or examinations does not constitute substantial evidence. *Zemke v. WCAB (1968) 33 CCC 358; Place v. WCAB (1970) 35 CCC 525; Hegglin v. WCAB (1971) 36 CCC 93; Baptist v. WCAB (1982) 47 CCC 1244; Guerra v. WCAB (1985) 50 CCC 270; Escobedo v. Marshalls (2005) 70 CCC 604; E.L. Yeager Construction v. WCAB (Gatten) (2006) 71 CCC 1687.* The entire medical opinion must demonstrate that the doctor's opinion is based upon reasonable medical probability. *McAllister (1968); Lamb (1974); Gay*

(1979). Furthermore, the board may not blindly accept a medical opinion that lacks a solid underlying basis and must carefully judge its weight and credibility. *National Convenience Stores (1981)*

In the case at bar, the applicant's demeanor at trial left much to be desired. He slouched excessively and appeared both upset and inconvenienced by the trial on direct examination. On cross- examination, he became combative with defense counsel and also to the court, going so far as to use profanity and log off Lifesize without notice. The court was nevertheless willing to allow the applicant the full opportunity to continue testifying in the afternoon and put the morning's difficulties in the past. In the afternoon, he was not combative, he was clearly annoyed by the defense attorney's questioning as evidenced by his eye-rolling, whispering under his breath, and continued unprofessional body language.

After reviewing all evidence, it is clear why. He was not forthcoming with the physicians, and the lack of candor was the centerpiece of the defendant's questioning. The applicant did not provide any physician a history that came even remotely close to his true history of chronic back pain, injuries, disability, range of motion and clinical evaluations, and treatment throughout the years. The records offered into evidence from Doctors Medical Center of Modesto (Exhibit A) reflect a longstanding history of back pain that is directly relevant to the issues of permanent disability and the need for future medical treatment.

Turning to the designated portions of Exhibit A, these records reflect the following:

8/17/2016 evaluation in the emergency department for sciatica and chronic back pain greater than three months duration, that "…left lower back pain …has been ongoing for 3 years", and a diagnosis of back pain, lumbar strain, disc herniation, and sciatica. There was no specific mechanism of injury. He was prescribed medication.

8/30/2016 evaluation in the emergency department for back pain and rated an 8/10. The diagnosis was acute back pain with sciatica. He was prescribed medication.

9/1/2016 evaluation in the emergency department resulting from a bicycle accident two days ago and noting of abrasions and contusions. He was prescribed medication.

1/20/2020 evaluation in the emergency department at 18:02 resulting from a motor vehicle accident (MVA) with an onset of "0145". He was the driver, was rear-ended, and spun out. Pain was 8/10. Diagnoses included spinal injury, trunk injury, and cervical spine injury. He was prescribed medication.

3/16/2020 evaluation in the emergency department with complaints consisting of low back pain with radiation down his left leg for six months, worsening over the past three months.

The report also reflects that the "[p]atient states that he has had chronic back pain for the last 8 years" and that he had a "MVC" in January. He was prescribed medications, had an x-ray, and the diagnosis was "Back pain, lumbar strain, disc herniation, sciatica, spinal stenosis, chronic back pain, vertebral fracture, [and] compression fracture".

7/25/2020 evaluation in the emergency department due to a motor vehicle crash six days earlier when he was the driver of a car and was sideswiped on the driver's side by another driver. Complaints were to his low back. He was prescribed medications and given a Toradol injection.

The applicant worked at Medline for less than two months prior to his injury, yet prior to that time he had back pain and problems for at least eight years as evidenced by the records of his private medical providers. It is clear that the most reliable medical opinion introduced into evidence in this case is that of the PQME. Both the PQME and Dr. Navani evaluated the applicant one time. But it is the PQME who was provided with the records reflecting the applicant's longstanding history. The PQME is the only physician who was afforded a true and accurate history. Dr. Navani never reviewed the voluminous records. The doctor issued just one report in February 2022 without knowing the true etiology and history, all because of the applicant's failure to provide an accurate history and failure to review the medical records.

The PQME reports were offered as joint exhibits, the court admitted them as such, and now the applicant objects to the conclusions. The PQME notes that the clinical examination in his office demonstrated better range of motion than the prior examinations at the applicant's private physicians. The PQME also notes that, after reviewing all records, his preexisting condition would have warranted a DRE Lumbar Category II, yet at the time of his evaluation, the applicant had excellent range of motion, was able to reach within 20 cm of touching his fingers to the floor with the knees in an extended position, and straight leg raising was negative bilaterally. The applicant's reflexes were symmetric, appropriate, and equivalent bilaterally, straight leg raising was negative bilaterally, and there was a complete absence of radiculopathy or radiculitis or findings of a radicular nature, which was present previously. When the PQME saw the applicant, he presented with less obvious subjective symptoms than he had during the visits between 2016 and 2020. In short, the applicant was *better* at the time of the PQME evaluation than before the injury.

The PQME concludes in both supplemental reports that he can say with the highest degree of medical certainty that the episode of June 23, 2021 presents purely an exacerbation of the preexistent condition already well documented

over an extended period of years which was not provided to him by the applicant, and thus there is no evidence of any impairment other than that which would have been derived on the preexisting condition. The PQME's opinions are based on the most accurate history (due to the review of records), and the reports constitute substantial evidence. Dr. Navani's single report fails in this regard. Contrary to the applicant's claim that "Dr. Navani actually spoke with and treated the Applicant whereas Dr. Hellner just issued a supplemental report", (Petition for Reconsideration, page 6, lines 20-21) Dr. Hellner also spoke with the applicant and conducted a full clinical evaluation. The applicant's claim is misleading and unfounded.

PETITONER'S SECOND CONTENTION – TEMPORARY DISABILITY

The applicant contends that the finding of fact that he should not be precluded from litigating TD "in the future" is unclear, at best. On the MOH from the first trial-setting day, it is noted that the applicant's counsel stated there was a claim for TD, although none was identified on the PTCS, and the record at that time suggested the applicant worked at two jobs subsequent to Medline. By the time of trial, the parties and the court perfected the PTCS, and the applicant maintained his position that there was no claim for TD at that time.

The undersigned is unclear as to what the applicant now argues, but only two scenarios appear reasonable. If the applicant is arguing that he may be entitled to TD in the future, then that right is viable by way of a Petition to Reopen for New and Further Disability. If, however, the applicant is arguing that he somehow reserved the right to litigate a retroactive TD issue, then that is a disingenuous argument in that the issue was the subject of discussions on all trial days. At no time did the applicant make a motion to bifurcate a retroactive TD issue or reserve any such issue. The applicant was given the opportunity to raise that issue several times over, yet did not do so.

Either scenario makes the TD issue raised in the Petition untenable. This court's intent at the time of trial was to go forward with any claim of TD, if asserted. The applicant chose not do so, and the medical record supports a finding of no TD, regardless.

IV. RECOMMENDATION

It is respectfully recommended that the Applicant's Petition for Reconsideration dated July 14, 2023 be denied.

DATE: July 18, 2023

TODD T. KELLY
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE