

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

**TIMOTHY LAHEY, *Applicant***

**vs.**

**MEDLINE INDUSTRIES; PROPERTY INSURANCE AND CASUALTY COMPANY  
OF HARTFORD, administered by BROADSPIRE,  
*Defendants***

**Adjudication Numbers: ADJ15199903  
Van Nuys 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 determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*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 determinations. (*Id.*)

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

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

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



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

**September 12, 2023**

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

**TIMOTHY LAHEY  
SHATFORD LAW  
TOBIN LUCKS**

**LN/pm**

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

# **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

## **I. INTRODUCTION**

### **I INTRODUCTION**

Applicant's Occupation:	Forklift Driver
Applicant's Age on	
Date of Injury:	36
Date of Injury:	June 23, 2021
Parts of Body Injured:	Low back and alleged left hip and right hip
Manner in Which Injury	
Occurred:	Struck a pole at five mph while driving a forklift
Identity of Petitioner:	Applicant filed the petition
Timeliness:	The petition is timely filed
Verification:	The petition is properly verified
Date of Issuance of	
Findings of Fact & Order	June 23, 2023

Petitioner's Contentions: That the court erred in finding no permanent disability or need for further medical treatment, pursuant to the panel qualified medical evaluator's opinion.

That the court erred in finding no temporary disability, despite the applicant making no claim for such.

## **II. FACTS**

The applicant, Mr. Timothy Lahey, was hired by Medline Industries (Medline) on May 14, 2021. (Exhibit J1, page 3). The following month, on June 23, 2021, the applicant was driving a stock picker and struck a metal support pillar at about five miles per hour and injured his low back. (Id. at p. 2). The defendant referred the applicant for medical treatment, and the applicant treated at Occupational Medical Doctors for the next several months, up until November 2021 (Exhibits 1, 2, 4, 5, 6, and J4). During that time, the applicant secured representation and filed an Application for Adjudication of Claim (Application) dated September 22, 2021 for his back injury. He then amended his Application on January 13, 2022 to include both hips. His attorney referred him for treatment to Dr. Annu Navani who evaluated the applicant one time and issued one report dated February 16, 2022. (Exhibit 3)

The parties then utilized panel qualified medical evaluator (PQME) Mark Hellner who evaluated the applicant and issued his report dated February 10, 2022. (Exhibit J1). The PQME found causation to the injury at Medline, concluded that the applicant was not permanent and stationery and

recommended treatment and diagnostic studies, but also noted that the applicant's range of motion was excellent. Most importantly, the doctor's report reflects on page 4 that the applicant provided no history of preexisting conditions "...other than a transient level of symptomatology in the low back non-radicular in nature from a motor vehicle accident in December of 2019 from which he recovered completely and did not miss any work."

Of significance is that the PQME thereafter reviewed medical records dated between January 8, 2010 and March 15, 2022 and then issued a supplemental report dated July 7, 2022 (Exhibit J2). The doctor parses out several reports between August 17, 2016 and July 5, 2020 and describes these records as containing "several important points to be noted". (Id. at p. 1). The first report reviewed is dated August 17, 2016 from Dr. Paulo Murrieta who provides that the applicant has had "...back pain...ongoing for three years." Thus, the PQME, after reviewing the records and noting that the applicant has had back pain with radiculopathy for eight years before his injury at Medline, and now knowing that the applicant was not candid with him at the time of the initial evaluation, concluded that the applicant suffered only an exacerbation of his preexisting condition, had no increase in impairment (and actually had less impairment than prior to the injury at issue), and that there was no contribution towards his impairment from the injury at Medline. (Id. at p. 3). At no time did the applicant seek any further supplemental report or seek to schedule a cross-examination.

On August 10, 2022 the defendant filed a Declaration of Readiness to Proceed (DOR) to which the applicant objected on August 23, 2022. The MSC on November 17, 2022 resulted in the matter being set for trial over the applicant's objection. Trial was scheduled on December 29, 2022, but due to insufficient time to conduct the trial, as well as this court noting that the PQME failed to comment on the need for future medical treatment, the matter was continued and the parties were ordered to develop the record and obtain a supplemental report from the PQME on this limited issue. Neither party objected. The court also encouraged the parties to further discuss resolution because the applicant's attorney alleged a period of temporary disability (TD) that the defendant was unaware of.

The PQME issued a supplemental report dated March 16, 2023 that reiterated his prior findings and concluded that "...no additional treatment is required subsequent to...the first few days to a week or so following the injury of June 23, 2021 for any additional treatment to be provided at this point in time or in the future with respect to the episode of exacerbation of June 23, 2021." (Exhibit J3)

With that, the parties were prepared to adjudicate the matter if settlement could not be achieved. The court exhausted all efforts to facilitate resolution and gave plenty of time to do so. The Pre-Trial Conference Statement (PTCS) was perfected and the parties went forward with trial on May 31, 2023 over Lifesize

with all three PQME reports being entered into evidence jointly, as well as the one report of Dr. Navani, among other medical and subpoenaed records.

On direct examination the applicant testified that he injured his back on June 23, 2021, that he had no back pain prior to his shift, that his current symptoms include intense low back pain with radicular symptoms, that he desires more treatment, that there was not much discussion with Dr. Navani about his prior injury, that he mentioned the prior motor vehicle accident of January 2019, that he has consistent low back pain, and that he can only work off and on due to the pain. (MOH, pp. 4-5).

On cross-examination (*id.* at pp. 5-7), the applicant was asked about his prior treatment dating back three years before 2016, that his deposition testimony was such that he denied any prior back injuries, and that he had a motor vehicle accident in 2020. At this point the applicant raised his voice and refused to answer the preceding question stating that it was irrelevant. The applicant's attorney, upon inquiry by the court, stated that there was no objection to the defense attorney's question. The court then advised the applicant that he needed to answer. The applicant became irate, used profanity, and immediately logged off of the Lifesize App. The court discussed the matter with the attorneys, and the applicant's attorney advised opposing counsel and the undersigned that he would speak with his client about continuing and remaining professional. Trial reconvened at 3:20 p.m.

Cross-examination continued with the applicant testifying that he completed all paperwork in the PQME's office (even though the report states he did not), that he did have a motor vehicle accident in 2019, that he had two motor vehicle accidents in 2020 where he injured his back, that those records reflect back pain at an 8 out of 10, the he denies having chronic back pain for several years prior to 2020 (despite the records), that he never told the doctors his back pain in 2020 was worsening over the past few months (despite such an indication in those records), and that he had a bicycle accident in 2016. He concluded cross-examination by testifying that he began working at Tesla on September 12, 2021 but quit because he did not like the environment and that he worked at KeHE from November 16, 2021 through February 2022 but quit because of the lifting requirements.

On redirect, the applicant testified about the discrepancy between the records and his deposition testimony. His answer was that "...he misunderstood the question and forgot that he treated." (*Id.* at p. 7).

Based upon the applicant's demeanor, lack of credibility at trial, and the fact that only the PQME reviewed all the medical records pertaining to the extensive preexisting history of back injuries, pain, and treatment, the court issued its Findings & Order on June 22, 2023 consistent with the PQME, i.e. no permanent disability (PD) and no future medical treatment. The court also found that the