

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

STEVEN SHINE, *Applicant*

vs.

**CTE, INC., SECURITY NATIONAL INSURANCE COMPANY, administered by
AMTRUST, *Defendants***

**Adjudication Number: ADJ11439752
San Diego 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].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id.*)

We observe, moreover, it is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 15, 2022

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

**STEVEN SHINE
HIDEN, ROTT & OERTLE
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

AS/pc

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
ON PETITION FOR RECONSIDERATION**

INTRODUCTION

Date of Injury:	8/14/2018
Age on DOI:	55
Occupation:	Laborer
Identity of Petitioner:	Defendant
Timeliness:	The Petition is timely
Verification:	The petition is verified
Date of Decision	5/24/22

Petitioner's Contentions

1. That the Worker's Compensation Judge acted in excess of his powers;
2. That the evidence does not justify the Findings of Fact;
3. That the Findings of Fact do not support the Order or Decision or Award

FACTS

Applicant sustained an admitted industrial injury to the lumbar spine, right upper extremity and right wrist. A dispute arose between the parties in regards to the overall degree of permanent partial disability. A trial was held at which time the reports of the qualified medical evaluator, and the primary treating physician were submitted, as well as testimony from applicant. Thereafter, the WCJ issued his opinion, findings and award which included the following rating of applicant's permanent partial disabilities:

Grip Loss: 16.01.04.00 - 18[1.4] - 25 480G - 28 - 33 %
Thoracic Spine: 15.02.01.00 - 8[1.4] - 11 - 4801 - 16 - 19%
Lumbar Spine: 80%(15.03.01.00 - 8[1.4] - 11 - 4801 - 16 - 19) 15%
Multiple Disabilities Table:
33% Combined with 19%, Combined with 15% = 54% Final PD

Applicant was awarded 54% permanent partial disability and future medical treatment. Defendant has filed a timely petition for reconsideration.

DISCUSSION

Defendant's petition alleges that the degree of permanent partial disability assigned by the WCJ to applicant's loss of grip strength is not appropriate in light of the evidence. In reaching his opinion regarding permanent partial disability, the WCJ has relied upon the conclusions of the qualified medical evaluator, Dr. Wayne Inman, and applicant's primary treating physician, Glenn Nussbaum DC.

Both physicians found that applicant has permanent partial disability in the form of grip loss that is 100% caused by the industrial injury. However, the physicians differed in their opinion as to the degree of whole person impairment resulting therefrom. The primary treating physician, Dr. Nussbaum concluded the following:

"With regard to the patient's right wrist, the patient has significant grip strength deficit. Noting that there is no pain with grip strength testing, nor range of motion deficit, which would negate the ability to use grip strength as a method of impairment, grip strength deficit will be considered in this case. Per Table 16-4, the patient has a 30% upper extremity impairment due to a strength loss index of approximately 65%. This converts to 18% whole person impairment per Table 16-3" (Applicant's Exhibit 10, page 9)

The QME, Dr. Wayne Inman came to the following conclusion:

"In regard to the right wrist, he has significant grip weakness on his right dominant hand, which of course is a significant impairing factor in his previous work as a construction laborer. As stated earlier, this is associated with a 6% whole person impairment. 11 (Defendant's exhibit H, QME report of Dr. Inman, page 15,)

In regards to causation and apportionment the QME stated:

"There are no significant nonindustrial factors at this time. Therefore, I feel that all of his impairment as described above is 100% industrial and related to the specific injury as described on August 14, 2018." (Defendants exhibit H, QME report of Dr. Inman, page 15,)

"I have been asked to specifically review the report of Dr. Nussbaum and address issues regarding causation, apportionment and impairment, and I compared to my previous reports.11 (sic)

"First, in regard to the right wrist, it appears we are in agreement that he demonstrates same loss of grip strength and associated impairment.11 (sic) (Defendant's exhibit E, QME report of Dr. Inman, page 8,)

After hearing applicant's testimony, and reviewing the medical record in detail, the WCJ concluded that the treating physician, Glenn Nussbaum DC has provided the most accurate assessments of applicant's disability resulting from his grip loss. Defendant has contended that Dr. Nussbaum's assessment of the grip loss should be discounted and has argued that "applicant's grip strength measurements must be re-evaluated because the applicant's testimony implies

that he has been experiencing pain with gripping and grasping since 2020, at or around the same time as his last evaluation with PTP DC Nussbaum."

At trial there was confusing testimony from applicant in regards to whether he experiences pain upon grasping and gripping. Applicant was led to say that he experiences pain on gripping and grasping, but then upon further questioning stated that he does not have pain upon gripping and grasping. Applicant appeared confused about how to answer defendant's leading questions. Having had the opportunity to carefully observe applicant's demeanor at trial, the WCJ does not give great weight to his responses to the leading questions asked by defendant at trial. Applicant's confused and conflicting responses appeared to be the product of skillful cross-examination, rather than a statement of the actual facts. The better evidence consists of the opinion of the primary treating physician, Dr. Glenn Nussbaum:

"With regard to the patient's right wrist, the patient has significant grip strength deficit. Noting that **there is no pain with grip strength testing, nor range of motion deficit, which would negate the ability to use grip strength as a method of impairment**, grip strength deficit will be considered in this case. Per Table 16-4, the patient has a 30% upper extremity impairment due to a strength loss index of approximately 65%. This converts to 18% whole person impairment per Table 16-3" (Applicant's Exhibit 10, page 9)

Therefore, the WCJ has concluded that *at the time of applicant's final evaluation with his treating physician*, grip strength testing did not produce any pain which would negate this measurement from being used in considering applicant's overall degree of permanent partial disability. After considering the totality of the evidence offered, the WCJ finds the treating physician, Dr. Nussbaum's opinion, to be the most credible and substantial evidence in regards to applicant's upper extremity impairment.

RECOMMENDATION

It is recommended that reconsideration be denied.

DATED: 06/21/2022
ANDREW J SHORENSTEIN WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE