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3 **WORKERS' COMPENSATION APPEALS BOARD**

4 **STATE OF CALIFORNIA**

5 **MARSHALL S. SHIPLEY,**

6 Case No. 85 ANA 163335

7 *Applicant,*

8 vs.

9 **CITY of WHITTIER,**  
10 **Permissibly Self-Insured,**

11 **OPINION AND DECISION**  
12 **AFTER RECONSIDERATION**

13 *Defendants,*

14 Defendant City of Whittier petitioned for reconsideration of  
15 the Findings and Award issued by the workers' compensation judge  
16 (WCJ) in this case on May 17, 1989. In that decision, the WCJ  
17 found that applicant Marshall S. Shipley sustained injury to his  
18 spine arising out of and in the course of his employment by  
19 defendant as a recreation supervisor from September 16, 1984,  
20 through September 16, 1985. Defendant contends that the WCJ's  
21 finding of industrial injury is not supported by substantial  
22 evidence.

23 We granted reconsideration to study the record and the legal  
24 issues presented.

25 After reviewing the entire record, we are persuaded that  
26 applicant has not met his burden under Labor Code section 3202.5  
27 of proving by a preponderance of the evidence that he sustained a  
cumulative industrial injury.

The only expert medical evidence in the record that indicates  
that applicant sustained a cumulative industrial injury is the

1 opinion of Nick F. Sharma, M.D. In his report of January 3, 1986,  
2 Dr. Sharma concluded that applicant sustained chronic  
3 musculoligamentous lumbosacral sprain and strain, but did not  
4 explicitly link applicant's back symptoms to cumulatively  
5 traumatic activities that applicant performed in his employment.  
6 In his report dated March 31, 1986, Dr. Sharma attributed  
7 applicant's pathology to a "continuous trauma in his work to  
8 1985," but did not describe the injurious work activities and  
9 explain the mechanism of the injury. In his final report, dated  
10 December 2, 1987, Dr. Sharma concluded in part as follows:

11 "I feel the entire disability and pathology is  
12 related to a continuous type of trauma that he  
13 sustained while working for the City of  
14 Whittier. I tend to disagree with Dr.  
15 Hillsman that there was no work related  
16 injury. The patient has been doing work that  
17 included assembling furniture and moving  
18 tables and chairs. This microscopic  
19 repetitive trauma does lead to minor tears of  
20 the annular fibers of the intervertebral  
21 discs, which gradually leads to migration of  
22 the nucleus pulposus and eventual herniation  
23 of the nucleus pulposus through the lateral  
24 recess of the posterior longitudinal ligament,  
25 giving him compressive symptomatology and  
26 radicular symptomatology secondary to  
27 compression of the nerve root in the lumbar  
canal area. The entire pathology is related  
to a continuous type of work trauma which this  
patient sustained while working for the City  
of Whittier as a recreational officer."

22 Dr. Sharma did not, however, describe the frequency of the  
23 table and chair moving and furniture assembly work to which he  
24 attributed microtrauma.

25 The question of the industrial connection of applicant's  
26 condition was also considered by Regina O. Hillsman, M.D. In her  
27

1 report of May 29, 1986, Dr. Hillsman concluded in pertinent part  
2 as follows:

3 "The patient is working at present with no  
4 restrictions and denies any increasing pain,  
5 limitations or discomfort. Careful  
6 questioning of the patient and review of the  
7 data fails to reveal any specific job injury  
8 or any specific times at which the patient  
9 incurred unusual mechanical forces to his  
10 spine. It is difficult to explain the failure  
11 of the patient to report these alleged  
12 injuries to his employer at the time of which  
13 they reportedly occurred. Certainly, back  
14 pain is ubiquitous in an American society.  
15 The presence however, of disc herniation is  
16 limited to a much smaller percentage. High  
17 risk jobs, for such, would include heavy duty  
18 manual labor as is seen in construction  
19 workers and furniture movers, etc. Mr.  
20 Shipley's description of his job although I  
21 have not yet received a formal job analysis  
22 does not place him in an extremely high risk  
23 group for this condition. The aging process  
24 in itself produces significant change to the  
25 disc material with the loss of mortal content  
26 making disc material more brittle and  
27 therefore more subject to injury even with  
relatively minor trauma. At this time I am  
unable to define any specific direct link from  
his routine job duties as described to the  
direct herniation of his disc. The connection  
at this time is speculative."

19 ...  
20 "It is my opinion that the patient can fully  
21 perform the duties of his employment and is  
22 not restricted in any way.

21 CAUSATION:

22 It is my opinion based upon the evidence  
23 available that the cause of the patient's  
24 industrial injury was 100% non industrial.

25 FUTURE REASONABLE MEDICAL TREATMENT:

26 It is my opinion that no further medical  
27 treatment will relieve or cure the patient  
from the effects of back condition."

SHIPLEY

1 The burden of proving industrial injury rests with the worker  
2 who must carry the burden by a preponderance of the evidence.  
3 (Lab. Code, §§5705, 3202.5; Wehr v. Workers' Com. Appeals Bd.  
4 (1985) 165 Cal. App.3d 188, 50 Cal.Comp.Cases 165, 169.) The  
5 opinion of a medical expert does not constitute substantial  
6 evidence and will not support a finding of industrial causation if  
7 the opinion is based on an incorrect understanding of the material  
8 facts, is a mere conclusion unsupported by logical reasoning or  
9 explanation or is based on speculation and conjecture. (Heggin  
10 v. Workmen's Comp. Appeals Bd. (1971) 4 Cal.3d 162, 36  
11 Cal.Comp.Cases 93, 97; Insurance Company of North America v.  
12 Workers' Comp. Appeals Bd. (Kemp) (1981) 122 Cal. App.3d 905, 46  
13 Cal.Comp.Cases 913, 922.)

14 We are persuaded that the preponderance of the evidence  
15 favors the conclusion that applicant did not experience cumulative  
16 trauma in his employment. In that regard, we find the well-  
17 reasoned opinion of Dr. Hillsman more convincing than the  
18 conclusory opinion of Dr. Sharma, who did not describe physically  
19 traumatic work activities of sufficient frequency to support his  
20 conclusion of cumulative injury. Nor is applicant's testimony  
21 helpful in that respect inasmuch as he described only isolated  
22 instances of moving furniture and setting up tables and chairs.  
23 Based on the opinion of Dr. Hillsman, therefore, we conclude that  
24 the evidence preponderates in favor of the conclusion that  
25 applicant did not sustain a cumulative industrial injury as  
26 alleged. Accordingly, we will reverse the WCJ's finding of  
27 industrial injury.

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For the foregoing reasons,

IT IS ORDERED that the Findings and Award filed May 17, 1989, be, and it is hereby, RESCINDED, and the following Findings and Order substituted therefor:

FINDINGS OF FACT

1. Applicant Marshall S. Shipley did not sustain a cumulative injury to his spine arising out of and in the course of his employment as a recreation supervisor by defendant City of Whittier from September 16, 1984, through September 16, 1985.

2. Applicant reasonably incurred medical-legal and litigation expense in amounts to be adjusted by the parties or determined by a workers' compensation judge.

3. All other issues are moot.

ORDER

IT IS ORDERED that, except for the expenses specified in Finding 2, applicant take nothing by reason of his claim herein.

WORKERS' COMPENSATION APPEALS BOARD

*John P. Olin*

I CONCUR,

~~NOT PARTICIPATING~~

~~Richard W. Younkis~~

Dated and filed at San Francisco, CA  
JUN 25 1990  
Service by mail on said date to all parties listed on the official address record except lien claimants.



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