WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ALONZO MCCLANAHAN, *Applicant*

vs.

DPR CONSTRUCTION, INC.;
NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA, adjusted by AIG, *Defendants*

Adjudication Number: ADJ11348013

Sacramento District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted defendant's Petition for Reconsideration of the Findings and Amended Award (F&A) issued on August 5, 2021, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues.[1] This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that applicant sustained industrial injury to his right shoulder.

Defendant contends that the WCJ erred because the WCJ admitted exhibits that were not listed on the pre-trial conference statement and because the evidence warrants rejecting the WCJ's determination of applicant's credibility.

We have received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed

[1] Commissioner Lowe was on the panel that issued the order granting reconsideration. Commissioner Lowe no longer serves on the Appeals Board. A new panel member has been substituted in her place.

below, and for the reasons stated by the WCJ in the Report, as our Decision After Reconsideration we will affirm the August 5, 2021 F&A.

FACTS

Per the WCJ's Opinion on Decision:

> Defendant objects to the QME reports by Dr. Kevin Hanley dated February 24, 2018 and August 20, 2018, marked as Applicant's Exhibit 1 and 2. Defendant contends the reports were not listed on the Pre-Trial Conference Statement. However, it appears Defendant received these reports before the Mandatory Settlement Conference. The report dated February 24, 2018 was sent to AIG claims on April 17, 2018 according to the Proof of Service and the report dated August 20, 2018 was addressed to AIG Claims and Defense counsel. Both reports relate to the subject date of injury on July 25, 2017 and the right shoulder. Applicant Exhibit 1 and 2 are admissible and admitted into the record.
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> AOE/COE
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> Applicant claims to have sustained injury arising out of and in the course of employment to right shoulder on July 25, 2017. Defendant contends it was only a temporary exacerbation of a prior injury.
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> PRIOR INJURY:
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> On January 8, 2013, Applicant was seen for an injury the day before while lifting a garbage container of sheet rock material. He was working labor construction at Nibbi Brothers. He complained of pain in the right upper arm and forearm. He was assessed with a right bicep muscle strain and possible bicep muscle/tendon rupture. (Defendant Exhibit RR)
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> Applicant had an MRI of the right arm on January 9, 2013 for right arm pain after a lifting injury on January 7, 2013. The report included a miscellaneous finding of a small right shoulder joint effusion/small amount of fluid in the sub deltoid bursa compatible with bursitis. (Defendant Exhibit SS)
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> On November 12, 2014, Applicant saw Dr. Edward Verceles for increased right shoulder pain. Applicant reported that he hurt his right shoulder on January 7, 2013 but that it was never worked up. Dr. Verceles' diagnoses were post-surgical repair of right bicep tear, bicep tenosynovitis, rotator cuff syndrome, and shoulder tendinitis. (Defendant Exhibit HH)

Applicant had a[n] MRI of the right shoulder on November 20, 2014 for right shoulder pain, stiffness, and decreased range of motion. The MRI showed supraspinatus tendinosis with possible partial-thickness tear of the anterior distal tendon fibers, degenerative changes of the humeral head and AC joint with impingement. (Defendant Exhibit II)

Applicant was seen on September 29, 2015 for continued shoulder pain. (Defendant Exhibit LL) On October 19, 2015, Applicant was diagnosed with right shoulder joint pain. He complained of right shoulder pain for 16 days after a tree branch fell on it while trying to get into the passenger seat of a car. (Defendant Exhibit N)

Dr. Thomas Pattison performed a QME evaluation on October 26, 2015 where Applicant complained of right elbow pain. Applicant was diagnosed with post-acute distal biceps rupture with ongoing right arm pain, and right sided lateral epicondylitis. Regarding the shoulder, Dr. Pattison found full range of motion and no impairment. (Defendant Exhibit MM)

Applicant was seen by Dr. Moses Jacob on February 21, 2016 where he complained of shoulder soreness, difficulty in the forearm and wrist, and pain in both hands. Applicant was diagnosed with post-surgical repair of the right biceps, right shoulder rotator muscle tendinosis that requires a[n] MRI, right elbow and wrist sprain, and right thumb tenosynovitis. Dr. Jacob found 7% upper extremity impairment of the right shoulder based on range of motion. (Defendant Exhibit 00)

SUBJECT INJURY:

At trial, Applicant testified as follows: On July 25, 2017, he was moving 200 2x4s that were 20 feet long from one place to another for hours. He was stacking the 2x4s on his shoulder and balancing them. He woke up the next day with arm and shoulder stiffness and went to the doctor that night.

Applicant was seen at Kaiser urgent care by Dr. Da Visio on July 26, 2017 for right lateral neck pain and right trapezius pain. Applicant reported waking up with these symptoms and described lifting a lot of 2x4s at work the day before. Applicant denied any impact trauma and reported staying in bed all day. Upon exam, Applicant had pain with increase palpation of the neck and trapezius. Applicant was diagnosed with neck strain and right trapezius strain. (Defendant Exhibit 0, Joint Exhibit AA)

Applicant was seen by Dr. Bryan at Kaiser on August 1, 2017 where he described working construction and felt particularly sore in the neck and right shoulder one day last week when he left work but did not think much about it, and then awoke the next morning with severe soreness and muscle pain on the right side of his neck extending to the right shoulder. Applicant denied trauma to the neck or shoulders other than his work. Applicant believes the injury is from work but does not want to file a workers' compensation claim because it is too much trouble and he would be fired. Dr. Bryan indicated the condition was likely triggered by work. Applicant planned to get a new mattress because his mattress is old and contributes to shoulder and neck pain. (Joint Exhibit BB/Defendant Exhibit P) At trial, Applicant testified that his comment about the mattress was a joke.

Applicant went to US Healthworks on August 10, 2017 where he described lifting 20 foot 2x4 lumber, three to four at a time, and remembers feeling pain in his neck and shoulder. Applicant reported transporting 4x4s 16 days ago by lifting them onto his right shoulder and carrying them over to another area. While doing so he felt a sharp pain in his shoulder. Applicant finished the workday without lifting any additional lumber and did not report the injury to the supervisor until the next day. Upon exam, Applicant had tenderness of the right trapezius muscle, deltoid, AC joints, and right biceps tendon. Applicant was diagnosed with a right shoulder strain. (Defendant Exhibit A)

Applicant returned to US Healthworks on August 16, 2017 for worsening right shoulder pain. Upon exam, he had tenderness of the right trapezius muscle, deltoid, and upper extremity muscles as well as the right subacromial and subdeltoid regions. (Defendant Exhibit C)

Applicant was seen at US Healthworks on August 21, 2017 where he was diagnosed with right shoulder bursitis and right shoulder cuff syndrome. (Defendant Exhibit E)

Applicant was seen at US Healthworks on September 1, 2017 where he complained of pain with motion of the shoulder. Upon exam, he had full range of motion without weakness. He was diagnosed with adhesive capsulitis of the right shoulder. (Defendant Exhibit G/Q)

Applicant saw Dr. Nguyen at US Healthworks for a surgical evaluation on September 8, 2017 for the right shoulder. The history of present injury indicates Applicant injured his right shoulder while lifting garbage bags weighing up to 150 pounds all day. Dr. Nguyen found an industrial injury on July 25, 2017. (Defendant Exhibit H) At trial, Applicant testified that he did not recall telling the doctor that he injured his shoulder while lifting garbage bags. There appears to be some confusion as lifting garbage bags was the mechanism of injury for the prior injury.

In his report dated September 29, 2017, Dr. Nguyen diagnosed Applicant with rotator cuff tendinitis. (Defendant Exhibit I)

On January 30, 2018 Applicant saw Dr. Brooks at US Healthworks regarding the injury on July 25, 2017 involving lifting up a heavy bar. Dr. Brooks opined that the x-ray showed mild AC joint degeneration and the MRI showed a partial thickness rotator cuff tear of the right shoulder. Dr. Brooks diagnosed Applicant with right shoulder rotator cuff tear, [subacromial] impingement, AC joint arthrosis, and biceps tendinitis. Dr. Brooks found industrial causation from July 25, 2017. (Defendant Exhibit AA) At trial, Applicant testified he did not tell Dr. Brooks that he was injured while lifting a heavy bar.

Applicant had a QME evaluation by orthopedic surgeon Dr. Hanley on February 24, 2018. The history of injury provides that Applicant was moving a large stack of 20 foot 2x4s about 100 feet by hand and became aware of some discomfort in the neck and right shoulder. It further provides that Applicant called out of work the next day and went to urgent care that night followed by visits to Kaiser Permanente and ultimately US Healthworks. Dr. Hanley diagnosed Applicant with impingement syndrome of the right shoulder with partial rotator cuff tear. Dr. Hanley found Applicant's history to be consistent with an aggravation of underlying degenerative tear of a rotator cuff but opined it should have been temporary. (Applicant Exhibit 2)

The physical therapy report dated June 12, 2018 provides the mechanism of injury as lifting a stack of heavy 2x4s on a construction job. (Defendant Exhibit CC)

Dr. Hanley produced a supplemental report dated August 20, 2018 after review of additional medical records. Dr. Hanley found no long-term treatment or residuals from the incident on October 2015 when Applicant was struck by a tree branch. Dr. Hanley opined that the prior injury in January 2013 relates to the distal bicep tendon at the elbow rather than the shoulder. Dr. Hanley opined that the report by Dr. Brooks mentioning lifting a bar was likely a misunderstanding on the part of Dr. Brooks. Dr. Hanley opined that the US Healthworks report about lifting heavy bags relates to the 2013 injury to the bicep. Ultimately Dr. Hanley found no significant inconsistencies in the record and believed Applicant lifted and carried a number of 20 foot 2x4s as described and developed some discomfort and symptomology from that activity. Dr. Hanley explained that the MRI showed a nearly full rotator cuff tear and extensive bursitis. Dr. Hanley found an industrial injury at least causing symptomatic outgrowth from degenerative joint disease which is supported by the records. (Applicant Exhibit 1)

Applicant was seen at NMCI on October 6, 2019 for right shoulder pain. The history of the injury provides that the injury occurred while lifting a 2x4 over his shoulder and stacking it. (Defendant Exhibit QQ)

Applicant had a QME evaluation by Dr. Patrick McGahan on April 25, 2020. Dr. McGahan found an industrial injury to the right shoulder on July 25, 2017 based on the history, physical exam, imaging, and medical records. Dr. McGahan found an aggravation of a preexisting disease and recommended treatment through the workers' compensation system. (Joint Exhibit DD)

During his deposition on July 15, 2020, Dr. McGahan testified that he understood an aggravation to be a new injury to a body part with a previous injury where the new injury worsens the condition and increases the impairment. In comparison, he understood a temporary exacerbation to be when the symptoms are only temporary worsened and then return to preinjury level without new impairment. Dr. McGahan testified that Applicant's symptoms are very similar to those in 2016 which he acknowledged in the apportionment. Dr. McGahan explained that the review of records showed some worsening of symptoms after the July 2017 injury for which Applicant sought care. Dr. McGahan further explained that the MRI after the 2017 injury show a progression of the partial thickness rotator cuff tear in comparison with the MRI from 2014. (Joint Exhibit FF)

Dr. McGahan produced a supplemental report dated October 1, 2010 after review of additional records where he reiterated his finding that the 201 7 injury was an aggravation of the prior 2013 injury with worsening of symptoms unless the trier of fact finds Applicant to be not credible. (Joint Exhibit EE)

During his second deposition on October 7, 2002, Dr. McGahan testified that he found an aggravation based on the medical documentation following the injury on July 25, 2017. Dr. McGahan explained Applicant was evaluated shortly after the injury and reported pain in the affected body part, and his history and physical and MRI confirmed that the injury took place. (Joint Exhibit FF)

Based upon Applicant's **credible testimony**, the treatment records, and the findings by QME Dr. McGahan, it is found that Applicant sustained injury to his right shoulder arising out of and occurring in the course of employment on July 25, 2017.

(F&A, pp. 3-6 (emphasis added).)

DISCUSSION

The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].)

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd*. (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acci. Com.* (*Baskin*) (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

When applicant claims a physical injury, applicant has the initial burden of proving industrial causation by showing the employment was a contributing cause. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302; § 5705.) Applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. (Lab. Code[2], §§ 3202.5; 3600(a).)

> The requirement of Labor Code section 3600 is twofold. On the one hand, the injury must occur in the course of the employment. This concept ordinarily refers to the time, place, and circumstances under which the injury occurs. On the other hand, the statute requires that an injury arise out of the employment. It has long been settled that for an injury to arise out of the employment it must occur by reason of a condition or incident of the employment. That is, the employment and the injury must be linked in some causal fashion. (*Clark*, 61 Cal.4th at 297 (internal citations and quotations omitted).)
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> The statutory proximate cause language [of section 3600] has been held to be less restrictive than that used in tort law, because of the statutory policy set forth in the Labor Code favoring awards of

[2] All future references are to the Labor Code unless noted.

> employee benefits. In general, for the purposes of the causation requirement in workers' compensation, it is sufficient if the connection between work and the injury be a contributing cause of the injury.

(*Clark, supra* at 298 (internal citations and quotations omitted).)

Pursuant to Labor Code, section 5502(d):

> (3) If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and **listing the exhibits**, and disclosing witnesses. **Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference**.

(Emphasis added.) (§ 5502(d)(2), (3).)

Notwithstanding section 5502(d), "It is the policy of the law to favor, whenever possible, a hearing on the merits. Appellate courts are much more disposed to affirm an order when the result is to compel a trial on the merits than when the default judgment is allowed to stand. Therefore, when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default." (*Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205-1206 [57 Cal. Comp. Cases 149].)

The Appeals Board also has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (§§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389, 394 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) However, this discretionary authority must be reconciled with the discovery cut-off contained in Labor Code section 5502(d)(3), which closes discovery at the time of the mandatory settlement conference. (See *Kuykendall v. Workers' Comp. Appeals Bd*. (2000) 79 Cal.App.4th 396 [94 Cal. Rptr. 2d 130, 65 Cal.Comp.Cases 264]; S*an Bernardino Community Hospital v. Workers' Comp. Appeals Bd*. (1999) 74 Cal.App.4th 928 [88 Cal. Rptr. 2d 516, 64 Cal.Comp.Cases 986].) "Section 5502, subdivision (d)(3) was enacted to minimize delays and efficiently expedite

case resolution by making sure parties are prepared for hearing." (*Kuykendall*, *supra*, 79 Cal.App.4th at 404.)

It appears that applicant erred in omitting the reports of Dr. Hanley from the pre-trial conference statement. Defendant's position is that the reports should not have been admitted into evidence based on a strict reading of section 5502. However, we find this error to be harmless as neither the WCJ nor the Appeals Board relied upon the reporting of Dr. Hanley to find applicant's injury industrial. Moreover, the WCJ always retains discretion to determine if evidence should be admitted into the record as a matter of due process and so that their decision is based on substantial evidence. As defendant admits in its petition, Dr. Hanley retired and his reporting was not complete. Dr. Hanley's reporting cannot constitute substantial medical evidence upon which an award may issue. Thus, defendant was not harmed by the admission of Dr. Hanley's reports. Furthermore, Dr. McGahan became the QME precisely because Dr. Hanley retired, and the parties stipulated the Dr. McGahan was the QME. Any claim by defendant that it would have obtained a "rebuttal witness" is without merit. While a QME's summary of the circumstances of the claimed injury can be helpful, the WCJ's decision here as to the relevant facts was based on applicant's credible testimony. When a defendant disputes the facts surrounding an applicant's claim of injury, witnesses may be presented in rebuttal to applicant's testimony, not to rebut the QME's recitation of the facts. Here, defendant submitted additional evidence on the second day of trial, which the WCJ accepted, and after the testimony was complete, defendant could have sought to present the testimony of another witness; instead, defendant agreed to submit the matter. The parties replaced Dr. Hanley with Dr. McGahan. The opinions of Dr. McGahan constitute substantial medical evidence to show that applicant sustained industrial injury to the right shoulder. As the error alleged by defendant was harmless, we need not address the substance of Dr. Hanley's reports.

We would further note that section 5708 provides that the Appeals Board is bound to accomplish substantial justice in all cases and is generally not bound by the common law or statutory rules of evidence. The WCJ "may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division," and based on our review, the WCJ properly admitted and considered Dr. Hanley's reporting. (Lab. Code, § 5708.)

Next, defendant argues that the WCJ erred in finding applicant a credible witness. 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, 504-505].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id*.) We acknowledge that inconsistencies exist in the record; however, applicant testified as to these inconsistencies and the WCJ found applicant's testimony credible. Defendant does not make a persuasive argument to reject the credibility findings of the WCJ.

Accordingly, as our Decision After Reconsideration, we affirm the August 5, 2021 F&A.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Amended Award issued on August 5, 2021, is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I DISSENT (See Dissenting Opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 22, 2024

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

ALONZO MCCLANAHAN
RATTO LAW FIRM
LENAHAN, SLATER, PEARSE & MAJERNIK

EDL/mc

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

DISSENTING OPINION OF COMMISIONER JOSÉ RAZO

I respectfully dissent. For the reasons stated by the majority opinion, I agree that the admission of applicant's exhibits was in error. However, I disagree that this is harmless error.

The Labor Code requires the parties to disclose evidence and witnesses at the MSC. (§ 5502(d).) Here, applicant failed to list the reporting of Dr. Hanley on the PTCS. The purpose of the statute is to preclude trial by surprise. The Appeals Board is constitutionally bound to accomplish substantial justice. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) Section 5502 furthers that constitutional duty by ensuring that all parties are aware of the witnesses and evidence to be presented so that they may properly prepare for a trial.

The right to present evidence implicates the right to due process. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 175 [36 Cal.Comp.Cases 93, 102]; *Pence v. Industrial Acci. Com.* (1965) 63 Cal.2d 48, 51 [30 Cal.Comp.Cases 207, 209].) As defendant's right to due process was violated, I consider such error to be fundamental to the proceedings, which requires the matter to be returned to the trial level for correction.

Labor Code section 5313 requires a WCJ to state the "reasons or grounds upon which the determination was made." The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision "must be based on admitted evidence in the record" (*Hamilton*, *supra*, at p. 478), and 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].) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at p. 475.)

It is not clear on the record before us whether the WCJ relied upon the reporting of Dr. Hanley to reach her conclusions. The WCJ's Report additionally does not address whether the reporting of Dr. Hanley contributed to forming her findings, and thus it too does not cure the error

in allowing the reports in evidence. (*City of San Diego v. Workers' Comp. Appeals Bd*. (*Rutherford*) (1989) 54 Cal.Comp.Cases 57 (writ den.); *Smales v. Workers' Comp. Appeals Bd*. (1980) 45 Cal.Comp.Cases 1026 (writ den.).) As the record is not clear whether the reports contributed to the WCJ's decision, the most prudent course is to return the matter to the trial level for further proceedings.

Next, the WCJ's finding of credibility was not based upon an adequate review and explanation of the record. Applicant alleged a specific injury to Dr. McGahan as follows:

> Alonzo McClanahan is a 43-year-old right hand dominant man, who worked as a carpenter for one year for DPR Construction. He reports that on July 25, 2017, he was lifting heavy 2 x 4s. He reports that he had to carry 2 x 4s, which were 20 feet long approximately 150 yards across the work site. He reports that he carried multiple 2 x 4s each time and had progressive pain in his shoulder.

(Joint Exhibit DD, p. 29.)

In a treating doctor's report, applicant described his injury as follows: "The patent injured the right shoulder lifting garbage bags weighing some 150 pounds all day. He does not recall any specific injury, but thinks that the lifting contributes to the pain." (Defendant's Exhibit H, p. 1.)

In another treating doctor's report, applicant described his injury as follows: "He had an injury to his right shoulder. He was lilting up a heavy bar and had resultant right shoulder pain and stiffness." (Defendant's Exhibit AA, p. 1.)

While I acknowledge that great weight is given to the WCJ on determinations of credibility, the WCJ has not adequately addressed the discrepancies in the record presented by defendant in the Petition for Reconsideration. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500, 504-505].) Accordingly, I would have rescinded the Findings and Amended Award and returned the matter to the trial level for additional determinations on applicant's credibility given the discrepancies presented. (*Id*.)

For all of the above reasons, I respectfully dissent.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

August 22, 2024

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

ALONZO MCCLANAHAN
RATTO LAW FIRM
LENAHAN, SLATER, PEARSE & MAJERNIK

EDL/mc

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