

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

DAVID VENTURA, *Applicant*

vs.

GOLD COAST INGREDIENTS, INC.; REPUBLIC INDEMNITY, *Defendants*

**Adjudication Number: ADJ8147459
Van Nuys District Office**

**OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Lien Claimant Moussa Moshfegh, M.D., seeks reconsideration of the July 2, 2024 Findings of Fact and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant did not sustain injury arising out of and in the course of employment in the form of a hernia, applicant's claim is not presumptively compensable, and Dr. Moshfegh provided medical services to a denied claim of cumulative trauma injury ending on July 27, 2011 and to an unpled specific injury of March 27, 2011, neither of which is related to the claim at issue here.

Dr. Moshfegh contends that defendant was provided with notice of applicant's industrial injury at the time of applicant's termination, and in the least, at the time Dr. Moshfegh sent defendant a Request for Authorization on February 4, 2012. Dr. Moshfegh further contends that because defendant failed to deny applicant's industrial claim, applicant's injury is presumed compensable under Labor Code, section 5402. Lastly, Dr. Moshfegh contends that defendant failed to present any evidence that the medical treatment he provided was neither reasonable nor necessary.

We have not received an answer from defendant Gold Coast Ingredients, Inc./Republic Indemnity. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we grant

reconsideration, rescind the July 2, 2024 Findings of Fact and Order, and return this matter to the trial level for further proceedings.

FACTS

As the WCJ stated in his Report:

Applicant, David Ventura, was employed by Gold Coast Ingredients, Inc. (Gold Coast), as a production worker. According to factual representations by the employer contained in Defendant Exhibit B, applicant was terminated on 7/27/11 for “stealing company property” an act purportedly recorded on video.

Post-termination, applicant filed three claims. ADJ8147459, which is the only case presently before the Court, relates to a claimed specific injury that purportedly occurred on 5/26/11. ADJ8147460 relates to a purported injury to applicant’s head that allegedly occurred on 4/6/10. ADJ8147461 relates to a purported continuous trauma injury encompassing applicant’s last year of employment from 7/27/10 through 7/27/11.

All three claims were resolved by way of a joint compromise and release for \$8,500.00 with a Joint Order Approving issuing on 5/29/12 by WCJ Gerald Cohn (now retired).

The matter returned to the trial calendar relating solely to the lien of Moussa Moshfegh, M.D. for treatment services provided associated with hernia evaluation/surgery. Defendant denied injury and liability for the services. (Report, p. 2.)

Dr. Moshfegh issued a report dated October 15, 2011, where he described an injury on March 27, 2011 when the barrel that applicant was rolling slipped and applicant had to jerk and grab the barrel again and place it on a pallet. (Lien Claimant’s Exhibit 3, Dr. Moshfegh’s report dated October 15, 2011, p. 2.) According to Dr. Moshfegh’s report, applicant subsequently experienced pain in his right testicle, and one month later, began experiencing discomfort at the upper part of his umbilicus with a lump appearing in that area that gradually enlarged. (*Ibid.*) The report states that applicant notified his supervisor about the injury at the time of his termination. (*Id.* at p. 5.) Dr. Moshfegh diagnosed applicant with recurrent umbilical hernia and made a request for authorization for surgical repair of the umbilical hernia. (*Ibid.*) The Request for Authorization was apparently not sent to Republic Indemnity until February 4, 2012. (Lien Claimant’s Exhibit 2, Dr. Moshfegh’s Transmittal of Authorization Request Form.) On February 17, 2024, Dr.

Moshfegh operated on applicant to repair his umbilical hernia. (Lien Claimant’s Exhibit 4, Dr. Moshfegh’s report dated February 17, 2012.)

The record contains an Application for Adjudication dated January 12, 2012. (Application for Adjudication.) The Application for Adjudication alleges a specific injury dated May 26, 2011, when “APPLICANT WAS TURNING BARREL OF 440 POUNDS WHEN HE MADE LEFT TURN AND INJURED HIS TESTICLES.” (Application for Adjudication, emphasis in original.)

DISCUSSION

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on July 24, 2024 and 60 days from the date of transmission is September 22, 2024. The next business day that is 60 days from the date of transmission is September 23, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on September 23, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

¹ WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on July 24, 2024, and the case was transmitted to the Appeals Board on July 24, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 24, 2024.

Turning to the merits of this case, the WCJ denied Dr. Moshfegh's lien because Dr. Moshfegh's report chronicles a specific injury that occurred on March 27, 2011, a date of injury that was not claimed in this matter. "The purported 3/27/11 event has never been pled, nor is it part of the present litigation." (Report, p. 3.) The WCJ points out that the only claim at trial was an alleged specific injury of May 26, 2011. (Report, p. 1.) However, a WCJ is not limited to the issues presented on the pleadings. (Lab. Code, § 5702.) A WCJ has the authority to amend the pleadings to conform to proof. (Cal. Code Regs., tit. 8, § 10517.) In other words, having different dates of injuries in the Application for Adjudication and in Dr. Moshfegh's report is not fatal. For that reason, we grant reconsideration, rescind the July 2, 2024 Findings of Fact and Order, and return this matter to the trial level for further proceedings.

As to the issue of whether applicant's injury is presumed compensable under Labor Code, section 5402(b), the only evidence suggesting that applicant provided the requisite notice to his employer is Dr. Moshfegh's report, which states that applicant notified his supervisor on the day of his termination of his hernia injury. (Lien Claimant's Exhibit 3, Dr. Moshfegh's report dated October 15, 2011, p. 5.) Applicant was terminated on July 27, 2011. (Report, p. 2.)

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Labor Code section 5402(b)(1) provides that “If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division.” “Knowledge of an injury, obtained from any source, on the part of an employer, the employer’s managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400.” (Lab. Code, § 5402(a).)

Ninety days from July 27, 2011, the day Dr. Moshfegh reports applicant notified his employer of his injury, is October 5, 2011. The record contains a denial letter dated November 16, 2011 for a date of injury dated May 26, 2011, which is after the expiration of the 90-day period from July 27, 2011. (Defendant Exhibit A, Denial Letter.) Given the confusion as to the dates of injury, we refrain from making any opinions as to the issue of presumed compensability and return this matter to the trial level to develop the record on this issue. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; see *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

Accordingly, we grant reconsideration, rescind the July 2, 2024 Findings of Fact and Order, and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that lien claimant’s Moussa Moshfegh, M.D.’s Petition for Reconsideration of the July 2, 2024 Findings of Fact and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 2, 2024 Findings of Fact and Order is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 23, 2024

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

**DAVID VENTURA
BERMEO MURLUZA
PATRICK PETRONELLA
CATALINA LARRANAGA**

LSM/oo

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