

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

JORGE MURO RODRIGUEZ, *Applicant*

vs.

**AUTOMATIC SPECIALTY COMPANY, INC.;
INSURANCE COMPANY OF THE WEST, *Defendants***

**Adjudication Numbers: ADJ13419831, ADJ13420585
Marina Del Rey District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the March 5, 2024 Findings of Fact in Case No. ADJ13419831, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a machine operator on October 24, 2019, sustained industrial injury to his mouth and to the inside of his throat. The WCJ found that applicant did not sustain injury in the form of headaches or to the neck; sustained no temporary or permanent disability; and required no further medical treatment to cure or relieve from the effects of his condition.

Applicant also seeks reconsideration of the March 5, 2024 Findings of Fact in Case No. ADJ13420585, wherein the WCJ found that applicant, while employed as a machine operator from October 3, 2015, to March 19, 2020 sustained injury to the skin, but not to the respiratory system and/or internal organs.

Applicant contends that the WCJ's Findings of Fact in both cases are inconsistent with his ongoing symptoms, and that the medical-legal reporting on which the WCJ relied is not substantial medical evidence.

We have received an Answer from defendant. The WCJ has prepared a Report and Recommendation on Petition for Reconsideration (Report) pertaining to each claimed injury, in both instances recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Reports, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

FACTS

Applicant has filed two claims of injury. In Case No. ADJ13419831, applicant claimed injury to his mouth, inside of throat, headaches, and neck, while employed as a machine operator by defendant Automatic Specialty Company on October 24, 2019. Applicant alleges he was injured when a piece of metal entered his throat requiring an emergency surgery. Defendant admits injury to the mouth and inside of throat, but disputes injury in the form of headaches and to the neck.

In Case No. ADJ13420585, applicant claimed injury to his skin, respiratory and internal systems, while employed as a machine operator by defendant Automatic Specialty Company from October 3, 2015, to March 19, 2020. Defendant denies the injury arose out of and occurred in the course of employment (AOE/COE).

The parties have selected Robert O. Ruder, M.D., as the Qualified Medical Evaluator (QME) in the field of otolaryngology. The parties have further selected James Lineback, M.D., as the QME in internal medicine, and Cindy Chen, M.D., as the QME in dermatology.

On October 9, 2023, the parties proceeded to trial, placing in issue, in relevant part, injury to the neck and headaches in Case No. ADJ13420585, and injury AOE/COE in Case No. ADJ13420585. The WCJ ordered both cases consolidated. The WCJ heard applicant's testimony on October 9, 2023, and again on February 21, 2024, and ordered the matter submitted for decision as of February 29, 2024.

On March 5, 2024, the WCJ issued two separate Findings of Fact. In ADJ13419831, the WCJ determined in relevant part that applicant sustained admitted injury to the mouth and throat, but not in the form of headaches or to the neck. (Case No. ADJ13419831, Finding of Fact No. 1.) The WCJ determined that the injury resulted in neither temporary nor permanent disability and that applicant did not require future medical care to cure or relieve from the effects of his industrial conditions. (Case No. ADJ13419831, Findings of Fact Nos. 3, 4, & 6.)

In Case No. ADJ13420585, the WCJ determined in relevant part that applicant sustained injury AOE/COE to the skin, but not to the internal or respiratory systems. (Case No. ADJ13420585, Finding of Fact No. 1.)

Applicant's Petition for Reconsideration (Petition) avers the WCJ erred in relying on the reporting of otolaryngology QME Dr. Ruder. Applicant asserts the conclusions reached by the physician were not based on an adequate examination of the applicant, including the fact that the QME administered a liquid but not a food-based swallowing test. (Petition, at p. 5:22.) Applicant asserts the QME failed to review all pertinent records, and that the QME report contained multiple misspellings. (*Ibid.*) Applicant asserts that the reporting of Dr. Ruder failed to explain how and why applicant's previously diagnosed gastroesophageal reflux condition was unrelated to applicant's admitted industrial injury. (*Id.* at p. 6:1.) Applicant's Petition similarly contends the reporting of the dermatology QME is not substantial evidence because it fails to adequately explain how and why the QME reached her conclusions, and because those conclusions are based on an inadequate physical examination of applicant. (*Id.* at p. 6:5.)

Defendant's Answer responds that the reporting of Dr. Ruder in otolaryngology is appropriately based on a review of the available medical record, and reasonably explains the etiology of applicant's complaints as having a nonindustrial nexus. (Answer, at p. 4:25.) Defendant's Answer similarly avers the reporting of dermatology QME Dr. Chen is based on a reasonable review of the record, an adequate understanding of applicant's medical history, and because applicant appeared to exhibit no residual physical findings upon examination. (*Id.* at p. 7:11.)

The WCJ has prepared two Reports. In ADJ1341983, the WCJ initially observes that applicant's Petition contains a statement authored by the applicant which would not appropriately be considered evidence. (Report in ADJ13419831, p. 2.) With respect to the applicant's contentions regarding the sufficiency of the record, the WCJ's report observes that the reporting of Dr. Ruder is substantial evidence. The WCJ's Report observes, "[t]he acid reflux is non-industrial because medical records going back to 2014 (a year before applicant began to work at the defendant in October of 2015) show complaints for acid reflux." (*Id.* at p. 5.) In ADJ13420585, the WCJ's Report observes that his determinations were limited to the issue of injury AOE/COE, and "it is too soon to make a case for a [Petition for Reconsideration] based on the findings of Dr. Chen ... when most issues for this case have not been addressed by the WCJ." (Report in ADJ13420585, at pp. 4-5.)

DISCUSSION

On an initial procedural note, we observe that the WCJ ordered both of applicant's pending cases consolidated. (Minutes of Hearing and Summary of Evidence, dated October 9, 2023, at p. 2:1.) Further, the WCJ ordered "the evidence in one to be received in the other insofar as is relevant and material." (*Id.* at p. 2:4.) However, and notwithstanding the consolidated proceedings, the WCJ has issued separate Findings of Fact and separate Reports. To the extent that the trial proceedings are set forth in a joint trial record, we recommend that in the future the WCJ consider the issuance of a joint decision, where appropriate, for purposes of clarity and ease of reference. We also observe that in the instant matter, applicant's Petition addresses both pending cases, as does defendant's Answer, and that a joint Report would assist the parties and the Appeals Board in most efficiently addressing the various contentions advanced by the parties.

Turning to the contents of the Reports, the WCJ has raised the issue of the sufficiency of the verification of applicant's Petition. The WCJ observes that applicant's Petition appears to contain a statement from the applicant with respect to the arguments advanced in the Petition, along with statements relevant to the applicant's medical history and the adequacy of his QME evaluations. (Report in ADJ13419831, p. 2; Report in ADJ13420585, p. 2.)

Labor Code¹ section 5902 provides that a petition for reconsideration "shall be verified upon oath in the manner required for verified pleadings in courts of record and shall contain a general statement of any evidence or other matters upon which the applicant relies in support thereof." (Lab. Code, § 5902.) Here, the introductory statement of the applicant is appropriately understood to constitute argument rather than evidence, within the context of his Petition for Reconsideration. (See, e.g., *Wills v. J.J. Newberry* (1941) 43 Cal.App.2d 595 [111 P.2d 346].) We further note that the applicant's Petition has been appropriately verified by the applicant and by his attorney in compliance with section 5902.

Turning to the contents of applicant's Petition, we begin our analysis with section 5903, which provides:

At any time within 20 days after the service of any final order, decision, or award made and filed by the appeals board or a workers' compensation judge granting or denying compensation, or arising out of or incidental thereto, any person aggrieved thereby may petition for reconsideration upon one or more of the following grounds and no other:

¹ All further references are to the Labor Code unless otherwise noted.

- (a) That by the order, decision, or award made and filed by the appeals board or the workers' compensation judge, the appeals board acted without or in excess of its powers.
- (b) That the order, decision, or award was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order, decision, or award.

Nothing contained in this section shall limit the grant of continuing jurisdiction contained in Sections 5803 to 5805, inclusive.

(Lab. Code, § 5903.)

Here, applicant's Petition fails to set forth *any* of the specified grounds for reconsideration. In addition, section 5902 requires that the petition "shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order, decision or award made and filed by the appeals board or a workers' compensation judge to be unjust or unlawful, and every issue to be considered by the appeals board." (Lab. Code, § 5902.) WCAB Rule 10945 (Cal. Code Regs., tit. 8, § 10945(a)) further provides that:

- (a) Every petition for reconsideration, removal or disqualification shall fairly state all of the material evidence relative to the point or points at issue. Each contention shall be separately stated and clearly set forth. A failure to fairly state all of the material evidence may be a basis for denying the petition.

Subdivision (b) of Rule 10945 further provides that, "[e]very petition and answer shall support its evidentiary statements by specific references to the record." (Cal. Code Regs., tit. 8, § 10945(b).) Here, the Petition makes no specific reference to the evidentiary record and offers neither citation nor reference to the medical reporting in support of applicant's contentions.

More significantly, to the extent that applicant advances arguments challenging the sufficiency of the QME reporting, applicant's Petition makes no specific reference to the underlying physician reports. Nor does the record reflect discovery efforts by the applicant addressing the alleged shortcomings in the reporting. Moreover, there is no evidence that applicant sought supplemental reporting from the evaluating physicians or that applicant undertook the deposition of the QMEs to address the arguments advanced in applicant's Petition.

We will deny the Petition, accordingly.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 28, 2024

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

**JORGE MURO RODRIGUEZ
LAW OFFICES OF LEO H. HERNANDEZ
D'ANDRE LAW**

SAR/abs

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