

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

PETER DOVER, *Applicant*

vs.

**FRESH START BAKERIES, INC.;
ST. PAUL FIRE & MARINE INSURANCE CO., *Defendants***

**Adjudication Number: ADJ313572
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration filed by applicant Peter Dover, in pro per.¹ This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the April 4, 2019 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant settled his Supplemental Job Displacement Benefit (SJDB) voucher in the February 8, 2016 Compromise and Release.

Applicant contends that he did not know that he settled his SJDB voucher when he initialed the Compromise and Release and that his attorney instructed him on how to use the voucher after the Compromise and Release was approved, which he claims supports his contention that the voucher was not settled.

We received two Answers, one from defendant Fresh Start Bakeries, Inc./Travelers Property Casualty Company of America, and the other from applicant's former attorney, Glauber Berenson Vego. 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 Answers and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we

¹ Commissioner Lowe, who was on the original panel in this matter, no longer serves on the Board. Another commissioner was appointed in her place.

rescind the April 4, 2019 Findings and Order and return the matter to the trial level for further proceedings consistent with this opinion.

FACTS

On August 31, 2007, a Findings and Award was issued finding that applicant, while employed by defendant as an industrial machinery engineer on January 1, 2005, sustained an industrial injury to his low back. (Findings and Award dated August 31, 2007.) It further found and awarded applicant with 36% permanent disability. (*Ibid.*) Although not in evidence, it appears that applicant received a SJDB voucher as a result of this finding of permanent disability. (Glauber Answer, pp. 1:19-2:2, ¶¶ 2, 7.)

On December 7, 2009, applicant filed a Petition to Reopen for New and Further Disability. (Petition to Reopen for New and Further Disability dated December 7, 2009.) He alleged that his medical condition has worsened, resulting in additional permanent disability and ongoing need for medical treatment. (*Ibid.*)

On December 17, 2013, and December 23, 2013, applicant's former attorney demanded for a voucher to be issued but it is unclear whether a voucher actually issued. (Applicant Exhibits 15 and 17, letters from Glauber office.)

On February 8, 2016, the parties entered into a Compromise and Release settling 15 body parts allegedly injured on January 1, 2005. (Joint Exhibit 1, Compromise and Release dated February 8, 2016.) The Compromise and Release was approved on the same date. (Order Approving Compromise and Release.) Applicant was represented by Glauber Berenson Vego during the Compromise and Release. The parties initialed the line next to SJDB voucher, indicating that the parties wished to settle this issue. (Joint Exhibit 1, Compromise and Release dated February 8, 2016, ¶ 9, p. 7.) Furthermore, the parties signed an addendum to the Compromise and Release, which states:

A serious dispute exists with regard to whether Applicant sustained any industrial injury arising out of or occurring in the course of employment, *outside of an injury to the low back*, which might, if resolved against Applicant, totally bar Applicant's recovery of any compensation benefits for that claim. Additionally, there is a serious and legitimate issue with regard to the existence of multiple periods of continuous trauma. The applicant wishes a lump sum settlement and the defendant wishes to buy its peace. It is the intention of the parties thereto that the applicant and defendant Travelers, on behalf of the Fresh

Start Bakeries, resolve all of the issues indicated in Paragraph 9 by way of this Compromise and Release agreement. (Joint Exhibit 1, Compromise and Release dated February 8, 2016, Addendum B, emphasis added.)

The parties went to trial on March 19, 2019 on the following issues: (1) whether applicant is entitled to a SJDB voucher in the amount of \$8,000.00, (2) penalties and interest, and (3) whether the SJDB voucher was resolved in the Compromise and Release. (Minutes of Hearing/Summary of Evidence (MOH/SOE) dated March 19, 2019, p. 2:17-22.) Applicant was represented by Glauber Berenson Vego.

On April 4, 2019, the Findings and Order at issue was issued. (Findings an Order dated April 4, 2019.) On April 26, 2019, applicant filed the instant Petition for Reconsideration. (Petition.) On May 8, 2019, the WCJ issued his Report. On May 9, 2019, defendant answered the Petition. (Defendant's Answer.) On May 14, 2019, applicant's former attorney Glauber Berenson Vego filed an Answer. (Glauber Answer.) We granted reconsideration on May 20, 2019.

DISCUSSION

Labor Code² section 5313 requires the WCJ to,

. . . make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made. (§ 5313.)

Section 5313 requires the WCJ to state the “reasons or grounds upon which the [court’s] determination was made.” (See also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22 [2010 Cal. Wrk. Comp. LEXIS 74].) 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*, at p. 478), and must be supported by substantial evidence. (§§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.*

² All statutory references are to the Labor Code unless otherwise noted.

(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. Workers' 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.)

Furthermore, the WCJ is charged with preparing the minutes of hearing and a summary of evidence at the conclusion of each hearing. (Cal. Code Regs., tit. 8, § 10566; *Hamilton*, *supra*, at p. 476.) The minutes of hearing and summary of evidence must include all interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence, the disposition of the matter, and a fair and unbiased summary of the testimony given by each witness. (Cal. Code Regs., tit. 8, § 10566; *Hamilton*, *supra*, at p. 476.)

Here, applicant claims he is entitled to a SJDB voucher while defendant claims the voucher was settled in the February 8, 2016 Compromise and Release. The applicable SJDB statute here is section 4658.5, which does not contain the prohibition from settlement of a voucher that is found in section 4658.7, subdivision (g). While the Compromise and Release did indicate the voucher was being settled, it appears that the SJDB voucher in question had already been issued following the August 31, 2007 finding that applicant was 36% permanently disabled. (Joint Exhibit 1, Compromise and Release dated February 8, 2016, ¶ 9; Glauber Answer, pp. 1:19-2:2, ¶¶ 2, 7.) Yet it appears that applicant had “misplaced” this voucher and is no longer in possession of it. (Glauber Answer, p. 2:15-17, ¶ 8.) It is also unclear whether a voucher issued as a result of the demands of applicant’s former attorney in 2013. (Applicant Exhibits 15 and 17, letters from Glauber office.) Thus, it is unclear whether the voucher was issued, when it was issued, whether it has expired, and whether applicant is in possession of a voucher. (§ 4658.7, subdivision (d).)

Furthermore, applicant claims that he was not aware that he was settling his SJDB voucher and claims that he was not present at the March 19, 2019 trial, which his former attorney later confirmed, even though the Minutes of Hearing reflect that he was present but not in the courtroom. (Petition, Addendum to Petition, ¶¶ 1-2; Glauber Answer, 3:3-7, ¶ 11; Minutes of Hearing dated March 19, 2019, p. 2:2-4.) No testimony was taken at trial and the only exhibit admitted was the February 8, 2016 Compromise and Release. (Minutes of Hearing dated March 19, 2019.)

The April 4, 2019 Findings and Order does not take into account these facts. It simply points to the Compromise and Release to show that the parties settled the voucher. However, given the facts above, it is unclear whether the voucher in question was in dispute at the time of the Compromise and Release and therefore subject to settlement. It is also troubling that applicant was not present at trial and claims he did not understand he was settling his entitlement to the voucher. For these reasons, we rescind the April 4, 2019 Findings and Order and return the matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the April 4, 2019 Findings and Order is **RESCINDED** and the matter is **RETURNED** to trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 4, 2024

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

**PETER DOVER
GLAUBER BERENSON VEGO
DIMACULANGAN & ASSOCIATES**

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*