

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

RAFAEL SANCHEZ, *Applicant*

vs.

**SANTA MARIA JOINT UNION HIGH SCHOOL DISTRICT; permissibly self-insured,
administered by WORKERS COMP ADMIN SANTA MARIA, *Defendants***

**Adjudication Number: ADJ11250487
San Luis Obispo District Office**

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

Applicant Rafael Sanchez seeks reconsideration of the June 13, 2024 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant is not entitled to additional Panel Qualified Medical Evaluations (PQME) in cardiology, psychiatry, or internal medicine (to address diabetes).

Applicant contends that discovery in the form of additional PQMEs is needed to develop the record in light of his July 25, 2023 Amended Application for Adjudication changing/extending the date of his cumulative trauma injury claim and adding claims of injury to his back, foot, shoulder, rheumatology, neck, knees, and ankles.

We received an answer from defendant Santa Maria Joint Union High School District. 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 Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we grant reconsideration, rescind the June 13, 2024 Findings and Order, and return this matter to the trial level for further proceedings.

FACTS

As the WCJ states in her Report,

Rafael Sanchez has 14 workers compensation cases recorded in EAMS. A short chronological summary of each case is helpful to understand why applicant's motion for additional panels was denied.

Many of the cases were prior to EAMS and have little information available. All of them are against the Santa Maria High School District.

The first case, ADJ 4413737, is a March 1, 1988 injury to the hand, not wrist or fingers, settled by stipulations with request for award. No other information is available.

ADJ 3582015 is for date of injury May 18, 1988. Joseph Lounsbury is listed as applicant's attorney by substitution in 2021, long after the case was resolved. It appears when Mr. Lounsbury was retained in the currently litigated cases, Substitution of Attorneys forms were completed for all cases. The ADJ case shows the matter was resolved by Stipulations with Request for Award on February 9, 1996. Parts of body listed in EAMS are neck and back. No information regarding the level of permanent disability reflected in the Stipulations could be located.

ADJ 3079114 was injury to the wrist, knee and ankle occurring on January 18, 1990. Case also resolved by Stipulations on February 9, 1996. Amount unknown.

ADJ 2041123 injury on March 2, 1994 to arm, wrist and finger also resolved by Stipulations on February 9, 1996.

ADJ 2916934 continuing trauma from March 2, 1993 through March 2, 1994. Injury claimed to the neck, arm, back, shoulders and multiple additional parts not listed. Stipulations also approved on February 9, 1996. No information available as to level of permanent disability or additional body parts that may have been included.

ADJ 2261456 shows a date of injury of April 7, 1995. The case notes indicate the file at SRC was destroyed. The date of injury was created and may not be correct. No other information available.

ADJ 7295424 is a November 20, 2009 injury to the right wrist. Stipulations with Request for Award to zero permanent disability with a need for medical treatment were approved on November 17, 2010.

INT 10300250 does not have an ADJ case. There is a DEU case showing a continuing trauma from November 6, 2013 through November 6, 2014. Parts of body were fingers and hand. Zero rating based on QME.

ADJ 9942826 is currently in litigation. Date of injury is November 6, 2014. The original application for adjudication of claim shows parts of body as legs, hands, wrists, fingers, upper and lower back. The application was filed on August 26, 2019. Stipulations and Issues signed October 20, 2020 added an additional body part of neck. The only body parts admitted were right hand and right finger.

ADJ 11068635 date of injury October 20, 2016 body parts wrists, hands and fingers. Mechanism of injury "...while performing job duties." Additional body parts were expanded at trial to include claimed injury to the neck, head/concussion. Bilateral wrists, bilateral hands bilateral shoulders, all fingers and bilateral knees. Case is in an off-calendar status and still open.

ADJ 12435952 was the subject of a Declaration of Readiness to proceed to Expedited Hearing. It is currently scheduled for Mandatory Settlement Conference on July 15, 2024. Injury claimed to multiple orthopedic body parts on December 18, 2018. Injury is disputed, claimed dispute on Declaration of Readiness did not appear to be proper subject of an Expedited Hearing.

ADJ 11250487 is the Master file and the case currently before the Board. All 4 of the open matters were tried on May 20, 2021, continued and submitted for decision on June 23, 2021. Issues included whether Mr. Sanchez was entitled to a panel qualified medical examination in all cases except ADJ11250487 (where a regular physician had already been appointed by Judge Zerboni) or no panel at all.

The only body parts in contention in 2021 were orthopedic. A decision issued on August 30, 2021 ordering the Panel QME process in 3 of the cases. Since Judge Zerboni had already found the Panel QME in this case insufficient and appointed a regular physician in ADJ 11250487, a new panel was not ordered for that case. Applicant's Petition to strike Dr. Ovidia as regular physician was denied without prejudice to renew.

All 4 of the open cases were the subject of a Joint Order Appointing Regular Physician dated September 22, 2022. Dr. Michael Sommer was selected. On May 5, 2023. Dr. Renee S. Rinaldi-Ballard was appointed as a regular physician in rheumatology because Dr. Sommer wanted an examination and opinion from a rheumatologist.

Hopefully, the exhaustive history of this complicated matter demonstrates the cases have been open for years with significant litigation. The alleged date of injury in ADJ 11250487 was not changed until an amended application filed by applicant's attorney on July 25, 2023. The date of injury was changed to July 2, 1984 through the date of retirement, February 1, 2019. Claimed body parts were amended to include rheumatology, and foot. No mention of internal or psychological claims was made.

The Minutes of Hearing dated November 6, 2023 state on p. 2: "Amending application to include hypertension." "Dr. Sommers depo set in 2 weeks. Dr. Rinaldi rheumatologist-non-industrial causation." "AA plans to ask for psyche & cardiovascular evaluations. Defendant objects to additional claimed body parts at this time & wants resolution of the cases." (Report, pp. 2-5.)

Michael A. Sommer, M.D., issued an independent medical legal evaluation dated March 28, 2023. (Applicant Exhibit 24, Dr. Sommer's report dated March 28, 2023.) While Dr. Sommer's report focuses on musculoskeletal issues, he mentions applicant's diabetes diagnosis as well as his problems with heart disease and hypertension. (Applicant Exhibit 24, Dr. Sommer's report dated March 28, 2023, pp. 2, 22, 29, 40, 50, 57, 61.) Dr. Sommer apportions 15% of applicant's injuries to his diabetes, stating that "it is known that diabetes is deleterious to disc tissue and neural tissues." (Applicant Exhibit 24, Dr. Sommer's report dated March 28, 2023, p. 57.) Dr. Sommer also suggests that there is some relationship between applicant's diagnosis of connective tissue disease and his heart disease. (Applicant Exhibit 24, Dr. Sommer's report dated March 28, 2023, p. 53, 61.)

DISCUSSION

The WCJ found that applicant is not entitled to additional PQMEs in cardiology, psychiatry and internal medicine because the "*length of time this matter has been litigated combined with the length of time Mr. Sanchez has had these conditions weighs against any further discovery.*" (Report, p. 7, emphasis in original.) The WCJ further went on to state that "[b]oth parties have the constitutional right to 'substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character, all of which matters are expressly declared to be social policy of this State, binding upon all departments of the State government.' Article XIV Section 4 of the California Constitution" and that "[v]iewing the timeline in these cases led to the conclusion on balance that further Panels are not warranted in this case." (Report, p. 7.)

While proceedings must be expeditious, substantial justice requires the Appeals Board to protect the due process rights of every person seeking reconsideration. (See, *San Bernardino Community. Hosp. v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986]; and *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710.)

[I]n exercising adjudicatory functions the commission is bound by the due process clause of the Fourteenth Amendment to the United States Constitution to give the parties before it a fair and open hearing. 'The right to such a hearing is one of "the rudiments of fair play" (citation) assured to every litigant by the Fourteenth Amendment as a minimal requirement.' [Citations.] (*Fremont Indem. Co. v. Workers' Comp. Appeals Bd. (Zepeda)* (1984) 153 Cal.App.3d 965, 970-971 [49 Cal. Comp. Cases 288].)

A decision of the Workers' Compensation Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280-281.) Substantial justice creates a duty to develop an adequate record despite delay in proceedings. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404.)

Furthermore, the Appeals Board 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. (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).)

Therefore, we conclude that applicant is entitled to additional PQMEs in cardiology and internal medicine given Dr. Sommer's opinion regarding the relationship between applicant's musculoskeletal condition and his diabetes and the relationship between applicant's diagnosis of Mixed Connective Tissue Disease (MCTD) and his heart disease. We also conclude that applicant is entitled to additional PQME in psychiatry because of applicant's "multiple injuries and persistent multifocal complaints" as described by Dr. Sommer.

Finally, we observe that a WCJ is not limited to the issues presented on the pleadings or bound by stipulations. (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, we note that neither the parties or the trial court are limited by the parties' stipulations to body parts or the applications for adjudication filed thus far.

Accordingly, we grant reconsideration, rescind the June 13, 2024 Findings and Order, and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that applicant Rafael Sanchez’s Petition for Reconsideration of the Sanchez June 13, 2024 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers’ Compensation Appeals Board, that the Sanchez June 13, 2024 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings.

WORKERS’ COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 26, 2024

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

**RAFAEL SANCHEZ
JOSEPH E. LOUNSBURY
TOBIN LUCKS LLP**

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