

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

SHARNEE CROUTPURDIE, *Applicant*

vs.

**GLOBAL PARATRANSIT, INC., administered by CANNON COCHRAN
MANAGEMENT SERVICES, INC. (CCMSI), *Defendants***

**Adjudication Number: ADJ9435746
Los Angeles District Office**

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of a March 23, 2021 Findings and Award (F&A) wherein a workers' compensation administrative law judge (WCJ) found in pertinent part that applicant sustained injury arising out of and in the course of her employment (AOE/COE) to the lumbar and cervical spine resulting in temporary disability and 6% permanent disability based upon reports from panel Qualified Medical Evaluator (QME), Dr. Payam Moazzaz. At trial, the WCJ excluded reports from secondary and consulting physicians and applicant's prior primary treating physician (PTP), Dr. Abel Quesada.

Applicant contends that the excluded reports should be admitted and that based upon these reports, she is entitled to additional temporary disability as well as a finding of industrial injury to the additional body parts of the thoracic spine, right shoulder, sleep disorder, and periodontal disease (bruxism). Applicant also contends that the award of permanent disability should be based upon the reports of Dr. Quesada rather than the reports of the QME.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration (Petition) be denied.

We have considered the Petition, the Answer, and the contents of the Report. Based upon our review of the record and for the reasons stated below, we are rescinding the WCJ's March 23,

2021 F&A, dismissing the Petition, and returning the matter to the trial level for further proceedings consistent with this opinion. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

FACTS

Applicant while employed by defendant as a driver on March 8, 2014, claimed injury to right shoulder, sleep disorder, periodontal disease (bruxism), and cervical, thoracic, and lumbar spine. The parties ultimately retained a QME, and the matter was set for trial.

The matter proceeded to trial on March 5, 2020, and various exhibits were admitted into evidence in anticipation of trial. Subsequently, the trial was continued to February 11, 2021.

At the February 11, 2021 trial, the WCJ excluded secondary and consulting physician reports from Dr. David Schames, Dr. Sanjivan Singh Kohli, Dr. Zhanna Feldsher, Dr. Anoush Ehya and Dr. Rick Pospisil. The WCJ found the reports “questionable” because the PTP had failed to incorporate the findings of these doctors into his own reports. Per the WCJ, under “8 CCR 9785(e)(4), the PTP is required to incorporate the findings and opinions of other physicians” into the PTP reports. (Opinion on Decision (OOD), March 23, 2021, p. 6.)

The WCJ also excluded reports from applicant’s prior PTP, Dr. Quesada. The WCJ found “the status of Dr. Quesada unclear” because applicant last “saw Dr. Quesada on April 21, 2018 – four years after the accident” which, according to the WCJ, made the reports of “questionable validity.” (*Id.*)

Ultimately, the WCJ issued a March 23, 2021 Findings and Award wherein he found injury to the cervical and lumbar spine with a 6% permanent disability based upon the opinions of the QME, Dr. Moazzaz, in his May 2, 2020 report. A Petition for Reconsideration was then filed by applicant on April 26, 2021.

DISCUSSION

There are twenty-five days allowed within which to file a Petition for Reconsideration from a “final” decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a Petition for Reconsideration must be filed with (i.e., received

by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

Labor Code section¹ 5900(b) states in pertinent part that: “At any time within 60 days after the filing of an order, decision, or award made by a workers’ compensation judge and the accompanying report, the appeals board may, on its own motion, grant reconsideration.” Further, section 5911 states: “Nothing contained in this article shall be construed to prevent the appeals board, on petition of an aggrieved party or on its own motion, from granting reconsideration of an original order, decision, or award made and filed by the appeals board within the same time specified for reconsideration of an original order, decision, or award.” Here, the Order was served on March 23, 2021. For the Petition to be timely filed, it therefore had to have been filed no later than April 19, 2021. The Petition, however, was filed in EAMS on April 26, 2021. As such, the Petition was untimely, and as such, we will need to dismiss the Petition. Under our authority pursuant to section 5900(b), however, we granted reconsideration on our own motion.

Turning now to the issue of admissibility of the exhibits excluded by the WCJ, in his March 23, 2021 F&A, the WCJ found applicant’s Exhibits 3-6, which consist of secondary and consulting physician reports from Dr. David Schames, Dr. Sanjivan Singh Kohli, and Dr. Zhanna Feldsher, to be inadmissible. These reports, however, were previously admitted without objection, as evidenced by the original Minutes of Hearing dated March 5, 2020. As such, we agree with applicant that they should not now be excluded from the record.

Applicant’s Exhibits 18-19, which consist of orthopedic reports from Dr. Anoush Ehya and Dr. Rick Pospisil, were similarly excluded from the record by the WCJ. The WCJ found these reports, as well as earlier referenced applicant’s Exhibits 3-6, to be “questionable” because the findings and opinions of these secondary physicians had not yet been incorporated into PTP reports as required under AD Rule 9785(e)(4) (Cal. Code Regs., tit. 8, § 9785(e)(4)). (OOD, March 23, 2021, p. 6.) There is no case or statutory law, however, to support the WCJ’s argument that secondary physician reports are to be found inadmissible if they are not incorporated into PTP reports. Further, section 4605 makes it clear that an employee may provide “at his or her own expense, a consulting physician” and there is no evidence in the record to suggest that the consulting physician reports have been acquired in contravention of section 4605 or other relevant case or statutory law. Further, while we agree that per *Valdez v. Warehouse Demo Services* (2013)

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

57 Cal.App.4th. 1231, secondary and/or consulting physician reports cannot be the sole basis for an award, we also believe that due process requires the inclusion of any and all relevant reports to ensure a full and accurate record.

Applicant's Exhibits 7-9, reports of prior PTP, Dr. Quesada, should similarly be admitted into the record. The WCJ argues that under AD Rule 9785(b)(1) (Cal. Code Regs., tit. 8, § 9785(b)(1)), applicant is not to have more than one PTP at any given time. There is no evidence in the record, however, to suggest that applicant was being seen by another PTP while Dr. Quesada served as applicant's PTP. Further, MPN issues aside, applicant is not prohibited from seeking a new PTP at any point in time and may replace a PTP for any number of reasons. Replacement, however, does not mean the reports of the prior PTP suddenly become invalid. Ultimately, the fact that the WCJ is unsure of Dr. Quesada's status is irrelevant insofar as the issue of admissibility is concerned. As with consulting physician reports, due process requires the admission of all relevant reports, including the prior PTP reports of Dr. Quesada.

On the issue of due process, it is well established under both the California and United States Constitutions, that parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [97 Cal Rptr. 2d 852, 65 Cal.Comp.Cases 805].) A fair hearing is "... one of 'the rudiments of fair play' assured to every litigant ..." (*Rucker, supra* at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission...must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must observe the mandate of the constitution of the United States and this cannot be done except after due process of law." (*Id.* at p. 577.) 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 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].) The Appeals Board also has the discretionary authority to develop the record when appropriate to provide due process or fully adjudicate the issues. (Lab. Code §§ 5701, 5906). As explained in *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924], "The principle of allowing

full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims."

Further, the court in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [33 Cal.Comp.Cases 350-351], has clarified that a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (§§ 5903, 5952, subd. (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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) This "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, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) Pursuant to *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]. Indeed, the Appeals Board has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where additional discovery may be necessary. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) These cases and statutes underscore the importance of allowing full consideration of the entire evidentiary record, in furtherance of the substantial justice required in workers' compensation proceedings. We therefore believe the above reports should be admitted into evidence.

On the issues of temporary and permanent disability and injury to additional body parts, further analysis is necessary upon inclusion of the additional reports. As such, we will rescind the F&A, dismiss the Petition, and return this matter to the trial level for further actions consistent with this decision. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the March 23, 2021 Findings and Award is **RESCINDED**.

IT IS FURTHER ORDERED that as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Petition for Reconsideration is **DISMISSED** and the matter **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 20, 2024

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

**SHARNEE CROUTPURDIE
MOORE & ASSOCIATES
SION & ASSOCIATES**

RL/cs

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