

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

DEBRA CHESBRO, *Applicant*

vs.

**STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS AND
REHABILITATION - MEN'S COLONY, legally uninsured, administered by STATE
COMPENSATION INSURANCE FUND/STATE CONTRACT SERVICES, Defendants**

**Adjudication Number: ADJ12829129
San Luis Obispo District Office**

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

Defendant seeks reconsideration of the First Amended Findings and Award, (F&A) issued by the workers' compensation administrative law judge (WCJ) on November 24, 2020, wherein the WCJ found in pertinent part that the report from orthopedic upper extremity/hand qualified medical examiner (QME) Michael J. Behrman, M.D., was substantial evidence, and based thereon that applicant's upper extremity injury caused 37% permanent disability.

Defendant contends that Dr. Behrman should not have used grip loss to rate applicant's impairment caused by carpal tunnel syndrome and that a formal rating from the Disability Evaluation Unit (DEU) should have been requested.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from applicant. We have considered the allegations in the Petition for Reconsideration (Petition) and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&A and return the matter to the WCJ for further proceedings consistent with this opinion, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

Applicant claimed injury to her right upper extremity, right wrist, and right hand while employed by defendant as a registered nurse during the period from January 1, 2005, through May 7, 2018. (see Application for Adjudication of Claim.)

The parties appeared at the San Luis Obispo District Office on October 12, 2020, and the matter was submitted for decision on November 19, 2020. (Minutes of Hearing, October 12, 2020.)

DISCUSSION

The threshold issue which we must address is that the record of proceedings in this matter does not contain a trial record regarding the October 12, 2020 trial. The Electronic Adjudication Management System (EAMS) adjudication file does not contain a Minutes of Hearing and Summary of Evidence, there are no stipulations and/or issues identified, and there is no evidence admitted into the record.

“[T]he record of proceedings in a case submitted for decision on the record must be properly organized and must contain at the minimum: a list of the issues submitted to the WCJ for decision; the stipulations of the parties, if any; and the admitted evidence.” (*Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 474 (Appeals Board *en banc*).) “The evidence submitted by the parties must be formally admitted and must be included in the record to enable the parties to comprehend the basis for the decision. Furthermore, a proper record enables any reviewing tribunal, be it the Appeals Board on reconsideration or a court of further appeal, to understand the basis for the decision.” (*Hamilton, supra*, 475.) The Labor Code and the Appeals Board rules contain explicit instructions concerning the contents of the record of a case. (Lab. Code, § 5502; Cal. Code Regs., tit. 8, § 10759 (b) and (c).) “It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record.” (*Hamilton, supra*, 477.)

As discussed above, at a minimum, the trial record must contain the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence. Here, there is no trial record, so we are not able to address the issues raised by the Petition or those discussed by the WCJ in the Report. Also, a WCJ is required 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." (Lab. Code, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-22 (Appeals Board *en banc*.) It appears that there is no Opinion on Decision in the EAMS ADJ file. Thus, we must rescind the F&A and return the matter to the WCJ.

Finally, although for the reasons discussed above, we cannot address the issues raised in the Petition, we note that while the WCJ is correct that he may independently rate permanent disability, consultative ratings are inadmissible as evidence and cannot be relied upon by the WCJ. (Cal. Code Regs., tit. 8, § 10166(b); see *Blackledge, supra*, at 616.)

Accordingly, we grant reconsideration, rescind the F&A and return the matter to the WCJ for further proceedings consistent with this opinion, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the First Amended Findings and Award, issued by the WCJ on November 24, 2020, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the November 24, 2020 First Amended Findings and Award, is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings consistent with this opinion, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 1, 2021

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

**DEBRA CHESBRO
SPATAFORE & GRANT
STATE COMPENSATION INSURANCE FUND**

TLH/pc

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