WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CECILIA DOLORES GARCIA, ***Applicant***

vs.

POMONA UNIFIED SCHOOL DISTRICT, permissibly self-insured and administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, ***Defendants***

Adjudication Numbers: ADJ10988642; ADJ11111236
Pomona District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Both applicant and defendant have petitioned for reconsideration of the Findings and Order (Amended) ("F&O") issued by the workers' compensation administrative law judge (WCJ) on January 30, 2025, wherein the WCJ found applicant did not sustain a work-related cumulative trauma psyche injury, found that applicant's left knee injury was industrial in nature, and ordered further development of the record with regard to all other claimed body parts. Applicant asserts the WCJ erred in finding no cumulative psyche injury, and should have instead ordered further development of the record due to the lack of a med-legal evaluation relating to the cumulative psyche injury claim, as opposed to a prior-resolved specific psyche injury claim. Defendant, by contrast, asserts the WCJ erred because (1) the medical evidence shows the left knee injury was non-industrial; and (2) as to the other body parts, the medical evidence either does not require further development, or applicant failed to exercise due diligence in pursuing medical discovery.

We received an Answer to applicant's petition from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) with regard to each petition, recommending that both petitions should be denied, except that defendant's petition should be granted with regard to the left knee, with the F&O amended accordingly.

We have considered the Petitions, the Answer, and the contents of the Reports, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant both Petitions. Our order granting the Petitions is not a final order, and we will order that a

final decision after reconsideration is deferred pending further review of the merits of the Petitions for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code[1] section 5950 et seq.

I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on February 20, 2025. This decision is issued by or on April 21, 2025, so that we have timely acted on the petitions as required by Labor Code section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to

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

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the first Report was served on February 14, 2025, and the case was transmitted to the Appeals Board on February 20, 2025. Service of the first Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the first Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties to the commence of the 60-day period on February 20, 2025.

However, the second Report was served on February 20, 2025, and the case was transmitted to the Appeals Board on February 20, 2025. Service of the second Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the second Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on February 20, 2025.

II.

Preliminarily, we note the following in our review:

This case involves a cumulative trauma injury claim to multiple body parts. A specific injury claim alleging a psyche injury involving the same parties was adjudicated previously, with the WCJ ordering that applicant take nothing on that claim.

This matter was initially set for hearing on August 29, 2024. The issues were listed as: (1) parts of body injured; (2) permanent and stationary date; (3) permanent disability; (4) apportionment; (5) need for further medical treatment; (6) liability for self-procured medical treatment; (7) EDD lien (deferred); (8) attorney fees; (9) whether the reporting of Drs. Pietruszka and Moshfegh were substantial medical evidence; (10) credit for payments by EDD; and (11) applicant's objection to setting the case and moving the case forward to trial, based on an allegation that further discovery is required. Evidence was admitted, with some exhibits marked for identification only, and the matter was continued for testimony. Further proceedings were held on November 21, 2024, with applicant providing extensive testimony. The matter was held open for post-trial briefing, and then taken under submission on January 15, 2025.

An initial Findings and Order issued on January 21, 2025; the instant amended F&O issued on January 30, 2025, with the WCJ finding in relevant part:

> 3. The left knee is industrial per the report of Kambiz Hannani, PQME.
> 4. Applicant did not sustain an industrial psychological injury.
> 5. As to other body parts, the medicals in this file are not substantial medical evidence. All require further development as to parts of the body injured, permanent disability, apportionment and future medical care, pursuant to the opinion attached hereto.

(F&O, at p. 1–2, ¶¶ 3–5.) The WCJ went on to order further development of the record in accordance with Finding of Fact 5. (*Id.* at p. 2.)

The instant Petitions for Reconsideration followed.

III.

In our initial review we note that the findings of the WCJ included determinations relating to parts of body claimed to have been industrially injured, and deferred other issues pending development of the record. We also observe that the WCJ's rationale for finding applicant's psyche injury non-industrial was that the issue had been previously adjudicated in applicant's specific injury claim, with the WCJ finding that res judicata and/or collateral estoppel prevented the litigation of that issue anew in the cumulative trauma claim.

Both Petitions include assertions relating to the presence or absence of substantial medical evidence, and, to the extent that there may be a lack of substantial medical evidence, whether that might be attributable to applicant's lack of diligence.

Finally, we note that in the relevant Report, the WCJ agreed with defendant's Petition that the F&O should be amended to find the left knee non-industrial rather than industrial, based upon the medical reporting of Dr. Hannani.

IV.

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue. The WCAB also has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].)

Additionally, any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

In this regard, it has been long established that, in order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416-417, 419 [33 Cal.Comp.Cases 660]; *Travelers Ins. Co. v. Industrial Acc. Com. (Odello)* (1949) 33 Cal.2d 685, 687-688 [14 Cal.Comp.Cases 54]; *Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1702, 1705 [58 Cal.Comp.Cases 313].)

Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd., supra,* 68 Cal.2d at |pp. 799, 800-801 (an opinion that fails to disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence); see also *People v. Bassett* (1968) 69 Cal.2d 122, 141, 144 (the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based). (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Here, given our preliminary review, it is unclear as to whether the existing record is sufficient to support the order and decision of the WCJ, as well as whether the record supports the WCJ's finding that further development of the record is necessary with respect to many of applicant's claimed body parts.

Furthermore, we note that the WCJ's decision was predicated upon the application of res judicata and/or collateral estoppel, also known as claim preclusion, as regards applicant's cumulative trauma psyche injury claim. Here, given our preliminary review, it is unclear which if either of these doctrines might apply, and to what extent their application might bar the litigation of applicant's cumulative trauma injury claim.

V.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal. 724, 729) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal. 2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd.* (1967) 67 Cal.2d 483, 491; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold

issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra,* at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> "No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …"

Thus, this is not a final decision on the merits of the Petitions for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

VI.

Accordingly, we will grant both Petitions, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petitions and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Order (Amended) issued on January 30, 2025 by the workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED that defendant's Petition for Reconsideration of the Findings and Order (Amended) issued on January 30, 2025 by the workers' compensation administrative law judge is also **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petitions and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 14, 2025

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

CECILIA DOLORES GARCIA
PEREZ LAW POMONA
BLITSTEIN YOUNG WOODLAND HILLS

AW/*kl*

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