

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

CHRISTOPHER ROGERS, *Applicant*

vs.

JRK PROPERTY HOLDING; CHUBB INSURANCE, *Defendants*

**Adjudication Numbers: ADJ11120360; ADJ11216793
Sacramento District Office**

**OPINION AND ORDERS
DENYING PETITIONS FOR RECONSIDERATION**

Applicant and defendant have filed separate petitions for reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact, Awards & Orders of November 13, 2024, wherein it was found that while employed on October 17, 2017 as a maintenance worker in case ADJ11120360, applicant sustained admitted industrial injury to his left hand/wrist causing temporary disability from October 21, 2017 to October 20, 2019, permanent disability of 17% and the need for further medical treatment. It was also found that while employed on October 20, 2017 in case ADJ11216793, applicant did not sustain industrial injury to his neck, low back, shoulders, or psyche. Applicant was ordered to take nothing by way of his claim in case ADJ11216793.

Applicant contends in his Petition that the WCJ erred in finding that he did not sustain industrial injury in case ADJ11216793. Defendant contends in its Petition that the WCJ erred in finding applicant entitled to a full 104 weeks of temporary disability indemnity in case ADJ11120360, arguing that temporary disability liability ceased as of May 2019. Defendant also requests clarification as to the exact benefits outstanding, arguing that it should be granted credits for overpayments of permanent disability advances and for payment of the Employment Development Department lien. We have not received any answers and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated by the WCJ in the Report, which we adopt, incorporate, and quote below, we will deny both petitions.

Preliminarily, we note that former Labor Code 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, Labor Code 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 Labor Code 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 December 9, 2024, and 60 days from the date of transmission is February 7, 2025. This decision is issued by or on February 7, 2025, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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 act on a petition. Labor Code 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 Report was served on December 9, 2024, and the case was transmitted to the Appeals Board on December 9, 2024. Service of the 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2)

Turning to the merits, we will deny both petitions for the reasons stated by the WCJ in the Report. With regard to applicant's Petition, we note that a WCJ's credibility determinations are "entitled to great weight because of the [WCJ's] 'opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand....' [Citation.]" (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) With regard to defendant's Petition, as noted in the Report, agreed medical evaluator orthopedist Joel W. Renbaum, M.D. did not find the applicant permanent and stationary until October 22, 2019 and opined that applicant was unable to return to his regular work activities. (October 22, 2019 report a pp. 8-9.) Defendant argues that this assessment included body parts and dates of injury that were ultimately found to be non-industrial, and that applicant would have been found to be able to return to work or have been deemed permanent and stationary earlier with regard to only the left hand/wrist. If the defendant desired further clarification, it should have sought a deposition or supplemental reporting from Dr. Renbaum. (*Foremost Dairies, Inc. v. Industrial Acc. Com.* (McDannald) (1965) 237 Cal.App.2d 560, 572 [30 Cal.Comp.Cases 320].) With regard to the issue of clarification of the credit and lien issues, as the WCJ notes, that is to be clarified in further proceedings.

REPORT AND RECOMMENDATION ON PETITIONS FOR RECONSIDERATION AND NOTICE OF TRANSMISSION

INTRODUCTION

Defendant filed a timely, sufficiently served and verified Petition for

Reconsideration on November 27, 2024. The petition does not state the legal basis for its filing, but the arguments are consistent with Labor Code Section 5903 (a), (c) and (e). Specifically, Defendant argues that the evidence does not support the awarded temporary disability indemnity in ADJ11120360.

Applicant filed a timely, sufficiently served and verified Petition for Reconsideration on December 4, 2024. The Petition states Labor Code Section 5903 provides the legal basis for the filing and the arguments are consistent with subsections (c) and (e). Specifically, Applicant argues that the evidence establishes injury arising out of and in the course of employment in ADJ11216793 and that the finding of no industrial injury and the Order denying the claim should be vacated.

STATEMENT OF FACTS

Christopher Rogers (Applicant) began working for JRK Property Holdings, Inc. (Employer) in August 2017. He was twenty-nine (29) years old and employed as a Maintenance Worker, Occupational Group Number 380, at Sacramento, California on October 4, 2017, when he sustained an injury arising out of and in the course of his employment to his left hand/wrist. (ADJ11120360) Defendant accepted liability for this claim and provided benefits. The evidence including testimony, medical records and employment records established October 20, 2017, was Applicant's last day of work with Employer.

Applicant was. evaluated by Dr. Joel Renbaum, M.D. as the Agreed Medical Examiner for. ADJ11120360 and ADJ11216793 for orthopedic issues. Dr. Renbaum evaluated Applicant on August.8, 2018, October 22, 2019, March 29, 2022, and December 1, 2022. He issued reports dated August 8, 2018, October 22, 2019, July 7, 2020, March 29, 2022, and December 1,2022. Dr. Renbaum's deposition was taken on October 11, 2021, and August 25, 2022, (Joint Ex. 1 - 7) The October 22, 2019, AME report from Dr. Renbaum documents Applicant had ongoing treatment with PTP Carl Shin through May 22, 2019 and found his condition permanent and stationary at the time of the October 22, 2019 evaluation. (Joint Ex. 2)

Applicant also alleged that he suffered an injury on October 20, 2017, as a result of an assault by his supervisor, Arcadia Martinez. Mr. Martinez denied this accusation at trial.

THE REPORTING OF AGREED MEDICAL EXAMINER JOEL RENBAUM M.D. SUPPORTS THE A WARD OF TEMPORARY DISABILITY FROM OCTOBER 21, 2017, THROUGH OCTOBER 20, 2019 IN ADJ11120360

Dr. Renbaum's expert medical opinion as the Agreed Medical Examiner is supported by the medical records he reviewed and the history he was provided

by the parties. He explains both how and why he reached his expert opinion regarding Applicant's disability status. The evidence does support the Finding of Fact that Applicant was temporarily disabled as a result of his left wrist injury from October 21, 2017, through October 20, 2019. The parties also stipulated to Applicant's Average Weekly Wage which was adopted a part of the Findings of Fact Therefore, Applicant did prove by a preponderance of the evidence his entitlement to TDI from October 21, 2017, through October 20, 2019.

The Pre-Trial Conference Statement filed February 21, 2023, did not contain information regard TDI payments by Defendant. The lien claim of EDD is noted on the issues page, but no specific information is listed. There was no participation by EDD in that PTCS. The lien of EDD was ordered deferred when the matter proceeded to trial on May 16, 2023. Therefore, Defendant was ordered to hold these funds in trust pending resolution of the lien claim of EDD. Defendant's Petition asserts Applicant has received \$27,782.00 in TDI benefits and additional payments from EDD. Further proceedings are required to clarify if there are overlapping payments.

**APPLICANT DID NOT PROVE BY APREPONDERANCE OF THE
EVIDENCE THAT HE WAS ASSAULTED BY ARCADIO MARTINEZ
ON OCTOBER 20, 2024, AS ALLEGED IN ADJ11216793**

Applicant's testimony was found to lack credibility. (OOD Pg. 4 - 5) He testified that he provided a light duty slip to his employer when the evidence established the light duty slip was not created until after he stopped working there. The employment records also evidenced that he did not report the injury, and he had told a coworker he kept in on his private insurance. Applicant's testimony was found to lack credibility because it intentionally or mistakenly misrepresented facts.

Applicant's Petition asserts that later medical reports were not considered in the analysis. The analysis focuses on the contemporaneous medical reports which establish Applicant did not report the alleged assault or report any neck complaints in October or November 2017. It is the history that Applicant's story changed in December 2017 that further detracts from his credibility.

The testimony of Arcadia Martinez was found to be consistent and credible. His testimony is supported by the two Incident Reports Defendant provided as evidence and the contemporaneous medical records. Based on evaluation of the credibility of Applicant, Mr. Martinez, the contemporaneous medical records, the subsequent medical records and the Incident Reports. Applicant was found to have failed to meet his burden of proof.

Additionally, Applicant denied a prior history of neck complaints when he was first evaluated by AME Dr. Renbaum. (Joint Ex. 1 Pg. 3) However, the treatment records from the VA document a motor vehicle accident occurring December

18, 2014, with complaints of neck pain and treatment that included physical therapy, X-rays of the cervical spine. These records also indicate that he was referred back to his auto insurance carrier for other care. The records also mention a March 13, 2014, motor vehicle accident that injured Applicant's neck and left trapezius muscle. (App. Ex. 14 Pg; 46 - 55) Applicant's intention or mistaken failure to mention two prior neck injuries to the AME is another factor detracting from his credibility. It also provides evidence that the VA accurately records Applicant's complaints regarding his neck and did not accidentally omit them or forget them when Applicant was seen in October and November of 2017.

The reports of Dr. Elanor Loomis M.D. and Dr. Martin Greenberg Ph.D. were based on the history provided by Applicant that he was assaulted on October 20, 2024. As discussed above and in the Opinion on Decision it was found Applicant was not credible on this issue and that the assault did not occur; as claimed. Medical opinions based on an inaccurate history are not substantial evidence. Therefore, they do not support Applicant's claim.

Applicant also has a history of presenting in a neck brace and a wrist splint to medical providers when there are direct recommendations in his medical record that he should stop wearing these. AME Renbaum stated there is no ratable AMA Guide impairment for Applicant's wrist and the WPI is based on Applicant's self-reported limitation on Activities of Daily Living per *Almaraz/Guzman II*. (Joint Ex. 1- 7 App. Ex. 4 & 5) Dr. Shin expressly states:

Also, during the course of our conversation, I noticed that, as he felt unhappy about our discussion, he spread his hands wide, and I saw him being able to spread his fingers wide open without any limitations. This is something he was not able to do during examination despite repeated encouragements and attempts.

He then stated that he is not going to go back to work and that he was done with me. As he walked out, he easily manipulated his left hand opening the examination room which was quite surprising to me.

I do not typically make a big fuss about inconsistencies in patient's behavior, but it unfolded right in front of my eyes within 15 minutes of my examination, was quite telling. (App. Ex. 5 Pg. 3)

Applicant appears to engage in financially motivated behavior regarding his claim in the face of medical recommendations that he should stop. This behavior noted by his treating physician is another factor detracting from Applicant's credibility.

CONCLUSION

Defendant's Petition requests clarification of the benefits paid and the payments that should be made. The parties have not stipulated to the total amounts paid. The stipulation to Defendant paying PDI at the weekly rate from June 29, 2019, through November 27, 2020 has already been adopted as a Finding of Fact. The amounts Awarded are being held in trust by Defendant and further proceedings are required. It would be improper and unnecessary to alter or amend the amounts awarded in ADJ11120360 at this time.

NOTICE OF TRANSMISSION

Pursuant to Labor Code, Section 5909, the parties and the appeals board are hereby notified that this matter has been transmitted to the appeals board on date set out below.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings of Fact, Awards & Orders of November 13, 2024 is **DENIED**.

IT IS FURTHER ORDERED that Applicant's Petition for Reconsideration of the Findings of Fact, Awards & Orders of November 13, 2024 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

KATHERINE WILLIAMS DODD, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 7, 2025

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

**CHRISTOPHER ROGERS
MASTAGNI HOLSTEDT
WAI CONNOR & HAMIDZADEH**

DW/oo

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