WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOHNNY RAGASA, *Applicant*

vs.

WASTE MANAGEMENT OF ALAMEDA COUNTY, INC.; ACE AMERICAN INSURANCE COMPANY administered by GALLAGHER BASSETT SERVICES, INC., *Defendants*

Adjudication Number: ADJ15681350; ADJ14443327
Oakland District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Defendant Ace American Insurance adjusted by Gallagher Bassett Services (defendant) seeks reconsideration of the Findings and Award (F&A) issued on December 13, 2024, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a mechanic during the period ending June 9, 2021, sustained industrial injury to bilateral knees. The WCJ found that applicant's injuries resulted in a period of temporary total disability commencing January 10, 2023 through the present and continuing.

Defendant contends that the reporting of the Qualified Medical Evaluator (QME) upon which the WCJ relied is not substantial medical evidence.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be dismissed for failure to serve all parties or denied on the merits.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant defendant's Petition for Reconsideration. Our order granting the Petition for Reconsideration 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 Petition 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.
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> (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 January 22, 2025, and 60 days from the date of transmission is Sunday, March 23, 2025. The next business day that is 60 days from the date of transmission is Monday, March 24, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, March 24, 2025, so that we have timely acted on the petition as required by 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

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

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

notified of the accurate date for the commencement of the 60-day period for the Appeals Board to 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 Report was served on January 22, 2025, and the case was transmitted to the Appeals Board on January 22, 2025. 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 section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on January 22, 2025.

II.

We highlight the following legal principles that may be relevant to our review of this matter. The WCJ's Opinion on Decision sets forth the procedural and medical-legal history as follows:

> This matter arises out of several injuries, both specific and cumulative, three of which are admitted and one denied, to the knees of a truck mechanic employed by Waste Management of Alameda County.
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> Applicant Johnny Ragasa first injured his left knee on November 1, 2016. That claim was assigned case number ADJ10771368. He sustained cumulative trauma to that left knee during the period of employment ending January 10, 2018 (case number ADJ11246634). Both cases were resolved by stipulated awards of permanent disability and further treatment, in 2018, and both were later reopened. Applicant then injured his right knee on December 11, 2020 (case number ADJ14443327); defendant has admitted liability for the injury; that case has not been resolved or adjudicated. Finally, Mr. Ragasa has filed a second claim of cumulative trauma, to both knees, through June 9, 2021 (case number ADJ15681350), which remains denied.
>
> Along the way, applicant has undergone surgery to both knees, in 2021, by Dr. Warren Strudwick. (Reportedly, he is awaiting approval of a proposed left knee arthroplasty.) Dr. Strudwick performed a right knee meniscectomy on June 10, 2021, followed by a left knee meniscectomy and debridement on December 7, 2021. Mr. Ragasa testified that he returned to a light-duty assignment in March, 2022, which appears to have expired after about 90 days,
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> For the first two injuries to the left knee and the latest claim involving both knees, the parties engaged Dr. Albert Retodo as their qualified medical evaluator (QME). For the third injury, to the right knee, the QME is Dr. Staci Talen. Both

> evaluators have performed multiple examinations and written several supplemental reports.

(Opinion on Decision, at p. 3.)

On November 18, 2024, the parties proceeded to trial. The WCJ described the issues framed for submission as follows:

> Chief among the issues submitted for decision are compensability of the claim of cumulative injury, pled through June 9, 2021 (the day before right knee surgery), and indemnity for temporary disability following the last payment of such benefits effective January 9, 2023. The issues are related. Defendant contends that the evidence supporting the 2021 claim is undermined by two things: The fact of light duty during portions of the period of alleged cumulative trauma, and its interpretation of Dr. Talan's conclusion that that applicant's current problems all stem from his earlier injuries, with no contribution from ongoing work. Applicant cites Dr. Retodo in support of the cumulative injury and both QMEs in support of his claim for temporary disability.

(Opinion on Decision, at p. 5.)

The WCJ heard applicant's testimony and ordered the matter submitted for decision.

On December 13, 2024, the WCJ issued his F&A, determining in relevant part that applicant sustained injury arising out of and in the course of employment (AOE/COE) during the period ending June 9, 2021 (ADJ15681350), resulting in temporary total disability from January 10, 2023, through the present and continuing, subject to the limitations imposed under section 4656. (Findings of Fact Nos. 1 & 3; Award.) The WCJ's Opinion on Decision observed that applicant's job duties, although modified, likely involved weight bearing during the alleged cumulative injury period. The WCJ determined that the QME opinions of Drs. Retodo and Dr. Talan when viewed in light of the entire record supported the claimed cumulative injury through 2021. (Opinion on Decision, at p. 5.)

Defendant's Petition avers the reports of QME Dr. Retodo are not substantial evidence with respect to the claimed cumulative injury because the physician's analysis is conclusory and fails to adequately explain the physician's reasoning. (Petition, at p. 5:8.) Defendant further contends that applicant's trial testimony is inconsistent with the functional and vocational limitations described in the reporting of Dr. Retodo. (*Id.* at p. 5:23.)

Applicant's Answer contends that defendant's Petition is subject to dismissal because it was not served on the Employment Development Department. (Answer, at p. 5:4; Cal. Code Regs.,

tit. 8, § 10625(a).) Applicant further contends that his claim is presumptively compensable under section 5402(b), and that the WCJ's findings of cumulative injury are supported by the aggregate QME reporting in evidence as well as applicant's testimony. (Answer, at pp. 6:4; 8:6.)

The WCJ's Report notes that he found the QME reporting of Dr. Retodo to be substantial evidence in part because the QME was clearly aware that applicant's work involved weight bearing and modified duties and because the QME's reporting was consonant with applicant's credible trial testimony. (Report, at p. 5.) The WCJ observes that the reporting of QMEs Dr. Retodo and Dr. Talan are reasonably read together as supporting deterioration in the right knee. (*Ibid*.) The WCJ further acknowledges that the F&A did not identify every period of overlapping or concurrently running temporary disability. However, the award specifically provided for the application of the limitations on TTD benefits found in section 4656, and that the simultaneous running of temporary disability periods due to multiple injuries apply inherently. (*Id.* at p. 6.) The WCJ also observes that the EDD has provided benefits to applicant but that the EDD was not served with defendant's Petition. Accordingly, the WCJ recommends that we dismiss defendant's petition for failure to serve a material party, or that we deny the petition on the merits.

The issue of how many cumulative injuries an employee sustained is a question of fact for the WCAB. (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234–235 [20 Cal. Rptr. 2d 26, 58 Cal.Comp.Cases 323] *(Austin); Aetna Casualty & Surety Co. v. Workmen's Comp. Appeals Bd. (Coltharp)* (1973) 35 Cal.App.3d 329, 341 [110 Cal. Rptr. 780, 38 Cal.Comp.Cases 720] *(Coltharp)*.)

In *Coltharp,* applicant's initial work duties, which he described as "heavy labor," caused cumulative trauma resulting in disability and a need for medical treatment, including back surgery. After the applicant returned to work, he was assigned "lighter work" but he still had to do some lifting as well as crawling through pipe. He said of his post-return work duties, "regardless of everything I did, it was aggravating on my back." A physician stated that applicant's post-return cumulative work activities were "the immediate precipitating factor that necessitated" another back surgery. Based on these facts, the *Coltharp* court found that the applicant had sustained two separate cumulative injuries, i.e., one before and one after the initial period of disability and need for treatment, and that to conclude otherwise would violate the anti-merger provisions of sections 3208.2 and 5303.

In *Austin,* applicant's increasing work responsibilities precipitated a major depression, resulting in temporary disability and a need for treatment, including psychiatric hospitalization. After receiving psychiatric treatment and being off work for a period of time, the applicant returned to work. However, when the applicant returned to work, he had not fully recovered from his depressive episode, he remained under a doctor's care and on medication, and he became progressively worse. It was the same stress that resulted in the initial hospitalization that further exacerbated applicant's problem after he returned to work. Based on these facts, the *Austin* court concluded the applicant had only one continuous compensable injury because, unlike *Coltharp*, his two periods of temporary disability were linked by the continued need for medical treatment and the two periods were not "distinct."

Moreover, any determination of how many cumulative injuries an employee sustained must be supported by substantial medical evidence. To constitute substantial evidence "a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

It is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].)

Here, we must determine whether the medical reporting in evidence constitutes substantial evidence. (Lab. Code, §§ 5903, 5952(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. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) If the medical reporting in evidence constitutes substantial evidence based on an adequate medical history coupled with an appropriately explicated analysis, we must then determine whether such reporting supports the claimed cumulative injury through June 9, 2021, and any corresponding periods of temporary total disability.

We also observe that decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) "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. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra,* 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

Additionally, the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board 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].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id*. at p. 404.) Here, based on our preliminary review, it appears that further development of the record may be appropriate.

III.

In addition, 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 [10 I.A.C. 322]) 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 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) 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 [45 Cal.Comp.Cases 410]; *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 Petition 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.

IV.

Accordingly, we grant defendant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Order issued by a workers' compensation administrative law judge on December 13, 2024 is **GRANTED**.

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 24, 2025

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

JOHNNY RAGASA
GEARHEART & SONNICKSEN
SLADE NEIGHBORS
EMPLOYMENT DEVELOPMENT DEPARTMENT

SAR/bp

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