WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIA ALVAREZ, *Applicant*

vs.

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

Adjudication Numbers: ADJ12221657; ADJ13326997
Pomona District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration, the Answer to the Petition, and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will grant defendant's Petition for Reconsideration solely to amend the February 20, 2025 Joint Findings, Order, and Award (F&A) to defer the issue of whether applicant has reached maximum medical improvement in each of the cases (Finding of Fact 4), and otherwise affirm the WCJ.

I.

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 March 26, 2025, and 60 days from the date of transmission is May 25, 2025. The next business day that is 60 days from the date of transmission is May 27, 2025 (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on May 27, 2025, so that 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 March 26, 2025, and the case was transmitted to the Appeals Board on March 26, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 26, 2025.

[1] 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.

II.

It has long been the law that: "…Where the duties of the employee embrace the duties of two forms of occupation, the rating should be for the occupation which carries the higher percentage." (*Dalen v. Worker's Comp. Appeals Bd.* (*Dalen*) (1972) 26 Cal.App.3d 497, 506 [37 Cal.Comp.Cases 393].) The issue addressed by the Court in *Dalen* was which occupation group number accurately reflected the physical demands of the applicant's work. The Court discussed how the occupational group number affected the occupational variant as to each body part. It concluded that "where the duties of the employee embrace the duties of two forms of occupation, the rating should be for the occupation which carries the higher percentage" and the Court instructed the Appeals Board to rate the injured worker's disability by using the occupational group number that resulted in the highest disability rating. (*Dalen*, *supra*, at 506, see fn. 3; *Holt v. Workers' Comp. Appeals Bd.* (1986) 187 Cal.App.3d 1257 [51 Cal.Comp.Cases 576].)

We note that under Labor Code section 5904, the petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the Petition, and in this case the sole contention of the Petition is that applicant's Occupational Group Number should have been 214 instead of 322. The WCJ adequately explains in her Report why she chose Occupational Group Number 322. As is often the case, some of applicant's work activities resemble one Occupational Group Number, while other work activities suggest a different Occupational Group Number. In this case, we are persuaded that Occupational Group Number 322 is the most consistent with applicant's work, for the reasons set forth in the WCJ's Report.

Nonetheless, we observe that 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.

Here, pending development of the record, the WCJ deferred the issues of whether the right wrist and right thumb were injured as a compensable consequence in ADJ12221657 (Finding of

Fact 2) and whether applicant sustained cumulative injury while employed by defendant during the period of September 1, 2005 through August 1, 2019 in ADJ13326997 (Finding of Fact 3). She also deferred the issues of permanent disability, apportionment, and attorney's fees in both cases (Findings of Fact 5, 9). Yet, she found that "[t]he permanent and stationary date [in] ADJ12221657 is 10/25/19, and [in] ADJ13326997 is 9/9/22" (Finding of Fact 4).

Since the WCJ found that further development of the record is appropriate and has not determined the issue of industrial causation of some body parts in ADJ12221657 and the issue of injury arising out of and in the course of employment in ADJ13326997, it is premature to determine whether applicant has reached maximum medical improvement. Thus, we defer the issue of whether applicant has reached maximum medical improvement in both cases.

Accordingly, we grant defendant's Petition for Reconsideration solely to amend the F&A to defer the issue of whether applicant has reached maximum medical improvement in each of the cases (Finding of Fact 4) and otherwise affirm the WCJ.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that the Joint Findings, Order, Award issued by the WCJ on February 20, 2025 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDING OF FACT

4. The issue of whether applicant has reached maximum medical improvement in ADJ12221657 is deferred; and the issue of whether applicant has reached maximum medical improvement in ADJ13326997 is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 27, 2025

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

MARIA ALVAREZ
LAW OFFICES OF RICHARD D. WOOLEY
BLITSTEIN, YOUNG & BLINDER

CWF/*cs*

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Defendant has filed a timely, verified Petition for Reconsideration, dated and received by the Board on 3/17/25, challenging the Joint Findings, Order, Award and Opinion on Decision issued by the undersigned WCJ on 2/20/25. Said order was served by the Pomona District Office on 2/20/25, giving Defendant until 3/17/25, to petition for reconsideration. Defendant's sole contention is that the court found incorrectly that Applicant's Occupational Code No. is 322, as opposed to 214.

This case involves an injured worker, Maria Alvarez, an Elementary Campus Supervisor who was [] years old on the specific date of injury of 10/15/18, when she injured her left hand and wrist by getting them caught in a closing door, and [] years old on the last day of the alleged CT period when she allegedly injured her bilateral hands, right wrist, and right thumb due to cumulative trauma. The case proceeded to trial on 9/9/24, and again on 12/5/24, at which time the matter was submitted.

The court's decision first made some preliminary evidentiary decisions, admitting Applicant's Exhibits 2-8 and pp. 20-22 of Defendant's Exhibit I. The court then made a final decision that Applicant injured her left hand and wrist on 10/15/18, based on the stipulations of the parties, but that she did not hurt her right wrist and thumb that day. The court also awarded further medical treatment for the left hand and wrist. The court then made final decisions regarding the P&S date, finding it to be 10/25/19, on the specific and 9/9/22, on the CT, and found the Applicant's Occupational Group No. to be 322, as advocated for by the Applicant. As for the issue of liability for self-procured medical treatment, the court found insufficient proof of any out-of-pocket expenses to be reimbursed to the Applicant but deferred any such treatment provided on a lien basis.

The court then deferred a finding as to whether Applicant's right wrist and thumb were injured as a compensable consequence of the specific injury pending further development of the record. The court also deferred the issues of causation as to the alleged CT injury, PD and apportionment, further medical treatment for anything besides the left arm and wrist on the specific injury, and attorney fees pending further development of the record.

Defendant contends only that that the evidence does not justify the court's finding of fact #6 that Applicant's Occupational Code No. is 322. Either an answer has not yet been filed by Applicant, or it has not yet been uploaded into FileNet. Based on the discussion below, the court recommends that the Petition be denied.

II

FACTS

The court concurs with the facts recited by Defendant.

III

DISCUSSION

Leaving aside the fact that Defendant's proposed ratings would be the same whether job code 322 or 214 was used, Defendant is correct that impairment number 16.01.04.00 which is for grip/pinch strength loss yields an F variant for job code 214, according to Section 4—Occupational Variants, of the 2005 Schedule for Rating Permanent Disabilities. Thus, if the court were to follow a strict AMA Guides rating of Dr. Simpkins' 9/9/22, and 12/31/20 reports, then using job code 214, the left grip loss portion of the rating would come in at 31% instead of 34%. The court overlooked this when the opinion on decision was written. Nevertheless, the court believes that job code 322 is still appropriate because rolling a cart around with food and drinks several times in a workday is typical of a flight attendant. Flight attendants do not cook food either. They just heat it up, like the Applicant. The court concedes that flight attendants probably have to load their rolling carts themselves, however. But other than that, the court believes that flight attendants do no other heavy lifting and sit for a large portion of a flight. Similarly, waiters and waitresses do not cook food either. They simply bring it to the diners. This is essentially what Applicant testified she did as part of her food service duties.

Defendant makes a good argument that Part B—Occupational Group Chart, of the 2005 Schedule for Rating Permanent Disabilities, shows that codes 210, 211, 212, 213, and 214, which includes administrative clerks, bank clerks, and general clerks are designated as light strength jobs. But these are all categorized as professional, technical, and clerical occupations. The court agrees that a bank clerk is a lot like an elementary school teacher insofar as a great deal of mental activity is required for the job such as dealing with books, paperwork, and numbers. But that has very little to do with Applicant's responsibilities, however. Exhibit D showed that Applicant's job as a

campus supervisor entails a "severely limited scope of responsibility" and that, unlike instructional aide classifications, they "are not involved in assisting students reach educational objectives."

And while the court agrees that Applicant's job does not seem very similar to a die maker, meter repair, or precision assembly, Part A—List of Occupations and Group Numbers, and Part C—Occupational Group Characteristics, of the 2005 Schedule for Rating Permanent Disabilities clearly shows that waiter/waitress is a 322 and that flight attendant is a 322, as well. In fact, according to Part A—List of Occupations and Group Numbers, other occupations that are a 322 include a bartender, a bus person, a caterer, a coffeemaker, a counter attendant—cafeteria, a dining room attendant, a dishwasher—hand or machine, a fast foods worker, and a kitchen helper. None of these seem like jobs with especially heavy duties, but they do seem like jobs involving food and beverage service along similar lines as what the Applicant was doing. Exhibit D supports this showing Applicant's expected duties included wiping down tabletops during and after breakfast and lunches, setting up table's family style, assisting students in emptying their trays, and cleaning tables after meals by removing the family style dishes, wiping down the tables with soap and water, and spraying the tables with spray.

In contrast, according to Part A—List of Occupations and Group Numbers, job code 214, in addition to including teachers and teacher aides, also includes such things as bagger, cashier, file clerk, film or tape librarian, instructor—vocational training, interior designer, media specialist—school library, order clerk, order filler—catalog sales, parts clerk, parts order and stock clerk, pit boss/floor person, retail clerk, sales clerk, salesperson—general merchandise, salesperson—parts, salesperson—shoes, service manager, shipping checker, shop estimator, sorter—pricer, stock clerk, stock clerk—automotive equipment, teller—vault, umpire, vault cashier, and weigher—shipping and receiving. None of these jobs seem all that similar to what Applicant was doing.

IV

RECOMMENDATION

It is therefore recommended that the Petition for Reconsideration be denied.

DATE: 3/20/2025

Respectfully submitted,

Ashley L. Odor

WORKERS' COMPENSATION JUDGE