WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARIO MANRIQUEZ, JR. ***Applicant***

vs.

STATE COMPENSATION INSURANCE FUND,
legally uninsured; administered by AIMS, ***Defendants***

Adjudication Number: ADJ2574910 (ANA 0328189)
Santa Ana District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted both applicant and defendant's Petitions for Reconsideration of the Findings of Fact, Orders and Award (F&A) issued on July 14, 2023, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that defendant had unreasonably delayed medical treatment and awarded 25% penalties on the delayed treatment. The WCJ further found that applicant suffered new and further disability, but deferred any finding as to the extent of such disability. The WCJ found that a prior panel should not be replaced and ordered further development of the record with the current qualified medical evaluator (QME).

Applicant contends that the WCJ erred because the current QME is not substantial medical evidence and that an evaluation with a new QME is warranted.

Defendant contends that the WCJ erred because the finding of new and further disability is not based upon substantial medical evidence and that further development of the record is not necessary on the issue. Defendant further contends that applicant's petition to reopen, which was filed in 2002, is procedurally defective. Defendant further contends that it is not liable for penalties because it could not comply with the order to provide applicant treatment.

We have received a request from applicant to admit additional exhibits, which we deny without prejudice.[1] Applicant filed a supplemental Petition for Reconsideration, which we have considered. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration we will rescind the July 14, 2023 F&A and substitute a new F&A, which defers the issues of new and further disability and penalties and returns the matter to the trial level for further proceedings including appointment of a regular physician pursuant to Labor Code[2] section 5701.

FACTS

Per the WCJ's Report:

> Mario Manriquez [was] employed June 1,1992 to September 3,1998 as an Attorney, at Riverside, California, by State Compensation Insurance Fund, legally uninsured, sustained injury arising out of and occurring in the course of said employment to his cardiovascular system resulting in hearing loss, tinnitus, and dental compensable consequences. (Citation.) At the time of injury the employer was legally uninsured. (Citation.) Its third-party administrator is AIMS. (Citation.)
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> Dispute arose regarding need for medical treatment in the form of hearing aids and dental work. (Citation.) Defendant has provided some dental care (citation,) and hearing loss treatment, including reimbursement for hearing aids. (Citation.) Some dental treatment remains unauthorized as does replacement hearing aids and a TV streamer attachment to them.
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> Expedited Hearing, then trial process took place concluding on [01/5/2023] regarding disputed issues of unauthorized dental treatment, replacement of previously authorized hearing aids and a TV streamer attachment to replacement hearing aids. Findings of Fact Award and Order issued 02/13/2023 awarding Applicant (a) replacement of bilateral hearing aids, (b) bilateral hearing aid TV attachment and ordering Defendant to provide both. (Citation.)
>
> The 02/13/2023 Findings of Fact Award and Order is final as no Petition for Reconsideration was filed.
>
> The parties returned to trial on 6/20/2023 on unresolved issues of regulatory filing compliance of Applicant's Petition to Reopen, whether there exists new and further injury, whether hearing loss and tinnitus treatment had been properly provided,

[1] Applicant may present this evidence at a future trial when this matter is resubmitted.
[2] All future references are to the Labor Code unless noted.

whether a primary treating physician had been properly designated, whether in-person testimony was required, the striking of a panel qualified medical evaluator and whether Defendant is subject to Labor Code §§5813-14 penalties, costs and/or sanctions.

The Findings of Fact issued 07/14/2023 enumerated fourteen (14) facts upon which four (4) orders and one (1) award issued. (Citation.) Orders and Award issued 07/14/2023 ordering Defendant to authorize the primary treating physician designated by Applicant, to again provide Applicant with bilateral hearing aid replacement and T.V. attachment not having been provided at or before the time of trial, denying replacement of panel in light of prior order of Workers' Compensation Judge Pamela Stone and directing parties the develop the medical record with specificity based on the 14 facts found as well as evidentiary record on Labor Code §5813 dispute(s). (Citation.)

Applicant was also awarded twenty-five percent (25%) of the costs of bilateral hearing aid replacement and T.V. attachment not to exceed ten thousand dollars ($10,000.00), whichever is less, based on the facts found relevant thereto. (Citation.)

Defendant filed timely Petition for Reconsideration asserting the undersigned acted without or in excess of his powers, that trial evidence does not support the fourteen (14) Findings of Fact upon which the orders and award is based, and the Findings of Fact do not support the Joint Findings and Award.

Defendant seeks reconsideration from the Findings of Fact, Orders and Award issued 07/14/2023. (Citation.) Applicant also seeks reconsideration from the Findings of Fact, Orders and Award issued 07/14/2023 but only for the limited remedies of striking the reporting of Dr. Nehls Betancourt M.D. from the record for replacement panel reporting.

(WCJ's Report, pp. 2-4.)

In the Report, the WCJ further notes the discrepancies in the QME's reporting as follows:

Applicant's Petition to Reopen asserts "consequential injury to pulmonary system and chronic fatigue." (Citation.) Dr. Betancourt identifies obstructive sleep apnea, insomnia, hypertension, bronchial asthma, hypothyroidism and benign prostatic hypertrophy in his reporting. (Citation.) His opinion is "there is no current evidence of new and further injury stemming from his original *specific* cardiovascular event on September 9, 1998." (Citation.)

The undersigned acknowledges contradictory findings as well as self-limiting statements in Dr. Betancourt's reporting. It is why the reporting is not to be substantial medical evidence on the issue of whether there is new and further injury.

> Dr. Betancourt's opinions may be admissible on remaining issues given prior appointment order now final. However, his reporting is not considered substantial medical evidence, not without further development of the record by the undersigned.
>
> Dr. Betancourt's reporting is on the one hand contradictory, finding "(i)n my professional opinion, and within reasonable medical probability, the subsequent cardiovascular events were solely attributable to the natural progression of his cardiovascular disease. The natural progression is solely attributable to his multiple, underlying, pre-existing, non-occupational risk factors as noted above." (Citation.) That opinion is followed by "I will be glad to calculate his current impairment rating under the old State of California Rating Schedule once the test results (listed above) and updated cardiovascular status related information (I am sure he has periodic testing by his cardiologists) is available for my review." (Citation.)
>
> Perhaps this is Dr. Betancourt himself recognizes the clear nature of this as a cumulative trauma claim, not a specific, in which he finds "no evidence of new and further stemming from his original *specific*…event." *Supra*. Perhaps it is otherwise. The record requires further development including review of testing to know within all reasonable medical probability according to his own reporting. (Citation.)

(*Id*. at pp. 7-8.)

DISCUSSION

1. New and further disability.

Section 5313 requires a WCJ to state the "reasons or grounds upon which the determination was made." The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision "must be based on admitted evidence in the record" (*Hamilton*, *supra*, at p. 478), and must be supported by 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].) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton*, *supra*, at p. 475.)

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).) "When the foundation of an expert's testimony is determined to be inadequate as a matter of law, we are not bound by an apparent conflict in the evidence created by his bare conclusions." (*People v. Bassett* (1968) 69 Cal.2d 122, 139.)

Applicant may seek to increase a disability award where new and further disability exists. (§ 5410.) Section 5410 states, in pertinent part: "Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability." (§ 5410, (emphasis added).)

Here, the WCJ issued a finding that applicant sustained new and further disability, but the WCJ deferred any determination of the extent of such disability. This is a contradiction. In order to support a finding of new and further disability, there must necessarily exist a finding establishing such disability. For the reasons discussed in the WCJ's Report, we agree that the current record does not constitute substantial medical evidence. Thus, we cannot determine whether applicant has sustained new and further disability absent a determination of any additional periods of temporary disability, or a final rating of permanent disability. Accordingly, we will amend the F&A to defer any finding of new and further disability, until it can be determined what disability exists.

2. Applicant' request for a replacement panel.

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.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) However, where the medical record remains deficient following a

return to the prior physicians, or where good cause exists otherwise, the WCJ may order an examination of applicant to proceed with a regular physician appointed by the WCJ. (§ 5701.)

Applicant argues that the QME's reporting should be stricken and a new QME should be assigned. That is not proper procedure when dealing with insubstantial reporting. However, we will treat applicant's petition as requesting appointment of a regular physician given the long case history and multiple deficient reports that have issued. The current QME continues to refer to applicant's injury as a specific event, even though it is stipulated as a cumulative injury. It does not appear that further development of the record with the current QME will be fruitful. Accordingly, we will order appointment of a regular physician and return this matter to the trial judge to execute that appointment, which includes selecting the regular physician and issuing appropriate orders.

3. The petition to reopen was not defective.

Over 22 years after it was filed, and after the parties have conducted decades of discovery on the petition to reopen, defendant argues that the petition should be summarily dismissed because it was procedurally defective when it was filed. It does not appear that defendant is raising this argument in good faith.

In workers' compensation proceedings, it is well-settled law that:

(1) <u>*pleadings may be informal*</u> (*Zurich Ins. Co., supra*, 9 Cal. 3d at p. 852; *Bland, supra*, 3 Cal. 3d at pp. 328–334; *Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal. App. 4th 485, 491; *Rivera v. Workers' Comp. Appeals Bd.* (1987) 190 Cal. App. 3d 1452, 1456 [236 Cal. Rptr. 28, 52 Cal. Comp. Cases 141]; *Liberty Mutual Ins. Co v. Workers' Comp. Appeals Bd.* (*Aprahamian*) (1980) 109 Cal. App. 3d 148, 152–153 [167 Cal. Rptr. 57, 45 Cal. Comp. Cases 866]; *Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal. App. 3d 590, 594–595 [126 Cal. Rptr. 187, 40 Cal. Comp. Cases 784]; *Beaida v. Workmen's Comp. Appeals Bd.* (1968) 263 Cal. App. 2d 204, 207–210 [33 Cal. Comp. Cases 345]);

(2) <u>*claims should be adjudicated based on substance rather than form*</u> (*Bland, supra*, 3 Cal. 3d at pp. 328–334; *Martino, supra*, 103 Cal. App. 4th at p. 491; *Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal. App. 3d 1102, 1116 [252 Cal. Rptr. 868, 53 Cal. Comp. Cases 502]; *Rivera, supra*, 190 Cal. App. 3d at p. 1456; *Beveridge v. Industrial Acc. Com.* (1959) 175 Cal. App. 2d 592, 598 [346 P.2d 545, 24 Cal. Comp. Cases 274]);

(3) *pleadings should liberally construed so as not to defeat or undermine an injured employee's right to make a claim* (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal. App. 4th at pp. 925–926 [72 Cal. Comp. Cases 778]); *Martino, supra*, 103 Cal. App. 4th at p., 490; *Rubio, supra*, 165 Cal. App. 3d at pp. 199–201; *Aprahamian, supra*, 109 Cal. App. 3d at pp.152–153; *Blanchard, supra*, 53 Cal. App. 3d at pp. 594–595; *Beaida, supra*, 263 Cal. App. 2d at pp. 208–209); and;
(4) *technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction* (*Bland, supra*, 3 Cal. 3d at pp. 331–332 & see fn. 13; *Rivera, supra*, 190 Cal. App. 3d at p. 1456; *Aprahamian, supra*, 109 Cal. App. 3d at pp. 152–153; *Blanchard, supra*, 53 Cal. App. 3d at pp. 594–595; *Beaida, supra*, 263 Cal. App. 2d at pp. 208–210).

Applicant's petition to reopen was not defective as applicant requested specific relief under the Labor Code. Even if we were to find the petition defective, defendant's subsequent litigation conduct, which led applicant to believe that a proper petition to reopen had been filed, and defendant's decision to wait over 22 years to raise this issue would appear to bar the issue by the principles of laches and / or estoppel.

4. The issue of penalties is deferred.

Section 5814 allows an award of penalties where payment of compensation is unreasonably delayed. (§ 5814.)

On February 13, 2023, defendant was ordered to provide applicant replacement hearing aids with a TV attachment. That order was not appealed and it is now final. Defendant *argues* that it was precluded from complying with this order because the treating doctor was unable to set an appointment timely. However, arguments are not evidence. Defendant's petition does not cite to any evidence establishing the fact that defendant was precluded from authorizing the ordered treatment.

Next, defendant provided no evidence of its efforts to comply with the February 13, 2023 order. The only evidence in the record is an email chain between defense counsel and applicant, which does not discuss the authorization for replacement hearing aids. (Defendant's Exhibit G.) Defendant's position appears to be that applicant is not doing enough to obtain the hearing aids; however, defendant has not provided any evidence of what efforts it has made to authorize the treatment. For example, defendant could have mailed a letter to Dr. Xu specifically authorizing the acquisition of the hearing aids. No such letter is in evidence. Defendant's argument that applicant is preventing the authorization is not supported by any record.

However, and notwithstanding the above observations, the burden of proof to establish penalties is on applicant. (§ 5705.) Given the dearth of information in the current record, we are not convinced that applicant established that defendant *unreasonably* delayed provision of the authorized treatment. If applicant only wished Dr. Xu to provide the hearing aids, and if the delay was caused by Dr. Xu's office, defendant would not be liable for penalties. Thus, we will order the issue of penalties deferred. All parties should proceed with diligence to ensure that the ordered treatment is provided.

Accordingly, as our Decision After Reconsideration we rescind the July 14, 2023 F&A and substitute a new F&A, which defers the issues of new and further disability and penalties and returns the matter to the trial level for further proceedings including appointment of a regular physician pursuant to section 5701.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, Orders and Award issued on July 14, 2023, by the workers' compensation administrative law judge is **RESCINDED** with the following **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Applicant's Petition for New and Further Disability was properly filed.
2. The issue of new and further disability is deferred.
3. The issue of penalties is deferred.
4. Applicant's Labor Code §4600 election of primary treating physician is valid.
5. The medical reporting of Nehls Betancourt, M.D., is not substantial medical evidence, and it does not appear that returning to Dr. Betancourt for further development of the record will be fruitful.

ORDERS

1. Defendant shall authorize Dr. Ganiyu Oshodi M.D. as the primary treating physician.
2. Defendant shall provide applicant with bilateral hearing aid replacement and T.V. attachment.

3. A regular physician under Labor Code section 5701 shall be appointed in this case and the selection of that physician is deferred to the trial judge to issue the appropriate appointment orders.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 5, 2025

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

MARIO MANRIQUEZ, JR., IN PRO PER
MULLEN & FILLIPI, LLP

EDL/mc

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