WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

WILLIAM OHMAN, *Applicant*

vs.

WASHINGTON NATIONALS; CINCINNATI REDS; CHICAGO WHITE SOX; FLORIDA MARLINS; BALTIMORE ORIOLES; LOS ANGELES DODGERS; ATLANTA BRAVES; CHICAGO CUBS; ACE AMERICAN INSURANCE COMPANY, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ10607572
Santa Ana District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION, GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant and defendant both seek reconsideration of the January 31, 2025 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a professional athlete from June 21, 1998 to March 5, 2013 by the Chicago Cubs, Atlanta Braves, Los Angeles Dodgers, Baltimore Orioles, Florida Marlins, Chicago White Sox, Cincinnati Reds, and the Washington Nationals, sustained industrial injury to his head in the form of headaches, vision, jaw, neck, back, bilateral shoulders, bilateral elbows, bilateral wrists, bilateral hands, bilateral fingers, bilateral hips, bilateral knees, bilateral ankles, bilateral feet, toes, neuro, psych, internal, and sleep. The WCJ found in relevant part that applicant sustained permanent partial disability of 75 percent and awarded corresponding indemnity less attorney's fees.

Applicant contends that the WCJ's award does not account for alleged psychiatric impairment.[1]

[1] Applicant also filed a February 24, 2025 letter to the WCJ requesting an increase in attorney's fees. Although the WCJ responded to the issue in her Report, we do not address the issue because we are deferring the issue of attorney's fees and the WCJ must address it in the first instance when she issues a new decision.

Defendant contends the WCJ improperly relied on reporting from applicant's evaluating physicians in violation of Labor Code[2] sections 4600, 4061, and 4062, and that the F&A is not based on substantial evidence. Defendant further avers the WCJ should have declined to exercise jurisdiction over the Cincinnati Reds.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny defendant's Petition, grant applicant's Petition, and return the matter to the trial level for development of the record.

We have considered the allegations of the Petition for Reconsideration 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 discussed below, we will deny defendant's petition, grant applicant's petition, amend the F&A, and return this matter to the trial level for further proceedings.

FACTS

Applicant claimed injury to his head in the form of headaches, vision, jaw, neck, back, bilateral shoulders, bilateral elbows, bilateral wrists, bilateral hands, bilateral fingers, bilateral hips, bilateral knees, bilateral ankles, bilateral feet, bilateral toes, neuro[logical system], psych[e], internal, and sleep, while employed as a professional athlete by defendant Washington Nationals, Cincinnati Reds, Chicago White Sox, Florida Marlins, Baltimore Orioles, Los Angeles Dodgers, Atlanta Brave and Chicago Cubs from June 21, 1998 to March 5, 2013.

On October 2, 2024, the parties proceeded to trial and framed for decision issues including injury arising out of and in the course of employment (AOE/COE), permanent disability, and apportionment. The parties also framed issues of the date of injury under section 5412 and "choice of law, choice of forum." (Minutes of Hearing and Summary of Evidence, dated October 2, 2024, at p. 2:16.)

On January 31, 2025, the WCJ issued her F&A, determining in relevant part that applicant sustained industrial injury to his head in the form of headaches, vision, jaw, neck, back, bilateral shoulders, bilateral elbows, bilateral wrists, bilateral hands, bilateral fingers, bilateral hips, bilateral knees, bilateral ankles, bilateral feet, toes, neuro, psych, internal, and sleep, resulting in

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

75 percent permanent partial disability less 15 percent attorney's fees. (Findings of Fact, Nos. 1, 5 & 7.)

Applicant's Petition avers the WCJ's finding of permanent disability omitted applicant's psychiatric disability. (Applicant's Petition, at p. 4:4.) Applicant further contends that notwithstanding the restrictions set forth in section 4660.1 for injuries occurring after January 1, 2013, applicant's psychiatric injury was a direct injury rather than a compensable consequence injury and thus compensable. (*Id.* at p. 4:19.)

Defendant's Petition challenges the WCJ's reliance on the reports of evaluating physicians Dr. Fonceca (orthopedic medicine), Greenzang (psychiatry), Nudleman (neurology), and Dimmick (internal medicine), averring their reporting is neither admissible nor substantial evidence. (Defendant's Petition, at p. 3:24.) Defendant contends the F&A finds injury to body parts for which there is no corresponding medical or medical-legal reporting substantiating the claimed injury. (*Id.* at p. 8:14.) Defendant also contends that because the Cincinnati Reds never employed applicant in California and never hired applicant in California, the WCJ should have applied the choice of law and choice of forum selections clause in that contract and declined to exercise jurisdiction over applicant's claim. (*Id.* at p. 9:4.)

The WCJ's Report reviews the submitted medical evidence and recommends that we grant Applicant's Petition for the purpose of developing the record with respect to the nature and extent of the injury, including parts of body injured. (Report, at p. 3.) With respect to defendant's Petition, the WCJ observes that applicant's hiring in California was a sufficient basis upon which to exercise California jurisdiction over the claim. (*Ibid*.) With respect to defendant's contention that the reporting of applicant's evaluating physicians is inadmissible and not substantial evidence, the WCJ observes that applicant's reporting was the sole body of medical reporting offered in evidence, and that the WCJ reviewed the admitted reports and found them persuasive and well-reasoned. Accordingly, the WCJ recommends we deny Defendant's Petition.

DISCUSSION

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 March 7, 2025, and 60 days from the date of transmission is May 6, 2025. This decision is issued by or on May 6, 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 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 March 7, 2025, and the case was transmitted to the Appeals Board on March 7, 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 March 7, 2025.

II.

We begin our discussion with the issue of nature and extent of the claimed injury. Applicant avers injury to multiple body parts and systems, including head in the form of headaches, vision, jaw, neck, back, bilateral shoulders, bilateral elbows, bilateral wrists, bilateral hands, bilateral fingers, bilateral hips, bilateral knees, bilateral ankles, bilateral feet, bilateral toes, neuro[logical system], psyche, internal system, and in the form of sleep disorder. (Minutes, at p. 2:4.) The WCJ's F&A found injury to each of the claimed body parts. (Finding of Fact No. 1.)

Applicant contends that notwithstanding the limitations on compensable consequence psychiatric injuries found in section 4660.1, applicant sustained direct psychiatric injury resulting in compensable permanent disability. (Applicant's Petition, at p. 4:4.) Applicant contends it was error not to include the impairment identified in the reporting of Dr. Greenzang in the calculation of final permanent disability.

Defendant's Petition avers that the medical evidence does not substantiate injury to applicant's vision, jaw, right elbow, right knee, right foot, bilateral toes, internal system other than hypertension, head, or sleep disorder. (Defendant's Petition, at p. 8:14.)

The WCJ's Report observes that any decision, award or order of the Appeals Board must be supported by substantial evidence in light of a review of the entire record. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310].) Following a review of the entire record, the WCJ recommends that we grant reconsideration and return the matter to the trial level for development of the medical and medical-legal record with respect to the nature and extent of the injury.

We agree. 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.) Accordingly, the Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that "[s]ections 5701 and 5906

authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record…the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*McDuffie, supra*, at p. 141.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*Ibid*.)

Here, following our independent review of the record occasioned by both applicant's and defendant's Petitions, we concur with the WCJ's conclusion that the record must be developed to address the nature and extent of the claimed injury. We observe that the F&A does not specifically address with specificity each of the body parts found to be industrial and does not analyze the issue of whether applicant's claim of psychiatric injury is compensable. Accordingly, and pursuant to the WCJ's recommendation, we will grant reconsideration and return this matter to the trial level for development of the record regarding the nature and extent of the injury.

We next address defendant's contention that the reporting of applicant's treating physicians is inadmissible. Defendant contends the reporting of primary treating physician (PTP) Dr. Fonseca does not reflect an actual treatment relationship with applicant, nor can it describe a treatment relationship when the treating physician opines applicant became permanent and stationary more than three years prior to the evaluation. (Defendant's Petition, at p. 3:23; 4:11.) Defendant further contends that none of applicant's evaluations by Drs. Greenzang, Nudleman, and Dimmick were accomplished by an appropriate referral from the PTP, and accordingly, were not an appropriate basis upon which to issue an Award. (*Id.* at p. 6:23.)

However, as is noted in the Report, the reporting of applicant's treating physicians was the sole body of medical reporting offered into evidence. (Report, at p. 3.) Although the record contains some evidence of a Qualified Medical Evaluation (QME) accomplished by Dr. Naresh Sharma on September 18, 2017, no corresponding reporting has been received in evidence. (See Ex. 12, Correspondence from Defense Counsel to Exam Works, dated December 19, 2017, p. 18.)

Here, based on her review of the admitted evidence, "the WCJ reviewed those reports submitted and assessed if they were persuasive and well-reasoned … a judge has discretion to rely on evidence submitted or further develop the record." (Report, at p. 3.) It is well-established that the WCJ and the Appeals Board are empowered to choose among conflicting medical reports and rely on that which is deemed most persuasive. (*Jones v. Workmen's Comp. Appeals Bd.* (1968) 68

Cal.2d 476 [33 Cal.Comp.Cases 221].) Moreover, section 4060(b) provides that "reports of treating physicians shall be admissible." (Lab. Code, § 4060(b).) Accordingly, we decline to disturb the WCJ's reliance on the reporting of applicant's treating physicians, the sole body of medical reporting admitted in evidence.

Finally, we address defendant's contention that the "WCJ incorrectly refused to enforce the Reds valid choice of law and choice of forum selection clause in their contract pursuant to the holding in the en banc decision of *McKinley v. Arizona Cardinals* (2013) 78 Cal.Comp.Cases 23." (Defendant's Petition, at p. 9:4.) Defendant asserts that because the Reds "never employed the Applicant in California and did not enter into a contract of hire with Applicant in California," the forum selection clause in applicant's contract with the Reds must be enforced. (*Id.* at p. 9:11.)

In *McKinley, supra*, we held that where a claimed injury has a limited connection to California, the WCAB will decline to exercise jurisdiction when there is a reasonable mandatory forum selection clause in the employment contract specifying that claims for workers' compensation shall be filed in a forum other than California. (*Id.* at p. 24.) However, our analysis of California contacts in *McKinley* was necessary because applicant was not hired in California, which would otherwise provide a "jurisdictional basis for legislating the terms of the employment agreement and hearing the workers' compensation claim." (*Id. at p.* 32.)

Here, applicant was hired in California on multiple occasions. Applicant's unrebutted testimony establishes that he signed his first multi-year contract with the Chicago Cubs in 1998 while physically located at his future father-in-law's home in Menlo Park, California. (Transcript of Proceedings, September 18, 2018, at p. 13:20; 14:4.) Applicant signed a subsequent contract with the Cubs while physically located in California. (*Id.* at p. 13:31.) Applicant's testimony also establishes that he signed his major league contract with the Los Angeles Dodgers while physically located at Dodger Stadium, in Los Angeles, California. (*Id*. at p. 16:11.) Applicant's hirings in California are sufficient to confer jurisdiction over the subject matter of the claim, which is the alleged cumulative injury. (*Alaska Packers Assn. v. Industrial Acc. Com. (Palma)* (1934) 1 Cal.2d 250, affd. (1935) 294 U.S. 532 (*Palma*); *Bowen v. Workers' Comp. Appeals Bd.* (1999) 73 Cal.App.4th 15, 27 [64 Cal.Comp.Cases 745] ["an employee who is a professional athlete residing in California … who signs a player's contract in California furnished to the athlete here by an out-of-state team, is entitled to benefits under the act for injuries received while playing out of state under the contract"]; *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (2013) 221

Cal.App.4th 1116, 1126 [78 Cal.Comp.Cases 1257] (*Johnson*) ["[T]he creation of the employment relationship in California, which came about when [Mr. Palma] signed the contract in San Francisco, was a sufficient contact with California to warrant the application of California workers' compensation law"].)

Thus, applicant's hiring in California is by itself sufficient connection with California to support the exercise of WCAB jurisdiction over a workers' compensation claim. (*Jackson v. Cleveland Browns* (December 26, 2014; ADJ6696775) [2014 Cal. Wrk. Comp. P.D. LEXIS 682].) Where the hiring is made in California, the employee "shall be entitled to the compensation … provided by this division" (Lab. Code, § 5305), and "shall be entitled to compensation according to the law of this state." (Lab. Code, §3600.5(a).) The word "shall" as used in the Labor Code is mandatory. (Lab. Code, § 15; *Smith v. Rae-Venter Law Group* (2003) 29 Cal. 4th 345, 357 [127 Cal. Rptr. 2d 516].) As we noted in *Jackson, supra,* 2014 Cal. Wrk. Comp. P.D. LEXIS 682, the conferral of jurisdiction arising out of California contracts of hire as embodied in sections 5000, 5305, and 3600.5(a) reflects the public policy of California, and precludes the enforcement of the choice of law/forum selection clauses that purport to deprive California of that jurisdiction. Accordingly, we are persuaded that applicant's California hiring is sufficient to justify the exercise of California jurisdiction over claim.

We also note that in addition to the substantive analysis above, our May 16, 2024 Opinion and Decision After Reconsideration determined that pursuant to sections 5305 and 3600.5, the WCAB has subject matter jurisdiction over the claimed cumulative injury. (Opinion on Decision After Reconsideration, dated May 16, 2024, at p. 11.) Insofar as defendant avers the Appeals Board should decline to exercise jurisdiction over the applicant's claim of cumulative injury, no party timely sought review of our 2024 decision, and as such, the issue of the Appeals Board's jurisdiction over this claim is now final. (Lab. Code, § 5904; *Bussa v. Workmen's App. Bd.* (1968) 259 Cal.App.2d 261 [33 Cal.Comp.Cases 124] [points not raised in petition for reconsideration are deemed finally waived and cannot be considered on review by appellate court]; *Guerra v. Workers' Comp. Appeals Bd.* (2016) 246 Cal.App.4th 1301, 1305, fn. 3 [81 Cal.Comp.Cases 324].)

Based on the foregoing, we will deny Defendant's Petition.

However, because we agree with the WCJ's recommendation that the record be developed with regard to the nature and extent of the injury, including both the body parts injured, as well as any permanent disability arising therefrom, we will grant applicant's petition and affirm the

finding of injury AOE/COE to the body parts described in Finding of Fact No. 1 with the exception of vision, jaw, right elbow, right knee, right foot, bilateral toes, internal system other than hypertension, head, sleep disorder, and psyche, which we will defer. We will further rescind Findings of Fact Nos. 5, 6, and 7, concerning permanent disability, life pension, and attorney fees, respectively, and defer those issues. We will also rescind the corresponding Award of permanent disability, life pension, and attorney fees. We will then return this matter to the trial level for further proceedings and decision by the WCJ.

For the foregoing reasons,

IT IS ORDERED that defendant's petition for reconsideration of the decision of January 31, 2025 is **DENIED**.

IT IS FURTHER ORDERED that applicant's petition for reconsideration of the decision of January 31, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of January 31, 2025 is **AFFIRMED,** except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant William Ohman sustained injury arising out of and during the course of employment in the form of headaches, and to the neck, back, bilateral shoulders, left elbow, bilateral wrists, bilateral hands, bilateral fingers, bilateral hips, left knee, bilateral ankles, left foot, neurologic system and hypertension, while employed between the period June 21, 1998 through March 5, 2013, as a professional athlete, group number 590, by the following organizations: Chicago Cubs, Atlanta Braves, Los Angeles Dodgers, Baltimore Orioles, Florida Marlins, Chicago White Sox, Cincinnati Reds, and the Washington Nationals.
2. The issue of injury to the body parts of vision, jaw, right elbow, right knee, right foot, bilateral toes, internal system other than hypertension, head, sleep disorder, and psyche, is deferred.
3. The date of injury under Labor Code section 5412 is October 14, 2016.
4. Applicant became permanent and stationary as of March 30, 2017.
5. Applicant is in need of further medical care to cure or relieve the effects of the injury.
6. The issues of permanent disability, including any life pension, and associated attorney's fees, are deferred.
7. The issues of liability for the loan to applicant from Glenn Stuckey & Partners, expenses for the QME in the amount of $991.83, the retainer fee for Dr. Greenzang in the amount of $2,700.17, and the retainer fee for Dr. Nudleman in the amount of $1,090.99 are deferred.
8. The issue of liability for self-procured treatment is deferred.

AWARD

AWARD IS MADE in favor of **WILLIAM OHMAN** against **WASHINGTON NATIONALS ET AL.; ACE AMERICAN INSURANCE** administered by **SEDGWICK** of:

a. Future medical treatment to cure or relieve from the effects of injuries.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 6, 2025

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

WILLIAM OHMAN
GLENN STUCKEY & PARTNERS
BOBER, PETERSON & KOBY

SAR/abs

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