

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

LANCE FOREMAN, *Applicant*

vs.

**GRUNDFOS AMERICAN CORPORATION AND TRAVELERS PROPERTY
CASUALTY COMPANY OF AMERICA, *Defendants***

**Adjudication Number: ADJ13690978
Oakland District Office**

**OPINION AND ORDER
GRANTING PETITIONS FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

We have considered the allegations of the Petitions 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 stated in the WCJ's report, which we adopt and incorporate, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the October 20, 2021 Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the October 20, 2021 Findings and Award is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 30, 2021

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

**BRIAN THORNTON
LANCE FOREMAN
LAURA CHAPMAN & ASSOCIATES**

PAG/oo

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

By a timely and verified Petitions for Reconsideration, defendant and applicant separately seek reconsideration of my October 20, 2021 Findings and Award, wherein I found that applicant, while employed as a service mechanic (Occupational Group 370), sustained injury arising out of and in the course of employment in the form of a hernia, causing temporary disability of 14%, with an award of 15% attorney's fee. The Award portion of the Award provides for permanent disability of 15%. I further found that there is no good cause to reopen discovery.

Defendant contends: (1) discovery should not have been closed on all issues; (2) there is no basis for the finding of injury AOE/COE; (3) there is no basis for an award of temporary disability; (4) there is no basis for the reference to a finding of psychiatric injury as set forth at page 3 of the Opinion on Decision; and (5) there is a basis for apportionment of permanent disability. Applicant contends that the record supports a finding of permanent disability of 14%.

I have reviewed the petitions, and I note that there are procedural and clerical errors which warrant that reconsideration be granted, that the Findings and Award be rescinded, and that the matter be returned to the trial level for a further proceedings to correct the errors and determine the issues to be determined for trial.

FACTUAL BACKGROUND

The background is set forth at pages 1-3 of my Opinion on Decision as follows:

1. Testimony of Applicant

Mr. Foreman testified on direct examination that the history of his injury, as set forth in Dr. Roger Nacouzi's QME report (Applicant's Exhibit 1) and his written statement (Defendant's Exhibit D) are accurate. (Minutes of Hearing and Summary of Evidence [MOH/SOE], August 25, 2021 at p. 4.)

On cross-examination, applicant stated that his first treatment with an employer-provided doctor was about April 22, 2020, as Applicant generally recollects.

He didn't report the injury for a week. He saw other doctors before April 22, 2020; the ER doctor and his personal doctor (Dr. Sherry Albrecht), who

referred him to West Coast Surgical Associates. He was seen there on March 9, 2020 (Defendant's Exhibit B).

It's incorrect that he injured himself while doing sit-ups. He was sitting up in bed and then, in self-exploration to figure out what was wrong with him, he noticed he was weak. He did sit-ups to see what his problem was with his stomach.

He was seen at West Coast at least one more time. There is a reference on March 25, 2020. He didn't correct the error in the March 9, 2020 report, but he may not have been aware of it at that time.

He did not want to go and have to get surgery at the time of his injury because COVID was a big concern to him with any treatment needed. He also did not want to have a work injury because of how it would affect his job, and he believed he may not get hired for additional jobs if he had a work injury. He dragged his feet in reporting the injury for these reasons. He eventually realized that he could not hide his injury anymore, and he notified his employer about two weeks after the injury, and he then provided his account of the injury.

In the March 25, 2020 report under "HPI," there is a reference that he had to carry 50-70 pounds of equipment while going down stairs. This information is not completely accurate. This was merely an example of his work duties, but not a description of the injury, which also involved stairs.

He never told a physician that he was injured at the Transbay terminal. He replaced the pumps at the Transbay terminal months before the injury. He doesn't believe that he gave an address of the injury location to a doctor.

He was asked about treating with Dr. Yong-Shih (surgeon), but he can't recall this doctor by name.

He recalls being seen for treatment at CCCMA. He was referred to a May 29, 2020 report from CCCMA which references Applicant carrying heavy concrete blocks. He recalls telling his surgeon that he was carrying grouting material on the date of injury, which is similar to concrete bags. He was not carrying actual concrete blocks.

He told his doctors that he has a hernia, and that he has a hard job. He did not want to file a work-related claim, and came to terms with this when he saw Dr. Sherry Albrecht.

He was working from February 29, 2020 through March 18, 2020, and then up until he had his surgery. He was on modified duty until he had his surgery. He was on then on light duty and was paid his full salary during that time.

DISCUSSION

With respect to defendant's petition, defendant is correct regarding clerical errors that found an award of temporary disability of 14% and the reference to a psychiatric injury in the Opinion on Decision. The award should have correctly found 14% *permanent* disability, and the reference to psychiatric injury was incorrect.

There are also substantive errors in the decision, as pointed out by defendant. The first is the closure of discovery. Discovery was ordered closed at the time of the July 12, 2021 Mandatory Settlement Conference on the issue of AOE/COE only, but my reiteration of the closure of discovery did not limit this closure to AOE/COE, as it should have. Second, I made a determination on the issue of applicant's occupational variant (Group 370), when that issue was not raised in the July 12, 2021 Pre-Trial Conference Statement as an issue for determination at trial. In reviewing the matter further, although neither party objected to me addressing the issues of permanent disability and apportionment, those issues were also not raised for determination in the July 12, 2021 Pre-Trial Conference Statement. Based upon my errors in the decision, I recommend that reconsideration be granted, that my October 20, 2021 Findings and Award be rescinded, and that the matter be returned to the trial level for further proceedings to correct these errors and re-submit the matter for decision.

With respect to defendant's contention regarding the finding of injury AOE/COE, I do not find a basis to alter the finding of injury AOE/COE in the form of a hernia, for the reasons set forth in the Opinion on Decision.

Lastly, the issue of the correct amount of permanent disability as raised by applicant can be addressed in further proceedings at the trial level, as it pertains to one of the issues that was not set for trial at the time of the mandatory settlement conference.

RECOMMENDATION

Based upon the foregoing, it is recommended that reconsideration be granted, that the October 20, 2021 Findings and Award be rescinded, and that the matter be returned to the trial level to correct the errors in further proceedings.

Dated: December 17, 2021

JAMES GRIFFIN
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE