

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

**PETERS ZAYERZ, *Applicant***

**vs.**

**OC 405 PARTNERS JV; LIBERTY MUTUAL INSURANCE, *Defendants***

**Adjudication Number: ADJ12970080  
Santa Ana District Office**

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

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of June 22, 2021, wherein it was found that, while employed in an unspecified position on January 24, 2020, applicant sustained industrial injury to the left elbow, left forearm, left wrist, left hand and fingers, and in the form of complex regional pain syndrome type I (CRPS) in the left upper extremity. It was found that applicant's injury caused an unspecified period of temporary disability which was continuing, and the need for further medical treatment to the left upper extremity. In finding industrial injury, it was also found that that the bar for claims made after notice of termination codified at Labor Code section 3600(a)(10) was not applicable to this case.

Defendant contends that the WCJ erred in (1) finding an entitlement to medical treatment, in finding temporary disability, and in specifying body parts that sustained injury, arguing that only injury arising out of and in the course of employment and post-termination defense were listed as issues for determination at trial, (2) finding industrial injury in the form of CRPS, and (3) finding that the post-termination defense did not apply to this matter. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated in the Report, which we quote and adopt below, we affirm the findings that the post-termination defense does not apply to this case, and that substantial medical evidence supports the finding of industrial injury in the form of CRPS. We also find that the WCJ did not err in finding industrial injury to specific body parts, since, unless excluded, injury to body

parts is included within the broader issue of injury arising out of and in the course of employment. However, we grant reconsideration and amend the WCJ's decision to delete the findings regarding temporary disability and further medical treatment, and to delete the award. As acknowledged in the WCJ's decision and in the Report, temporary disability and entitlement to medical treatment were not placed at issue at trial.

As the Court of Appeal stated in *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 711 [57 Cal.Comp.Cases 230], ““An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [Citation.]’ (*Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1453 [56 Cal.Comp.Cases 537].) Due process requires that all parties ‘must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. [Citations.]’ (*Fidelity & Cas. Co. of New York v. Workers' Comp. Appeals Bd. (Harris)* (1980) 103 Cal.App.3d 1001, 1015 [45 Cal.Comp.Cases 381].)”

However, it was not an error to make findings regarding injury to specific body parts, an issue subsumed within the greater issue of injury arising out of and in the course of employment. By being apprised of the issue of injury arising out of and in the course of employment, defendant received sufficient notice that the WCJ would determine which body parts sustained injury. We note that the report of qualified medical evaluator orthopedist Zenia E. Cortes, M.D. was placed in evidence without objection from the defendant.

Although we cannot award temporary disability or further medical treatment since they were not placed at issue, we note that the finding of industrial injury necessarily means that applicant's injury has caused the need for medical treatment and/or temporary and/or permanent disability. (Lab. Code, § 3208.1, subd. (a).) Even in the absence of an award, a defendant may be assessed sanctions for unreasonably delaying or refusing the payment of medical treatment or disability indemnity. (Lab. Code, § 5814.)

With regard to the finding of industrial injury in the form of CRPS, we affirm the WCJ for the reasons stated in the Report, as follows:

Petitioner said the court erred in making a finding of CRPS type I. Specifically, petitioner states:

One of the listed body parts/diagnoses found to be industrially injured [by the court] is CRPS type I left upper extremity. However, the basis for this diagnosis is from ortho QME Zenia Cortes's 7/15/2020 report which indicates applicant *may be developing CRPS type I* and has left upper extremity, [sic] and did not actually include same as a *formal diagnosis*. This is a medical determination and is not justified by the report used as the basis for the finding of fact. Applicant was not actually found to have CRPS type I. (Emphasis added.) (Defendant's Petition for Reconsideration dated July 9, 2021, page 3, lines 3-9, paraphrasing from Exhibit 1, page 115 of Dr. Cortes's report dated 8/10/2020.)

Petitioner misread the PQME report of Zenia Cortes, M.D. dated August 10, 2020. (Exhibit 1.) Dr. Cortes evaluated the applicant on 7/15/2020 and issued her report dated 8/10/2020. Dr. Cortes lists a formal diagnosis of **CRPS type I left upper extremity** at the top of page 115 as diagnosis 4. In the last paragraph Dr. Cortes seems to digress which is what petitioner focuses on, but the doctor then makes important treatment recommendations for early stage CRPS as evident from the full quote of Dr. Cortes on the subject.

It is probable that the patient is developing chronic regional pain syndrome as a result of the injury. The patient requires aggressive physical therapy for range of motion and desensitization. The patient should also be evaluated by pain management specialist and considered for treatments such as stellate ganglion block or bisphosphonate treatment. *Early treatment of CRPS is imperative to a better outcome.* (Emphasis added.) (Id. at p.115)

Dr. Cortes further elaborates about the CRPS type I diagnosis by citing two medical research articles dated 2015 and 2016, and which are the only research articles listed in her 119-page report. From this the court concludes Dr. Cortes makes a formal diagnosis of CRPS type I of the upper left extremity. And the report makes clear the "patient requires aggressive . . . [and early] treatment of CRPS [which] is imperative to a better outcome." (Id.)

(Report at pp. 2-3.)

With regard to the issue of the Labor Code section 3600(a)(10) post-termination defense, the WCJ believed the applicant's trial testimony that he reported his work injury to foreman Jaime Martinez before applicant was given notice of being laid off. As explained by the WCJ in the Report:

The testimony of the applicant and defense witness Martinez cannot both be true. At trial Martinez testified the applicant never reported an injury to him. (SOE, page 7:14-15.) Instead, Martinez said the applicant was laid off and refused to sign the employee separation documents or accept his final paycheck. (Id. page 8:3-10.) Martinez also said, “the applicant did not report an injury to him, and he did not ask to go see a doctor.” (Emphasis added.) (Id. page 8:11-13.)

Conversely, the applicant testified he reported the injury to his foreman Jaime Martinez at the end of his work shift when Martinez picked up the applicant and other coworkers at the job site and drove them to the OC 405 Partners work yard. (SOE, page 2:14-16.)

\*\*\*

The applicant’s testimony that he reported his injury to Martinez while being driven in Martinez’ pickup truck from the jobsite to the OC 405 Partner’s work yard sets the time when Martinez learned about the applicant’s injury which was before the time Martinez notified the applicant and his co-workers about the pending layoff per Martinez’ testimony.

Once they arrived at the company yard that afternoon, he also told him that no one was being fired but that the company had to let some of them go because work was slowing down. This discussion was not in the office, which was being occupied at the time. It was discussed outside along with Thomas and Juan who were also notified that they would be laid off along with the applicant.

(Minutes of Hearing and Summary of Evidence (SOE) dated 3/24/2021, page 7, lines 20-25.)

This is the testimony relied on by the court which set the timeline of events in which the applicant said he told Martinez about the injury while driving in Martinez’ vehicle in route from the jobsite to the employer’s work yard. This testimony also reveals the notice of the layoff was at the work yard outside and “not in the office, which was being occupied at the time.” (Id.) This leads to the inevitable conclusion the applicant reported his injury prior to notice of termination which the applicant must establish to defeat a post-termination defense. (Labor Code section 3600(a)(10)(A).)

(Report at pp. 3-4.)<sup>1</sup>

---

<sup>1</sup> We omitted a portion of the Report where the WCJ cites to applicant’s deposition testimony, which was marked for identification at trial, but not admitted into the evidentiary record. However, since applicant testified at trial that he reported his injury, and this trial testimony was believed by the WCJ, any deposition testimony is unnecessary to our decision.

A WCJ's credibility determinations are "entitled to great weight." (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Accordingly, we affirm the WCJ's finding that applicant's claim is not barred by the post-termination provisions of Labor Code section 3600(a)(10).

For the foregoing reasons,

**IT IS ORDERED** that Defendant's Petition for Reconsideration of the Findings and Award of June 22, 2021 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of June 22, 2021 is **AMENDED** as follows:

### **FINDINGS OF FACT**

1. The applicant, Peters Zayerz, while employed on January 24, 2020, at Costa Mesa, California, by OC 405 Partners JV sustained an injury arising out of and in the course of employment to his left elbow, left forearm, left wrist, left hand and fingers, and in the form of complex regional pain syndrome type I in the left upper extremity.
2. At the time of injury, the employer's workers' compensation carrier was Liberty Mutual Insurance Company.
3. Applicant established that the employer had notice of injury prior to giving applicant notice of termination pursuant to Labor Code section 3600(a)(10)(A).

4. All other issues, including the issue of industrial injury in the form of sleep disorder are deferred, with jurisdiction reserved.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**September 7, 2021**

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

**PETERS ZAYERZ  
JAMIE A. BLUNT  
HANNA, BROPHY, MacLEAN, McALEER & JENSEN**

**DW/oo**

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