

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

HAZEL BAEZA, *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF EDUCATION;
STATE COMPENSATION INSURANCE FUND/STATE CONTRACT
SERVICES, *Defendants***

**Adjudication Numbers: ADJ10177509, ADJ11692851, ADJ10177499
Sacramento District Office**

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

Defendant seeks reconsideration of the Findings, Award, and Order (F&A) issued by the workers' compensation administrative law judge (WCJ) on June 29, 2021¹. As relevant herein, the WCJ found that applicant sustained injury arising out of and in the course of employment (AOE/COE) to various body parts, that applicant sustained permanent disability in the amount of 7% after apportionment, and that there is a need for further medical treatment to various body parts.

Defendant contends, as relevant herein, that the WCJ's finding of a cumulative trauma injury do not correspond to and is not supported by the evidence submitted at trial.

Applicant did not file an answer. We did not receive a Report from the WCJ on the Petition for Reconsideration as he has retired.

We have considered the allegations of the Petition for Reconsideration. Based on our review of the record, we will grant reconsideration, rescind the WCJ's F&A and return these

¹ We note that defendant's Petition for Reconsideration was only filed in case number ADJ10177509, however the F&A was issued as to all three cases, and all three cases have been consolidated. This Opinion and Order is issued in all three cases.

matters to the trial level for further proceedings consistent with this opinion. When the WCJ issues a new decision, any aggrieved party may timely seek reconsideration from the new decision.

FACTUAL BACKGROUND

In ADJ10177509, during the cumulative period from October 23, 2014 to October 23, 2015 while employed by the defendant as a system software specialist, applicant claims she sustained injury arising out of and occurring in the course of employment to her bilateral upper arms, neck, bilateral hands and bilateral shoulders. In ADJ10177499, on July 21, 2015 while employed by the defendant as a system software specialist, Applicant claims she sustained injury arising out of and occurring in the course of employment to her bilateral upper arms, bilateral shoulders, and bilateral elbows. In ADJ11692851, on September 28, 2018 while employed by the defendant as a system software specialist, Applicant claims she sustained injury arising out of and occurring in the course of employment to her bilateral hands and fingers, bilateral wrists, bilateral shoulders, bilateral hips, left knee, soft tissue, teeth, head and cervical spine.

The parties proceeded to trial on June 29, 2021. According to the Minutes of Hearing, the issues in ADJ10177509 were parts of body, permanent and stationary date, permanent disability and apportionment, need for further medical treatment, attorney fees, and defendant's claimed temporary disability overpayment for various periods. The issues in ADJ10177499 were parts of body, permanent and stationary date, permanent disability and apportionment, need for further medical treatment, attorney fees, defendant's claimed temporary disability overpayment for various periods and applicant's July 23, 2018 penalty petition. The issues in ADJ11692851 were applicant's temporary disability claim for various periods, permanent and stationary date, permanent disability and apportionment, need for further medical treatment and attorney fees.

On June 29, 2021, in ADJ10177509 the WCJ issued his F&A and found applicant, while employed by the defendant during the cumulative period from October 23, 2014 to October 23, 2015 as a system software specialist, sustained injury arising out of and occurring in the course of employment to her bilateral wrists and cervical spine. In ADJ10177499, the WCJ found applicant, while employed by the defendant as a system software specialist, on July 21, 2015², sustained injury arising out of and occurring in the course of employment to her bilateral wrists and cervical

² The F&A initially states the date of injury is July 21, 2015, then later states the date of injury is amended to cumulative trauma through July 21, 2014.

spine. In ADJ11692851, the WCJ found that applicant, on September 28, 2018 while employed by the defendant as a system software specialist, sustained injury arising out of and occurring in the course of employment to her bilateral hands and fingers, bilateral wrists, bilateral shoulders, bilateral hips, soft tissue, teeth, head, and cervical spine. The WCJ further found applicant did not sustain injury arising out of and in the course of employment to her bilateral upper arms, bilateral hands, and bilateral shoulders but does not state to which case this finding applies.

The WCJ's Opinion on Decision states "[t]here does not seem to be any explanation for a separate claim of injury during a cumulative period of October 23, 2014, through October 23, 2015." However, the F&A states applicant, "...while employed during the cumulative period from October 23, 2014, to October 23, 2015, [...] sustained injury arising out of and occurring in the course of employment to her bilateral wrists and cervical spine." Additionally, the WCJ issued a single award of benefits rather than awarded separate benefits to each of the individual three cases. The F&A does not state which body parts the WCJ found to be injured arising out of and in the course of employment in each of the separate cases. The F&A does not state to which case or cases the permanent disability award pertains specifically. Furthermore, the F&A states the applicant was the same age both in 2014 and 2018.

In its petition, defendant seeks clarification as to whether ADJ10177509 was intended to be dismissed by aforementioned language, and, if not, seeks guidance as to the court's intended disposition regarding this claim. Defendant asks the Board to set aside the F&A.

DISCUSSION

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313.³ An adequate and complete record is necessary to understand the basis for the WCJ's decision and the WCJ shall "... make and file findings upon all facts involved in the controversy[.]" (Lab. Code, § 5313; *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal.Wrk.Comp. LEXIS 4947] (Appeals Bd. en banc)⁴ (*Hamilton*)). 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

³ All statutory references not otherwise identified are to the Labor Code.

⁴ En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, former § 10341, now § 10325(a) (eff. Jan. 1, 2020); *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

the decision.” (*Hamilton, supra*, at 475.) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*Hamilton, supra*, at 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)⁵

The Appeals Board’s record of proceedings is maintained in the adjudication file and consists of the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator’s file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, former § 10544, now § 10750 (eff. Jan. 1, 2020).) The WCJ’s decision “must be based on admitted evidence in the record.” (*Hamilton, supra*, at p. 476.) In *Hamilton*, we held that the record of proceeding must contain, at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Ibid.*) Part of the WCJ’s responsibility is to “frame the issues and stipulations for trial.” (*Id.* at p. 475.)

The number and nature of the injuries sustained are questions of fact for the WCJ. (*Western Growers Ins. Co. v. Workers’ Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323]; see also Lab. Code, § 3208.2.) “In any given situation, there can be more than one injury, either specific or cumulative or a combination of both, arising from the same event or from separate events.” (*Austin, supra*, at p. 234.)

Under the workers’ compensation statutes, a compensable injury may either be a “specific” injury or a “cumulative” injury. Labor Code section 3208.1 defines injury as either: “(a) ‘specific,’ occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) ‘cumulative,’ occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment.” Whether an applicant has sustained a specific or a cumulative injury, or multiple injuries, is question of fact which must be determined by the WCJ. (Lab. Code, § 5952; § 5953; *Western Growers Ins. Co. v. Workers’ Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th

⁵ Lab. Code, §§ 5701, 5906; *Old Republic Ins. Co. v. Workers’ Comp. Appeals Bd.* (2020) 85 Cal.Comp.Cases 504, 508 [2020 Cal. Wrk. Comp. LEXIS 26] (writ den.); *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 [2002 Cal. Wrk. Comp. LEXIS 1218] (Appeals Board en banc); see *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].

227, 233–235 [58 Cal.Comp.Cases 323].) As with any decision by a WCJ, a decision on the number and nature of injuries must be supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); *See Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

Under Labor Code sections 3208.2 and 5303, merger of multiple injuries is prohibited, and separate findings of fact and awards for each separate injury are required. Labor Code section 3208.2 provides that “[w]hen disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, all questions of fact and law shall be separately determined with respect to each such injury, including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit.” Labor Code section 5303 provides, in relevant part, that “[t]here is but one cause of action for each injury coming within the provisions of this division...no injury, whether specific or cumulative, shall, for any purpose whatsoever, merge into or form a part of another injury; nor shall any award based on a cumulative injury include disability caused by any specific injury or by any other cumulative injury causing or contributing to the existing disability, need for medical treatment or death.”

The issue that we face on reconsideration is that there is an insufficient record to evaluate the WCJ’s F&A. Here, the WCJ issued an F&A inconsistent with the Opinion on Decision; furthermore, the F&A is not supported by the evidence admitted at trial. Additionally, the WCJ issued an award of permanent disability and further medical treatment; however, it is a single award of benefits and does not award separate benefits to each of the individual three cases. The F&A does not clearly state which body parts the WCJ found to be injured arising out of and in the course of employment in each of the separate cases. The F&A does not state to which case or cases the permanent disability award pertains. Because the F&A is ambiguous, the parties cannot discern which benefits are due and owing to the applicant and under which claim defendant is supposed to furnish and/or pay them⁶.

⁶ It appears the age of the applicant is incorrectly stated at least in one of the cases, as the F&A states she was the same age both in 2014 and 2018.

Accordingly, we rescind the F&A and return all three matters to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the June 29, 2021 Findings, Award, and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the WCJ's F&A is **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



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.

**HAZEL BAEZA
LAW OFFICES OF GEORGE FOGY
STATE COMPENSATION INSURANCE FUND**

HAV/ara

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

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