

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

KHALILUR AZMI, *Applicant*

vs.

**COUNTY OF ORANGE, permissibly self-insured, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

Adjudication Numbers: ADJ9784641 ADJ9784642

Long Beach District Office

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

Applicant seeks reconsideration of the Joint Findings of Fact and Award and Order (F&A) issued by the workers' compensation administrative law judge (WCJ) on June 29, 2023, wherein the WCJ found in pertinent part that in case number ADJ9784642; applicant sustained a cumulative injury arising out of and occurring in the course of employment (AOE/COE) to his psyche, but did not sustain injury AOE/COE to his "trunk and back;" that applicant was temporarily totally disabled for the period from June 7, 2014, through June 7, 2016, and that the injury caused 19% permanent disability. The WCJ also found that applicant did not sustain injury AOE/COE in case number ADJ9784641, and ordered that applicant take nothing by way of that injury claim.

Applicant contends that the record should be further developed regarding his orthopedic injury claim.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We received an Answer from defendant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&A, and return the matter to the WCJ for further proceedings

consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

The factual background of applicant's injury claim, relevant to the issues addressed herein, is summarized as follows:

Applicant claimed injury to his "psyche, back, and trunk" while employed by defendant as an accounting assistant during the period from January 13, 2013, through June 6, 2014 (ADJ9784642). In case number ADJ9784641, applicant claimed injury to his "psyche, back, and trunk" while employed by defendant as an accounting assistant during the period from June 18, 2013, through June 18, 2014.

Applicant's deposition was initially taken on June 22, 2016. The deposition was continued to August 10, 2016, for further testimony, and it was again continued to August 21, 2017. Applicant's testimony, at the three depositions, pertaining to his physical/orthopedic symptoms included the following:

Q ... This is generic for Fexmid, 7.5 milligram. Sir, do you know what this one is for?

A This is for, like, muscle pain, I think.

(App. Exh. 1, June 22, 2016, deposition transcript, p. 10.)

Q Next one I have, Naproxen. Is that for muscle pain?

A That's for anxiety and muscle pain too.

(App. Exh. 1, pp. 10 – 11.)

Q... Who were the doctors that you saw?

A Dr. Rocillo. Then Dr. Singh. She is a psychologist. She's MD. Then I saw Dr. Mai. She's MD, too. Psychologist. ... And then I continue then with Dr. Tran with my physical therapy. My arms, tension, my legs, my hips, my shoulders.

(App. Exh. 2, pp. August 10, 2016, deposition transcript, pp. 71 – 72.)

Q ... Tell me your physical symptoms you're having.

A Oh, this tension in my arms, both arms. My extremities. My -- both legs. Sometimes I wobble. The center of the hips. My back. It's like my back is now transfer all the way to the shoulder now.

Q So let me summarize again so we can go quickly.

A And my knees.

Q So what you're feeling are tension in your body --

A My arms too much. My muscle here too much.

Q Okay. So, let me finish, sir. So we [you] have tension in your body, in your muscles and all over your body from stress?

A Legs especially. All legs. Two legs. Center of my hips.

(App. Exh. 2, pp. 109 – 110.)

Q What kind of advice were you seeking?

A Medical.

Q What was the nature of the medical question?

A I don't want to take the pills, and if there is anything else besides that for my pains, herbals, natural medicine, my joint pain, anxiety.

THE REPORTER: Your what pain?

THE WITNESS: Joint pain. My knee pain Sorry, knee pains, back pains. Sorry. And my anxiety.

(App. Exh. 3, August 21, 2017, deposition transcript, p. 118.)

Q Have you been to your personal physician at all since August 2016?

A I think I was. Because -- what do you call this? This portion locked, can't move, can't sit up.

Q So, are you pointing to your waist area?

A Yeah, jammed, the whole waist, this part, maybe, back. The whole thing was lots of pain.

Q Are you describing --

A Just the whole thing was lots of pain. And was jammed, I can't get up, I cannot sit. So I went to the doctor for that. I think that was -- August 2016, you said? I think it was after that, in that period of time.

(App. Exh. 3, p. 119.)

Q How many times did you go for that problem? ...

A But I always have back pain. It is like for three, four years. And knee pain. Because my anxiety destroyed my physical health, too.

(App. Exh. 3, p. 121.)

Q Describe to me your current symptoms.

A I have anxiety like 24 hours. Like sitting some load on my head all the time. Mild to strong it gets. I feel pain, a little pain is always there in my body and my extremities. My legs worse, I get back pain.

(App. Exh. 3, p. 124.)

Psychology qualified medical examiner (QME) James L. Deck, Ph.D., first evaluated applicant on December 8, 2014; he re-evaluated applicant on June 19, 2016 and he issued several reports. (See Joint Exh. 106, James L. Deck, Ph.D., November 27, 2017, p. 2, Introduction.) Dr. Deck again re-evaluated applicant on November 8, 2017. He took an interim history, reviewed additional records, and administered various psychological tests. Regarding applicant's physical condition at the time of the re-examination, Dr. Deck stated:

As for his current physical condition, Mr. Azmi reported chronic bilateral pain affecting the entire upper extremities. He rated the pain on the right and left upper extremities equally as "4-7"/10 claiming that the overall pain throughout his body is, "getting worse." Mr. Azmi, when asked, endorsed feelings of weakness throughout his upper extremities as well as numbness and tingling in the bilateral hands. ¶ Mr. Azmi described chronic neck, bilateral trapezius, and bilateral shoulder pain rated as a "3-6"/10. ¶ Mr. Azmi also reported chronic low

back pain rated as a "4-9"/10 with radiation throughout the bilateral lower extremities including numbness and tingling in his feet. ¶ Mr. Azmi reported chronic pain in the frontalis area of his head currently rated as a "4-8"/10. (Joint Exh. 106, p. 16.)

The parties proceeded to trial on May 11, 2023. The issues submitted for decision in case number ADJ9784642 included injury AOE/COE, parts of body injured, temporary disability, and permanent disability. Regarding the injury claim in case number in case number ADJ9784641, the parties stipulated “to dismiss this case as James Deck, Ph.D., and Richard Dorsey, M.D., only find one continuous trauma injury to the applicant.” (See Minutes of Hearing and Summary of Evidence (MOH/SOE), May 11, 2023, pp. 3 – 4.)

DISCUSSION

We must first point out that it is well established that any award, order or decision of the Appeals Board must be supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. App. Bd.* (1970) 3 Cal.3d 312, 317-319 [33 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635-637 [35 Cal.Comp.Cases 16.]) Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) When deciding whether an applicant sustained a cumulative trauma injury, the decision must be based on an expert medical opinion. (See *Insurance Company of North America v. Workers’ Comp. Appeals Bd. (Kemp)* (1981) 122 Cal.App.3d 905 [46 Cal.Comp.Cases 913].)

In this matter, in addition to his psychiatric injury claim, applicant claimed injury to his “back, and trunk.” At his depositions, applicant testified several times regarding his orthopedic symptoms. (See App. Exhs 1, 2, and 3, as quoted above.) Also, in his November 27, 2017 report, QME Dr. Deck noted that applicant had chronic pain in his neck/back and his upper and lower extremities. (Joint Exh. 106, p. 16.) However, there are no medical records from orthopedic medical providers nor any orthopedic medical-legal reports. Absent such evidence, there is no factual basis for determining the issues of injury AOE/COE and parts of body injured. Further, the record contains no evidence pertaining to the issues of proper notice, knowledge of injury, claim forms, etc. (Lab. Code, § 5400 et seq.); nor is there evidence as to whether proper contested claim medical-legal procedures were followed (Lab. Code, § 4060 et seq.). Therefore, issues such as timeliness and/or waiver cannot be resolved.

The WCJ and the Appeals Board have a duty to further develop the record when the record does not contain substantial evidence pertaining to a threshold issue, or when it is necessary in order to adjudicate the issues submitted for decision. (Lab. Code §§ 5701, 5906; *Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396 [65 Cal.Comp.Cases 264]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924].)

As discussed above, the trial record does not contain the evidence necessary for the WCJ or the Appeals Board to properly adjudicate and determine the issues submitted by the parties, including the threshold issues of injury AOA/COE and parts of body injured. Thus, it is necessary that the trial record be further developed.

Accordingly, we grant reconsideration, rescind the F&A, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Joint Findings of Fact and Award and Order issued by the WCJ on June 29, 2023, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the June 29, 2023 Joint Findings of Fact and Award and Order is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 20, 2023

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

**KHALILUR AZMI
PERONA, LANGER, BECK & SERBIN
STANDER, RUEBENS, THOMAS & KINSEY (SRTK)**

TLH/mc

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