WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

TRACE COQUILLETTE, *Applicant*

vs.

PITTSBURGH PIRATES; TRAVELERS INSURANCE, successor in interest to GULF INSURANCE, by merger; MONTREAL EXPOS; UNITED STATES FIDELITY & GUARANTEE, care of GALLAGHER BASSETT SERVICES; DETROIT TIGERS; TRAVELERS INDEMNITY COMPANY, successor in interest by merger to GULF INSURANCE, *Defendants*

Adjudication Number: ADJ9095459
Santa Ana District Office

OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION

Both applicant and defendant Pittsburgh Pirates, insured by Travelers Insurance (defendant) seek reconsideration of the September 8, 2023 Findings and Award and Order of Commutation (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a professional baseball player from June 7, 1993 to October 15, 2005 sustained industrial injury to the cervical and lumbar spine, bilateral upper and lower extremities, psyche, posttraumatic head, sleep, headaches, and internal. The WCJ found that applicant sustained 76 percent permanent disability after apportionment, and that applicant required further medical treatment to cure or relieve the effects of the injury.

Applicant contends the date of injury pursuant to Labor Code[1] section 5412 was September 2, 2016, and that the date of injury sets corresponding indemnity rates; that permanent disability indemnity began to accrue 14 days after the final payment of temporary disability; that applicant is owed a life pension; that the Appeals Board should reserve jurisdiction over the injury, which is insidious and progressive in nature; and that his head injuries were sudden and extraordinary within the meaning of section 3208.3(d).

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

Defendant contends that applicant's testimony was not credible; that either applicant or Qualified Medical Evaluator (QME) Dr. Gillman misrepresented the length of the orthopedic evaluation; that the apportionment analysis offered by consulting physician Dr. Nudleman is not substantial evidence; that the Pittsburgh Pirates are exempt from California jurisdiction pursuant to Labor Code section 3600.5(d); that disability arising out of applicant's claimed psychiatric injury is barred by section 3208.3(d); and that the record does not support a finding of temporary disability.

We have received an Answer to applicant's petition from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that we grant applicant's petition and amend the award to reflect 2016 indemnity rate and to reserve jurisdiction over applicant's alleged post-traumatic head and vertigo injuries. The WCJ's Report further recommends that defendant's petition be denied.

We have considered both Petitions for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant both Petitions for Reconsideration. Our order granting the Petitions for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petitions for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

I.

We highlight the following legal principles that may be relevant to our review of this matter:

Workers' compensation claims for psychiatric injury are governed by section 3208.3, which provides that "[a] psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under … the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field of psychiatric medicine." (Lab. Code, § 3208.3(a).) However, section 3208.3(d) bars

compensation for compensable psychiatric injury where the employment does not meet a specified threshold of six months:

> (d) Notwithstanding any other provision of this division, no compensation shall be paid pursuant to this division for a psychiatric injury related to a claim against an employer unless the employee has been employed by that employer for at least six months. The six months of employment need not be continuous. This subdivision shall not apply if the psychiatric injury is caused by a sudden and extraordinary employment condition. Nothing in this subdivision shall be construed to authorize an employee, or the employee's dependents, to bring an action at law or equity for damages against the employer for a psychiatric injury, where those rights would not exist pursuant to the exclusive remedy doctrine set forth in Section 3602 in the absence of the amendment of this section by the act adding this subdivision.
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> (Lab. Code, § 3208.3(d).)

In *Hansen v. Workers' Compensation Appeals Bd.* (1993) 18 Cal.App.4th 1179 [58 Cal.Comp.Cases 602], the Court of Appeal observed:

> The Legislature's expressed intent in enacting Labor Code section 3208.3 was to establish a new and higher threshold of compensability for psychiatric injury. (Lab. Code, § 3208.3, subd. (c).) The Legislature's apparent purpose in enacting subdivision (d) of section 3208.3 was to limit questionable claims for psychiatric injuries resulting from routine stress during the first six months of employment. Underlying this policy decision is the fact that in many employer-employee contracts the new employee is customarily on probation during the first six months of employment. It is during that period when problems between the employee and employer or supervisor often occur. Those problems often result in disciplinary action, resignation, or termination and lead to claims of psychiatric injury due to stress. Moreover, psychiatric injuries from stress during regular and routine employment are necessarily cumulative injuries that occur over time. Although the imposition of an employment period of six months may seem arbitrary to the employee, we do not find it so arbitrary or irrational as to render the statute unconstitutional on equal protection grounds. Nor does the statute deprive petitioner of due process of law.
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> (*Hansen, supra,* 18 Cal.App.4th 1179.)

Here, applicant alleges a single cumulative injury, spanning multiple employers. Pursuant to the stipulation of the parties at trial, applicant was employed by the Montreal Expos from June 7, 1993 to October 15, 2000, by the Miami Marlins from July 3, 2002, to October 15, 2003, by the Boston Red Sox from April 17, 2003 to October 15, 2003 and again from November 10,

2003 to October 15, 2004, and for the Chicago White Sox from February 2, 2005 to October 15, 2005. (Minutes of Hearing (Further), April 18, 2022, at p. 3:1.) Applicant's stated periods of employment with these employers all exceed the six-month requirement of section 3208.3(d). However, applicant is currently proceeding as against the Pittsburgh Pirates pursuant to section 5500.5, and the parties have stipulated that applicant was employed by the Pirates from March 26, 2002 to July 3, 2002, a period of less than six months. (*Id.* at p. 3:6.) Defendant contends that the "plain language" of section 3208.3(d) precludes any liability for psychiatric injury as to the Pirates. (Petition for Reconsideration, at p. 17:19.)

The WCJ's Report observes:

> Section 3208.3(d) does not explicitly define whether the six-month rule is satisfied by the fact the Applicant worked for 12 years as a professional baseball player, albeit for different employers. The statute's intent appears to prevent fraudulent psyche claims by probationary and newly hired employees, but this rationale would not apply. Due to the fact Applicant has a long, 12-year period of employment as a professional baseball player, a reasonable interpretation of Section 3208.3(d) is that the statute does not bar the Applicant's psyche claim.
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> (Report, at p. 16.)

Accordingly, we must consider how the election process available to the applicant under section 5500.5 interacts with the six-month employment requirement for compensability in psychiatric claims pursuant to section 3208.3(d), as well as the resulting liability of the parties.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra,* 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely

developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

Additionally, the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) 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.) Here, based on our preliminary review, it appears that further development of the record may be appropriate.

II.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57

Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp*. *Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp*. *Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Labor Code section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

III.

Accordingly, we grant both applicant's and defendant's Petitions for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petitions for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Order issued by a workers' compensation administrative law judge on September 19, 2023 is **GRANTED**.

IT IS FURTHER ORDERED that defendant's Petition for Reconsideration of the Findings and Order issued by a workers' compensation administrative law judge on September 19, 2023 is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 11, 2023

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

TRACE COQUILLETTE
GLENN, STUCKEY & PARTNERS
SEYFARTH SHAW
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK
DIMACULANGAN AND ASSOCIATES

SAR/abs

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