WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ADAN PEREZ, *Applicant*

vs.

STAR INSURANCE COMPANY, insurer for DICK PEIXOTO, adjusted by MEADOWBROOK INSURANCE GROUP, *Defendants*

Adjudication Number: ADJ10631225
Salinas District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant, in pro per, filed a Petition for Reconsideration from the August 8, 2023 Findings and Order issued by workers' compensation administrative law judge (WCJ). We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated below, we will grant reconsideration, amend the WCJ's decision to include the necessary jurisdictional findings and otherwise affirm the WCJ's decision for the reasons stated in the Report, which we adopt and incorporate.

Applicant's petition for reconsideration fails to state grounds for reconsideration or cite with specificity to the record making it subject to dismissal or denial. WCAB Rule 10945(b) provides, in relevant part: "[e]very petition for reconsideration … *shall support its evidentiary statements by specific references to the record.*" (Cal. Code Regs., tit. 8, former § 10842(b), now § 10945(b) (eff. Jan. 1, 2020), emphasis added.)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of August 8, 2023 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the August 8, 2023 Findings and Order is **RESCINDED** and **SUBSTITUTED** with a new Findings and Order, as provided below.

FINDINGS AND ORDER

1. Applicant ADAN PEREZ, while employed on September 13, 2016, as a mechanic, Occupational Group No. 370, at Watsonville, California, by Dick Peixoto, sustained injury arising out of and in the course of employment to his head and neck.

2. At the time of the injury, the employer's workers' compensation carrier was Star Insurance Company, administered by Meadowbrook Insurance Group.

3. Applicant's September 1, 2021 Petition to Reopen for New and Further Disability was filed timely.

4. Applicant has not sustained new and further disability; therefore, good cause has not been shown to reopen Applicant's Award.

5. Defendant's Petition to Dismiss Applicant's September 1, 2021 Petition for New and Further Disability is granted.

6. This decision does not affect Applicant's August 1, 2017 Award of further medical treatment, which remains in effect.

ORDER

GOOD CAUSE APPEARING:

IT IS HEREBY ORDERED THAT Applicant's September 1, 2021 Petition to Reopen for New and Further Disability is dismissed.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 30, 2023

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

ADAN PEREZ
BRADFORD & BARTHEL

PAG/*cs*

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

Applicant filed a timely, verified Petition for Reconsideration of the undersigned's Findings and Order that issued on 8/8/23 (EAMS Doc. ID: 77023403.)

II

F A C T S

Applicant, while employed on 9/13/16 as a mechanic, at Watsonville, California, by Dick Peixoto, then insured by Star Insurance Company, sustained injury arising out of and in the course of employment to his head and neck. Applicant received a 24% permanent disability award and a future medical treatment award. (Findings, Award & Orders, 8/1/17; EAMS Doc. ID: 64443959.)

On 9/10/21, Applicant filed a timely Petition to Reopen for New and Further Disability. (Appl's Pet. to Reopen, d. 9/1/21; EAMS Doc. ID: 35354018)

On 9/27/22, panel QME Tulsidas Gwalani, M.D. reevaluated the applicant. (BOARD EX. X-1: QME Report, Tulsidas Gwalani, M.D., 10/24/22; EAMS Doc. ID: 46432632.)

The matter proceeded to a status conference on 1/30/23, at which time the matter was continued to an MSC to allow the parties time to prepare the pre-trial conference statement (PTCS.) The applicant did not object to the continuance. (Minutes of Hearing, 1/30/23; EAMS Doc. ID: 76383393)

At the 3/27/23 MSC, the applicant had not completed his part of the PTCS, so was directed by the court to meet with the Information and Assistance Consultant to complete the PTCS. Over applicant's objection, the matter was to be set for trial when the PTCS was completed. (MOH, 3/27/23, EAMS Doc. ID: 76588823.)

Per case notes, the I&A Consultant met with Mr. Perez at least twice—on the second visit, he refused to sign the PTCS. The undersigned noted the applicant's refusal to sign on the PTCS. (PTCS, d. 4/25/23; EAMS Doc. ID: 76686445)

The matter was submitted for decision after trial on 5/31/23. The applicant was present at trial, but did not testify. (Minutes of Hearing, 5/31/23; EAMS Doc. ID: 77023402)

The undersigned issued her decision on 8/8/23 finding that Applicant had not sustained new and further disability; therefore, good cause has not been shown to reopen his Award. (FA&O, Finding 3, p. 1.) Applicant now petitions for reconsideration on the basis that he was not feeling well on the trial date and wants to reopen his case. (Appl's Pet. for Recon., filed 8/30/23; EAMS Doc. ID: 77110213) There was no indication at that time that the applicant was unwell.

III

DISCUSSION

A WCJ's report "cures any technical or alleged defect in satisfying the requirements of Labor Code section 5313." [*City of San Diego v. Workers' Comp. Appeals Bd (Rutherford)* (1989) 54 Cal.Comp.Cases 57 (writ den.); *Smales v. Workers' Comp. Appeals Bd* (1980) 45 Cal.Comp.Cases 1026 (writ den.)] To the extent that the undersigned failed to elaborate on her conclusions, they will be discussed below.

The undersigned set forth some of the procedural history above to demonstrate that the applicant had numerous opportunities to participate in the process. The applicant has not been deprived of any due process right, which might be a basis for granting reconsideration. 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.]'" (Citation omitted.) [*Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 711]

As to the merits of the case, the court reviewed the new evidence, which consisted of a reevaluation by QME Dr. Gwalani. Dr. Gwalani's report constitutes substantial medical evidence. In his report of 10/24/22, Dr. Gwalani opined that the applicant has remained permanent and stationary since 1/24/17. Applicant's subjective complaints remained the same as those stated in the QME's 2/20/17 report. Applicant's cervical sprain and head contusion have resolved, and he has no work restrictions. Dr. Gwalani found that the applicant had not sustained additional impairment. The applicant sought no treatment in the five years between evaluations. (Board Ex. X-1, p. 5) The applicant was unable to produce any medical evidence of an increase in disability or need for treatment.

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied. Respectfully submitted,

ROISILIN RILEY

Workers' Compensation Judge

Filed and served on 9/22/2023