

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

**JOHN NAVROTH II, *Applicant***

**vs.**

**MERVYN'S STORES;  
ACE AMERICAN INSURANCE COMPANY,  
ADMINISTERED BY CONSTITUTION STATE SERVICES, *Defendants***

**Adjudication Number: ADJ8209954  
Santa Ana District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Applicant seeks reconsideration of the January 20, 2023 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that the WCAB lacks jurisdiction to adjudicate the breach of contract dispute between the parties.<sup>1</sup>

Applicant's Petition for Reconsideration (Petition) contends that because the agreement was entered into by the parties pursuant to the recovery of a medical benefit, and because the WCAB has jurisdiction to adjudicate medical benefit disputes, the discovery agreement and any resulting monetary penalties constitute a medical benefit subject to WCAB jurisdiction.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

Applicant has also filed a "Response to Court's 02/17/23 Report and Recommendation on Petition for Removal," dated March 3, 2023. However, insofar as applicant's Response constitutes a supplemental pleading, we note that WCAB Rule 10964 requires that supplemental pleadings or responses other than the answer shall be considered only when specifically requested or approved

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<sup>1</sup> Commissioner Sweeney, who was previously on this panel, no longer serves on the Workers' Compensation Appeals Board. Deputy Commissioner Garcia, who was previously on this panel, is not available at this time. Other panelists have been assigned in their place.

by the Appeals Board. (Cal. Code Regs., tit. 8, § 10964(a).) Additionally, a party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading. Applicant has not sought the permission of the WCAB to file supplemental pleadings, or set forth good cause for doing so. Accordingly, we have not considered the March 3, 2023 Response herein.

We have considered the Petition for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the petition.

### FACTS

Applicant claimed injury to the right foot, toes, and ankle, right shoulder, penis, low back, left hip, left leg, and in the form of bilateral inguinal hernias, while employed as a Manager/Merchandise Specialist by defendant Mervyn's, on February 10, 2008.

On December 29, 2022, the parties proceeded to trial and framed the sole issue of “Sub rosa video and Defendants' 3-17-08 agreement to not audio or video, and Defendants with an agreed breach of contract fee of 504 million dollars.” (Minutes of Hearing (Further) and Summary of Evidence (Minutes), dated December 29, 2022, at 2:13.) Applicant testified that in March, 2008, he entered into an agreement with the claims manager wherein the parties agreed not to obtain audio or video recording, and that a monetary penalty would attached for violations of this agreement. (Minutes, at 5:16.) The parties further stipulated that sub rosa video has been obtained. (*Id.* at 4:4.)

On January 20, 2023, the WCJ issued the F&O, determining that “[t]he WCAB lacks jurisdiction to determine the dispute between the parties as it is a civil action and not a benefit conferred by the Labor Code.” (F&O, Finding of Fact No2.)

Applicant's Petition avers that the parties' agreement not to record audio or video was “borne out of the CA WC's requirement and Applicant's necessity for a recovery of a medical benefit - timely medical treatments,” and that the “agreement with monetary penalties is a recoverable medical benefit. Accordingly, the jurisdiction lies with the California WCAB, NOT the Civil Court of California.” (Petition, at 4:13.)

The WCJ's Report observes that as a court of limited jurisdiction, the Worker's Compensation Appeals Board is limited to adjudicating disputes as described in Labor Code section 5300. (Report, at p. 1.) The report observes:

Article XIV, Section 4 of the California Constitution vested the legislature with the power to create and enforce the Workers' Compensation system in California. That section contemplates medical care as "...medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury..." Furthermore, medical treatment as encompassed in Labor Code section 4600 is described as:

(a) Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury shall be provided by the employer. In the case of his or her neglect or refusal reasonably to do so, the employer is liable for the reasonable expense incurred by or on behalf of the employee in providing treatment.

(b) As used in this division and notwithstanding any other law, medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27.

While Labor Code section 4600 is not an exhaustive list of what qualifies as medical treatment, Applicant's argument that the alleged oral contract that the parties refrain from audio or video recording of each other is outside the realm of what can reasonably be considered a medical benefit. The existence of any alleged contract as argued by Applicant is unrelated in nature to any medical benefit conferred by the Labor Code or relevant case law.

## **DISCUSSION**

The Workers' Compensation Appeals Board is vested with exclusive jurisdiction to adjudicate disputes over industrial injury claims for workers' compensation benefits. However, the jurisdiction of the WCAB is statutorily limited to issues involving "compensation." The California Supreme Court has explained the nature of the jurisdiction of the Worker's Compensation Appeals Board as follows:

Pursuant to constitutional mandate, the Legislature has vested the Workers' Compensation Appeals Board (WCAB) with exclusive jurisdiction over claims for workers' compensation benefits. (Cal. Const., art. XIV, § 4, Lab. Code, § 5300.) Accordingly, the superior court and the WCAB in this case 'do not have concurrent jurisdiction over the whole of the controversy, and one of them will be without jurisdiction to grant any relief whatsoever, depending upon whether

or not the injuries were suffered within the course and scope of an employment relationship and so covered by the workmen's compensation laws.' [Citations] 'It is elementary that the type and extent of relief which can be granted and the factors by which such relief is determined differ materially between the two tribunals; the superior court cannot award workmen's compensation benefits, and the commission cannot award damages for injuries.'

\* \* \* \* \*

The statutes carefully distinguish between "compensation" and "damages." "'Compensation' means compensation under Division 4 [the Workers' Compensation and Insurance section of the Labor Code] and includes every benefit or payment conferred by Division 4 upon an injured employee, including vocational rehabilitation, or in the event of his death, upon his dependents, without regard to negligence." (Lab. Code, § 3207; Ins. Code, § 11630 ["As used in this chapter [Chapter 2--Workers' Compensation Policies], the term 'compensation' means the benefits insured by workers' compensation insurance."].) "'Damages' means the recovery allowed in an action at law as contrasted with compensation." (*La Jolla Beach & Tennis Club, Inc. v. Industrial Indemnity Co.* (1994) 9 Cal. 4th 27, 36 [884 P.2d 1048, 1052, 36 Cal. Rptr. 2d 100, 104, 59 Cal. Comp. Cases 1002].)

Thus, while the WCAB is statutorily vested with the jurisdiction to resolve disputes arising under Division 4 of the Labor Code, i.e., disputes involving "compensation," we are without jurisdiction to adjudicate issues beyond our statutory remit. "As a creature of the Legislature, the Board has no powers beyond those conferred on it." (*Victor Valley Transit Authority v. Workers' Comp. Appeals Bd.* (2000) 83 Cal.App.4th 1068, 1072 [65 Cal. Comp. Cases 1018] (*Victor Valley Transit*).

Here, we agree with the WCJ that the issue of the alleged breach of contract, and any resulting contractual relief due the parties, are issues of "damages," rather than "compensation." While the WCAB has exclusive jurisdiction over proceedings concerning the right to compensation, the Board may only address issues of contract interpretation between parties when necessary to determine issues *over which it has exclusive jurisdiction*. (*Victor Valley Transit, supra*, 83 Cal.App.4th 1068 (*emphasis added*)). Here, the alleged contract between applicant and defendant, and any resulting damages from the alleged breach of that contract, are not issues of compensation as contemplated under Division 4 of the Labor Code, and the dispute thus falls outside the WCAB's exclusive jurisdiction. Accordingly, we will affirm the F&O which finds no jurisdiction over the dispute.

We further observe that to the extent that applicant's Petition raises the issue of whether any sub rosa surveillance films may be submitted to a Qualified Medical Evaluator, the WCJ has previously deferred this issue, and the issue was not framed for decision as part of the December 29, 2022 trial proceedings. (Report, at p. 4.)

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

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



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

**April 4, 2023**

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

**JOHN NAVROTH II  
PEARLMAN BROWN & WAX**

**SAR/abs**

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