

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

KAREN BAGDOYAN, *Applicant*

vs.

**GOODWILL INDUSTRIES OF SOUTHERN CALIFORNIA, *Permissibly Self-Insured,
Defendant***

**Adjudication Number: ADJ9044260
Los Angeles District Office**

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

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Finding and Award and Order of September 27, 2023, wherein it was found that while employed on June 30, 2013 as a loader/unloader, applicant sustained industrial injury to his cervical spine, lumbar spine, left hip, left knee, left leg, left arm and in the form of sleep disorder causing the need for further medical treatment. The issue of permanent disability was deferred. While not included in the actual decision, in the Opinion on Decision, the WCJ wrote:

The medical record needs development, parties are Ordered to schedule a re-examination of the applicant with Orthopedic Panel QME Dr. John Regan to address whether applicant's impairment is most accurately reflected when rating by analogy as allowed under *Almaraz/Guzman*, and whether applicant's lumbar spine injury coupled with his inability to proceed with surgical intervention prevents applicant from competing in the open labor market. Additionally, parties are Ordered to meet and confer to discuss using an AME or Panel QME in psychiatry (MPD) to address whether applicant's June 30, 2013 injury caused an industrial psyche injury and need for treatment to his psyche.

Defendant contends that the WCJ erred in finding industrial injury to the cervical spine, arguing that the body part was not placed at issue at trial, and arguing that no substantial medical evidence of industrial causation was placed in evidence. Defendant also argues that the WCJ erred in "ordering" further development of the record on the issue of an unclaimed psyche injury in the

Opinion on Decision. We have not received an answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

We will grant reconsideration and amend the WCJ's decision to defer the issue of injury to the cervical spine. The cervical spine was not placed at issue in the Minutes of Hearing of the August 17, 2023 trial, where applicant claimed injury to the "cardiovascular system, headaches, sleep, bilateral hips, left knee and left leg" in addition to the admitted lumbar spine. It was thus error to find injury to a body part that was not placed at issue at trial. As the Court of Appeal stated in *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 711 [57 Cal.Comp.Cases 230], "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [Citation.]' (*Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1453 [56 Cal.Comp.Cases 537].) 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.]' (*Fidelity & Cas. Co. of New York v. Workers' Comp. Appeals Bd. (Harris)* (1980) 103 Cal.App.3d 1001, 1015 [45 Cal.Comp.Cases 381].)"

Additionally, although the WCJ identifies reports in his Report which show cervical complaints and diagnoses, none contain substantial medical evidence that these symptoms or conditions were caused by the industrial injury. "The applicant for workers' compensation benefits has the burden of establishing the 'reasonable probability of industrial causation'" (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] citing *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660]; Lab. Code, §§ 3202.5, 5705.)

We thus grant reconsideration and amend the WCJ's decision to defer the issue of industrial injury to the cervical spine.

With regard to the "order" to meet and confer regarding discovery regarding a possible injury to the psyche, this directive is not in the actual decision, and thus defendant has not technically been aggrieved. However, given the fact that applicant has not claimed injury to psyche, nor procured any reporting regarding this body part, we do not find discovery on this issue

appropriate, at least prior to a treating physician finding a need for medical treatment to the psyche caused by the injury. We note that any psychiatric permanent disability in this matter would be subject to Labor Code section 4660.1(c) for this 2013 injury and temporary disability was not placed at issue. Here, the decision contains a general award of all medical treatment reasonably required to cure or relieve the applicant from the effects of the medical injury. When there is such an award of medical treatment, the WCAB may enforce an award of medical treatment at any time, even for a condition that was not included in the original award. (*Pirelli Armstrong Tire Co. v. Workers' Comp. Appeals Bd. (Van Zant)* 68 Cal.Comp.Cases 970 [writ den.]; *San Juan School Dist. v. Workers' Comp. Appeals Bd. (Flannery)* (1999) 64 Cal.Comp.Cases 1181 [writ den.])

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Finding and Award and Order of September 27, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Finding and Award and Order of September 27, 2023 is **AMENDED** as follows:

FINDINGS OF FACT

1. In the matter of ADJ9044260, KAREN BAGDOYAN, age 30 on the date of injury, as a loader/unloader, Occupational Group No. 460, at Los Angeles, California by GOODWILL INDUSTRIES OF SOUTHERN CALIFORNIA, sustained an injury in the course of employment to his lumbar spine, left hip, left knee, left leg, left arm, and sleep.
2. Pursuant to the stipulation of the parties, at the time of injury the employee's earnings were \$320.04 per week warranting indemnity rates of \$213.36 for temporary disability and \$213.36 for permanent disability.
3. Pursuant to the stipulation of the parties, applicant's condition reached permanent and stationary status on September 20, 2014.
4. Said injury caused permanent disability; however, the Court finds the level of permanent disability found by Orthopedic Pane QME Dr. John Regan and treating physician Dr. Vahe Panossian are not an accurate representation of applicant's current permanent disability, and the medical record needs to be developed as there is insufficient medical evidence to issue a finding on permanent disability and apportionment.

5. Applicant is entitled to further medical treatment to cure and/or be relieved from the effects of his industrial injury.

6. The reasonable value of the services rendered by applicant's attorney is deferred pending a finding on permanent disability.

7. The issue of industrial injury to the cervical spine is deferred, with jurisdiction reserved.

AWARD

AWARD IS MADE in favor of KAREN BAGDOYAN, against GOODWILL INDUSTRIES OF SOUTHERN CALIFORNIA:

- a. Further medical care as set out in Finding No. 5.

ORDER

1. This matter is off calendar for further discovery.
2. The parties are ordered to return the Applicant to QME Dr. Regan for a re-examination to address the issue of industrial injury to the cervical spine and to conduct a more accurate permanent disability evaluation consistent with the Opinion on Decision by taking into consideration that the Applicant cannot medically have spinal surgery due to his heart condition.
3. In the alternative, the parties are encouraged to refer the Applicant to an agreed medical examiner in orthopedic surgery.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 15, 2023

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

**KAREN BAGDOYAN
ROSE, KLEIN & MARIAS
DONALD J. GABRIEL**

DW/oo

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