

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

DENNIS DUTRA, *Applicant*

vs.

**J.B. HUNT TRANSPORT SERVICES;
ZURICH AMERICA INSURANCE COMPANY,
HAMPSHIRE INSURANCE COMPANY AS ADMINISTERED BY YORK, *Defendants***

**Adjudication Number: ADJ10085912
Lodi District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Defendant Hampshire Insurance Company seeks reconsideration of the Findings of Fact & Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on May 2, 2023, wherein the WCJ found that defendant Zurich America Insurance Company's petition for contribution was timely, except as to the award of temporary disability benefits in the Stipulation and Award of February 16, 2016.

Defendant contends that defendant Zurich America's petition for contribution is not timely because it should have been filed within one year of the Stipulation and Award of February 16, 2016, when the parties stipulated that applicant sustained industrial injury to her bilateral upper extremities during the period from September 2, 2014 to July 20, 2015.

We received a Report and Recommendation on the Petition for Reconsideration (Report) from the WCJ, which recommends that the Petition be granted to amend the F&O to find that the petition for contribution was also untimely as to the medical treatment with Dr. Immerman awarded as a result of the February 16, 2016 Stipulations and Award.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, and as discussed below, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will affirm the F&O, except that we will amend it to find that defendant Zurich America's petition for contribution was timely except as to

the temporary disability indemnity and the medical treatment with Dr. Immerman awarded as a result of the February 16, 2016 Stipulations and Award.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of May 2, 2023 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDING OF FACT

1. Zurich America Insurance Company's petition for contribution is timely as to benefits except the temporary disability indemnity and the medical treatment with Dr. Immerman awarded as a result of the February 16, 2016 Stipulations and Award.

ORDER

a. Zurich America Insurance Company's petition for contribution is granted except as to the temporary disability indemnity and the medical treatment with Dr. Immerman awarded as a result of the February 16, 2016 Stipulations and Award.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 19, 2024

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

**DENNIS DUTRA
LAW OFFICE OF DOUGLAS MACKAY
DANDRE LAW, LLP**

AS/mc

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



REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION
PER 8 CCR 10962

INTRODUCTION

This is a timely filed and verified petition for reconsideration by New Hampshire Ins. Co. (hereafter AIG) of a final order of 5-2-23.

This reconsideration is filed challenging whether Zurich's petition for contribution dated April 28, 2021 was timely. The Court decided it was timely in part, as to all other claimed benefits except TD.

AIG asserts that accepting the injury by Zurich is an award as to all benefit entitlements to Applicant and since there was no petition for contribution within one year of 2-16-16 Zurich's petition for contribution on 4-28-21 was untimely as to all benefits.

AIG asserts the stipulation by Zurich on 2-16-16 to provide medical treatment with Dr. Immerman was a medical award and the petition for contribution of 4-28-21 was untimely as to all medical paid by Zurich.

The issues herein come from one case a CT ADJ10085912 and not the specific injury ADJ10085904. This specific was also resolved by the C&R of 1-29-21 herein.

In the case at hand a CT injury was plead against the one employer, JB Hunt Transport Services Inc. for the period 9-2-14 to 7-20-15. The employer had workers' compensation insurance companies with Zurich from 12/13/2014 to 7/20/2015 and New Hampshire Insurance (hereinafter AIG) from 9/2/2014 to 12/31/2014. This does not affect the timing of the petition for contribution.

The Hartford v. Workers Compensation Appeals Bd. Fremont Compensation Ins. Co. 62 Cal. Comp. Cases 1292 (Cal. App. 4th Dist. July 24. 1997)

A Stip[ulation] and Order issued at an expedited hearing between Applicant and Zurich on 2-16-16. Contribution was reserved and all other issues deferred.

My review of the case law indicated all carriers had to reserve contributions. *The Hartford v. Workers Compensation Appeals Bd., Fremont Compensation Ins. Co., 62 Cal. Comp. Cases 1292 (Cal. App. 4th Dist. July 24, 1997)*

Injury was accepted. TD was agreed to. The parties agreed the Stip[ulation] was not an award of TD and no petition to terminate TD was needed. The TD period was to the date of the 2-16-16 hearing and continuing. Finally, the Applicant was authorized to treat with Dr. Immerman. At the same time, AIG was joined.

5 years later, the parties resolved the Applicant's two injuries by C&R, OACR 2-1-21.

RECOMMENDATIONS

Defendant's petition for reconsideration should be granted to find Zurich's petition for contribution was untimely as to the treatment costs of Dr. Immerman only. AIG's reconsideration petition should otherwise be denied.

OPINION

FACTS

The parties stipulated.

Applicant, Dennis Dutra was 53 years old on the date of injury while employed during the period of 9/2/2014 to 7/20/2015 as a truck driver, Occupational Group No. 350 at various locations within California by J.B. Hunt Transport, sustained injury arising out of and in the course of employment to his wrist and upper extremities.

During the period of employment, the employer had workers' compensation insurance companies with Zurich from 12/13/2014 to 7/20/2015 and New Hampshire Insurance from 9/2/2014 to 12/31/2014.

Parties have stipulated that the Stipulations entered by and through the parties dated 2/16/16 remain in effect today.

Procedural History and Facts

Both parties briefed this case, and the facts are the same.

I will quote Zurich's brief *PROCEDURAL HISTORY & STATEMENT OF CASE page 1* and [incomplete sentence]

Applicant filed an Application for Adjudication of Claim on August 25, 2015, alleging cumulative trauma injury to his wrist and upper extremities for the period of September 2, 2014, through July 20, 2015. During the entire industrial cumulative trauma period, applicant was employed by JB Hunt Transport Services, Inc. (hereinafter, "JB Hunt").

During the applicable CT period, JB Hunt was insured by New Hampshire Insurance Company/AIG Claims, Inc. (hereinafter "AIG") from September 2, 2014, through December 31, 2014, and by Zurich American Insurance Company (hereinafter "Zurich") from December 31, 2014, through July 20, 2015.

On February 16, 2016, AIG was joined as a party defendant in this matter.

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On February 16, 2016, there was an Expedited Hearing set on the issues of temporary disability and medical treatment. At that hearing, applicant elected against Zurich, and applicant and Zurich entered into Stipulation and Award and/or Order in which Zurich accepted liability AOE/COE for bilateral upper extremities for the CT period of 9/2/14- 7/20/15. Zurich further agreed to commence TTD from 7/20/15 through the date of the Expedited Hearing, and continuing, with the Stipulation specifically noting that the agreement was not construed by the parties to be an Award of TD necessitating a Petition to Terminate TD. While Zurich did reserve its rights to seek contribution, all other issues were deferred. No trial was conducted, and no Findings of Fact was issued.

On January 29, 2021, Zurich and applicant settled applicant's claim by Compromise and Release.

On April 28, 2021, Zurich filed its Petition for Contribution against AIG, requesting contribution for benefits paid during the applicable CT period, based on pro rata liability between the two carriers for the single employment during the applicable CT.

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Discussion

Two awards are involved in this case a Stipulation and Award and/or Order of 2-16-16 and the Order approving C&R of 1-29-21.

An award of benefits is to the Applicant for specific benefits agreed to by the parties or found by a Judge. This does not begin when a final award is issued but on the date of any award of compensation benefits. *Rex Club v. Workers' Comp. Appeals Bd. 53 Cal. App. 4th 1465.1469.*

Here[,] Rex [C]club[,] supra[,] would require a petition for contribution to be filed within one year of the original Stipulation and Award and/or Order of 2-16-16 (triggering event 1) and as to the Order Approving C&R of 1-29-21(triggering event 2).

That would include all TD and medical treatment by Dr. Immerman.

It would not include PD, VR, or medical treatment beyond treatment by Dr. Immerman. Therefore, the petition for contribution of 4-28-21 would be timely for these benefits.

Is the TD stipulation between the Applicant and ZURICH an Award? I said yes. However, the two parties specifically said it was not to be construed that way and a petition to terminate TD was not needed. The WCAB may see this issue differently than I.

Also, I will recommend that the 4-28-21 petition for contribution was not timely as to treatment costs from Dr. Immerman, specifically. I will continue to find that this stipulation "authorization for treatment by Dr. Immerman" is not an award of medical care due to the language limitations used by the parties. Therefore, the petition for contribution of 4-28-21 would be timely for all new and distinct benefits of medical care beyond specific treatment by Dr. Immerman.

The rest of benefits not addressed in the 2-16-16 stipulations are subject to contribution due to the timely petition for contribution filed 4-28-21 after the Order Approving C&R on 1-29-21.

AIG assertion that accepting an injury is an award of all available benefits to an injured worker has no statutory or case law support.

CONCLUSION

I recommend AIG's petition for reconsideration be granted as to the medical costs of Dr. Immerman only. Contribution is not timely to those benefits.

Zurich's petition for contribution is timely as to all other new and distinct benefits not addressed in the 2-16-16 Stip.

Timothy Nelson
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE