

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

JENNIFER LEE REINO, *Applicant*

vs.

**ARMSTRONG WORLD INDUSTRIES, permissibly self-insured,
administered by SEGWICK CLAIMS MANAGEMENT; VONS, permissibly self-insured,
administered by ALBERTSONS HOLDINGS, *Defendants***

**Adjudication Numbers:
ADJ3362746 (BGN 0109461), ADJ2701589 (BGN 0131002),
ADJ2142330 (BGN 0139432), ADJ915001 (BGN 0139433)
Long Beach District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in this matter to further consider the factual and legal issues. This is our decision after Reconsideration. Defendant Vons seeks reconsideration of the November 13, 2020 Findings and Order wherein the workers' compensation administrative law judge (WCJ) found that Armstrong World Industries is entitled to 50% reimbursement for medical treatment costs from Vons.

Vons contends that the WCJ erred in finding that Armstrong is entitled to reimbursement arguing that Armstrong is seeking a contractual remedy beyond the statute of limitations for a contract that they also breached. Vons also contends that Armstrong cannot enforce the 1990 stipulated award because it was superseded by a 2009 Order approving a Compromise and Release. Finally, Vons contends that Armstrong's claim of reimbursement should be barred by the doctrine of laches.

Armstrong filed an Answer. Armstrong argues that Vons' reliance on contract law is misplaced because Armstrong is seeking to enforce an Award and is not trying to enforce a contract or obtain contract remedies.

We have reviewed Vons' Petition, Armstrong's Answer and the Record. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied. For the reasons discussed below, we will grant reconsideration, rescind

the Findings and Order and return this matter to the trial level for further proceedings and a new decision.

FACTS

Applicant's workers' compensation claims against both Vons and Armstrong were settled by a Stipulated Award approved on October 23, 1990. (Exh. W, October 23, 1990, Award, Stipulations with Request for Award.) Pursuant to the Stipulated Award, applicant settled claims for injuries sustained on June 25, 1985, June 12, 1988, January 31, 1989, and a cumulative trauma through January 31, 1989. Applicant was employed by Armstrong when she sustained the June 25, 1985 injury and by Vons when she sustained the other three injuries. Both Vons and Armstrong signed the October 23, 1990 Stipulations with Request for Award. The parties stipulated "the defendants agree to be responsible for the cost of future medical care in equal shares of 50% each, to be administered by Vons/Comco." (Id. at p. 3, paragraph 8)

Thereafter, applicant and Vons entered into a Compromise and Release agreement settling a Petition to Reopen her claims for injury while employed by Vons and her right to future medical care against Vons.

According to the August 27, 2020 Minutes of Hearing, a trial was held on that date concerning "enforcement of that [October 23, 1990] Award, particularly the reimbursement or sharing in medical costs between the two Defendants herein, that would pertain to the Master File Case ADJ3362746." (August 27, 2020, Minutes of Hearing and Order of Consolidation, p. 2:15-19.) The parties and WCJ did not itemize issues, but the Minutes of Hearing states: "So as to the issue in these cases regarding the reimbursement sought by Armstrong against Vons, Armstrong raises enforcement of the Joint Award, particularly in Case No. ADJ3362746, an Award approving the Stipulation dated 10-23-1990, and particularly the enforcement of the reimbursement for sharing of medical costs herein...Vons asserts that the Statute of Limitations has passed, laches apply, waiver applies." (Id. at 3:12-23.)

DISCUSSION

A WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the

proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-22.) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351];); See also *Hernandez v. Staff Leasing* (2011) 76 Cal.Comp.Cases 343 (Appeals Board Significant Panel Decision) (clarifying that *Hamilton* applies to a record created and maintained in EAMS.)

In this case, it is unclear whether Vons' arguments concerning the statute of limitations, laches, and waiver were formally raised as issues at trial. Therefore, we will return this matter to the trial level for the parties to clarify issues submitted for adjudication and to create a complete record.

In addition, we note that, while the equitable doctrine of laches may apply in workers' compensation proceedings, in order to apply the doctrine, the California Supreme Court has stated that, "[t]he defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." (*Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.App.3d 351, 359, 360, see also *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 77.) Therefore, unreasonable delay alone is not sufficient to establish laches; prejudice to the defendant resulting from the delay and/or acquiescence must be established. (See *Ragan v. City of Hawthorne* (1989) 222 Cal.App.3d 1361, 1367.)

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the November 13, 2020 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 26, 2021

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

**JENNIFER LEE REINO
PURINTON LAW
SAMUELSON GONZALEZ**

MWH/oo

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