

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

**JUAN SUAREZ, *Applicant***

**vs.**

**HALEY BROS/TM COBB COMPANY and CALIFORNIA INSURANCE GUARANTEE ASSOCIATION through its servicing facility, SEDGWICK CLAIMS MANAGEMENT SERVICES, for FREMONT INDEMNITY COMPANY, in liquidation, *Defendants***

**Adjudication Numbers: ADJ365717 (STK 0111454), ADJ3469175 (STK 0109844)  
Stockton District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

The Appeals Board previously granted reconsideration to further study the factual and legal issues in this case. This is our decision after reconsideration.

Defendant, Liberty Mutual Insurance Company, seeks reconsideration of the February 21, 2020 Findings and Orders wherein the workers' compensation administrative law judge (WCJ) found that Liberty Mutual was jointly and severally liable with Unicare for an award of future medical care pursuant to a May 6, 1997 Stipulated Award. Because Unicare is now insolvent and its claims are administered by the California Insurance Guarantee Association (CIGA)<sup>1</sup>, the WCJ found that Liberty Mutual is available "other insurance" and ordered that Liberty Mutual take over administration of applicant's medical care and resolve reimbursement and contribution issues with CIGA.

Liberty Mutual contends that the WCJ erred in ordering Liberty Mutual to reimburse CIGA because they settled all liability with applicant and they are not "other insurance" for applicant's claims. Defendant also contends that the public policy encouraging settlements outweighs the public policy to limit CIGA's liability to covered claims. Finally, Liberty Mutual contends that CIGA's petition for reimbursement and change of administrators is barred by the statute of

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<sup>1</sup> CIGA is an unincorporated association of insurers licensed in California, which pays claims of insolvent insurers set forth by Insurance Code section 1063 et seq. (*Isacson v. California Ins. Guarantee Assn.* (1988) 44 Cal.3d 775, 786-787.)

limitations or, in the alternative, that the equitable doctrines of waiver, laches, and estoppel should be applied.

Defendant filed an answer. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that reconsideration be denied. 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, as our decision after reconsideration, we will rescind the WCJ's February 21, 2020 decision and issue a new decision finding that Liberty Mutual is not available "other insurance" for applicant's claim.

As an initial matter, the petition for reconsideration is timely. To be timely, a petition for reconsideration must be filed with (i.e., received by) the WCAB within 25 days from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, former § 10507(a)(1), now § 10605(a)(1), former § 10845(a), now § 10940(a); former § 10392(a), now § 10615(b) (eff. Jan. 1, 2020).) A petition for reconsideration of a final decision by a workers' compensation administrative law judge must be filed in the Electronic Adjudication Management System (EAMS) or with the district office having venue. (Cal. Code Regs., tit. 8, former § 10840(a), now § 10940(a) (eff. Jan. 1, 2020).) Labor Code section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within 60 days of filing. (Lab. Code, § 5909.) Section 5315 provides the Appeals Board with 60 days within which to confirm, adopt, modify or set aside the findings, order, decision or award of a workers' compensation administrative law judge. (Lab. Code, § 5315.)

The Division of Workers' Compensation (DWC) closed its district offices for filing as of March 17, 2020 in response to the spread of the novel coronavirus (COVID-19).<sup>2</sup> In light of the district offices' closure, the Appeals Board issued an en banc decision on March 18, 2020 stating that all filing deadlines are extended to the next day when the district offices reopen for filing. (*In re: COVID-19 State of Emergency En Banc* (2020) 85 Cal.Comp.Cases 296 (Appeals Board en banc).) The district offices reopened for filing on April 13, 2020.<sup>3</sup> Therefore, the petition for

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<sup>2</sup> The March 16, 2020 DWC Newline regarding the closure of district offices may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-18.html>.

<sup>3</sup> The April 3, 2020 DWC Newline regarding reopening the district offices for filing may be accessed here: <https://www.dir.ca.gov/DIRNews/2020/2020-29.html>.

reconsideration is deemed filed on April 13, 2020, and the opinion granting the petition for reconsideration issued within the 60 day period.

## **FACTS**

Applicant sustained a cumulative injury to his low back and neck through September 8, 1993 (ADJ365717) while employed by Haley Brothers insured by Unicare Insurance and a specific injury to his low back and neck on July 27, 1986 (ADJ3469175) while employed at T.M. Cobb Company insured by Liberty Mutual.

The issue submitted at trial was: “Is Liberty Mutual liable for the administration of this claim and possible reimbursement and contribution to the California Insurance Guarantee Association.” (January 9, 2020, Minutes of Hearing and Summary of Evidence, p. 2.) The sole exhibit admitted at trial was the May 6, 1997 Stipulations with Request for Award and the associated Award. (Exh. 100.)

The May 6, 1997 Stipulations with Request for Award included the following stipulation:

This settlement is based on the QME Panel report of Dr. Branscum (rated by the DEU at 34%). This settlement resolves and all claims for ‘retroactive’ benefits to date (TD, VRMA and PD). Liberty Mutual agrees to pay Unicare \$25,000.00 in full satisfaction of contribution issue, in one lump sum, payment resolves any and all future claims for contribution. Defendant Unicare agrees to assume full and sole responsibility for all future payment of benefits and expenses allowed under the Labor Code. Interest is included if payment is made within 25 days. All claims for penalty are resolved by this settlement. (May 6, 1997 Stipulations with Request for Award, ¶ 8.)

The WCJ issued an Award in favor of applicant and against Unicare. (May 6, 1997, Award.) On the Award itself, the WCJ memorialized an additional stipulation: “Liberty Mutual to pay \$25,000 to Unicare in full satisfaction of contribution issue, past and future. Defendant Unicare to assume responsibility for administering these cases.” (May 6, 1997, Award, ¶ E.)

## **ANALYSIS**

CIGA’s liability is specifically defined in Insurance Code section 1063.1. While section 1063.1, subdivision (c)(1)(vi) defines “covered claims” as “the obligations of an insolvent insurer ... in the case of a policy of workers’ compensation insurance, to provide workers’ compensation

benefits under the workers' compensation law of this state," subdivision (c)(9) provides, "Covered claims' does not include (i) any claim to the extent it is covered by any other insurance of a class covered by this article available to the claimant or insured ...." Pursuant to Insurance Code section 1063.1, if CIGA alleges that Liberty Mutual is available as "other insurance" for benefits paid by CIGA, then CIGA has standing to file a petition for reimbursement and to request a change of administrator of applicant's medical award.

In order to obtain reimbursement or a change of administrators, CIGA must show that Liberty Mutual is jointly and severally liable for medical treatment. In cases where an applicant sustains successive injuries, insurers or self-insured employers are jointly and severally liable for medical treatment and temporary disability if both injuries contributed to the need for medical treatment or the temporary disability indemnity. (*California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd. (Hernandez)* (2007) 153 Cal.App.4th 524.) In *Hernandez*, the Court of Appeal explained the significance of joint and several liability for these benefits in cases where an insurer is insolvent and CIGA is administering a claim as follows,

Between workers' compensation insurers who are jointly and severally liable for various nonpermanent disability benefits, there is generally pro rata apportionment for the shared liability. (See generally Lab. Code, §§ 3208.2, 5303, 5500.5.) But, CIGA is not another workers' compensation insurer; it is a fund with responsibilities that are limited by statute in order to insure that the worker is protected. CIGA does not protect insurers....SCIF constitutes solvent 'other' insurance' that must reimburse the CIGA fund for the temporary workers' compensation benefits it paid in this matter. (*Id.* At p. 537.)

Pursuant to the Court of Appeal decision in *California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd. (Lopez)* (2016) 245 Cal.App.4th 1021 (81 Cal.Comp.Cases 317), a final award apportioning liability between insurers does not change the joint and several nature of defendants' liability. In *Lopez*, the insurers agreed, in a compromise and release agreement, that the insurers would apportion liability for the remaining liens "52% [Care West] and 48% [Ullico] according to proof and with rights to contribution and reimbursement between the two being reserved." (*Id.* at p. 1029, emphasis in original.) The *Lopez* Court noted that "Care West and Ullico understood their liability remained joint and several even after settlement and apportionment...The contribution

and reimbursement provisions would have been meaningless in the absence of joint and several liability.” (Ibid.)

In contrast, in this case, Unicare Insurance settled its contribution rights as part of the Stipulated Award, and, significantly, the award issued solely against Unicare. Applicant was a signatory to these stipulations, including the stipulation that only Unicare would be liable for benefits. Therefore, after the settlement, Liberty Mutual no longer had any liability for benefits to the applicant and applicant could only obtain medical treatment benefits from Unicare. There cannot be joint and several liability where one party has no liability. Accordingly, we grant reconsideration and find that Liberty Mutual is not liable for applicant’s medical treatment and CIGA is not entitled to reimbursement from them.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the February 20, 2020 Findings and Order is **RESCINDED**, and the following is **SUBSTITUTED** in its place:

#### **FINDINGS OF FACT**

1. Liberty Mutual is not liable to applicant for medical treatment to cure or relieve him from the effects of his industrial injuries.
2. CIGA is not entitled to reimbursement for medical treatment expenses from Liberty Mutual.

**ORDER**

**IT IS ORDERED** that CIGA shall continue to administer applicant's medical treatment award.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**



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

**FEBRUARY 8, 2022**

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

**JUAN SUAREZ  
MULLEN & FILIPPI  
YEMPUKU WETTERS & MCNAMARA**

**MWH/oo**

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