

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

CURT DOEHRMANN, *Applicant*

vs.

**BROWN'S HOME REMODELING and
SIRIUS AMERICAN INSURANCE COMPANY,
administered by CORVEL CORPORATION, *Defendants***

Adjudication Number: ADJ15343213

Sacramento District Office

**OPINION AND DECISION
AFTER
RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case.¹ This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings of Fact (Findings) issued by the workers' compensation administrative law judge (WCJ) on March 28, 2022, wherein the WCJ found in pertinent part that applicant was not entitled to a new Panel Qualified Medical Examiner list.

Applicant contends that based on the *Romero v. Costco Wholesale* Appeals Board panel decision, he is entitled to a new Panel Qualified Medical Examiner list. (See *Romero v. Costco Wholesale* (2007) 72 Cal.Comp.Cases 824.)

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be granted for the limited purpose of amending the Findings to correct a clerical error in Finding #1, but that the Petition otherwise be denied. We received an Answer from defendant.

We have subsequently received a Notice of Withdrawal of Petition for Reconsideration/ Petition for Removal filed by applicant on October 26, 2023. However, because we need to correct the Findings, we will amend Finding #1 and for the reasons stated by the WCJ in the Report, we will otherwise affirm the March 28, 2022 Findings.

¹ Commissioner Sweeney, who was a member of the panel has since retired and another panel member has been assigned in her place.

BACKGROUND

Applicant claimed injury to his back and left shoulder while employed by defendant as a flooring and drywall installer on September 9, 2021.

The parties proceeded to trial on March 22, 2022, and the issue submitted for decision was whether applicant was entitled to a new Panel Qualified Medical Examiner list. Minutes of Hearing and Summary of Evidence (MOH/SOE) March 22, 2022, p. 2.)

DISCUSSION

In her Report, the WCJ stated:

Although not addressed in either the Petition for Removal or the Answer, the WCJ became aware of a typographical error in the Findings & Order. Finding No. 1 should read as follows to match the 3/22/22 stipulations of the parties:

1. Applicant claims to have sustained an injury to his back and left shoulder while working as a flooring and drywall installer on September 9, 2021. The Court did not intend to find the injury industrially related. The undersigned therefore recommends that the Petition be granted solely to fix this typographical error. (Report, pp. 3 – 4.)

The term “clerical error” includes all errors, mistakes, or omissions which are not the result of the exercise of the judicial function. The Appeals Board may correct a clerical error at any time without the need for further hearings, even after the statutory time for reconsideration is passed. (*Toccalino v. Workers' Comp. Appeals Bd.* (1982) 128 Cal.App.3d 543 [47 Cal.Comp.Cases 145].) Thus, having reviewed the trial record, we agree with the WCJ, and we will amend Finding #1 to correct the clerical error.

Regarding applicant’s argument that he is entitled to a new Panel Qualified Medical Examiner list, we note that a decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ’s determination regarding interlocutory issues, then the Appeals Board (including the WCJ) will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions. Here, applicant’s argument pertains only to an interlocutory discovery issue so it is appropriate that the WCJ addressed that issue by utilizing the applicable removal standard. (Cal. Code Regs., tit. 8, § 10955(a); (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127

Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) As stated above, having reviewed the entire record, we agree with the WCJ's analysis and decision. Based thereon we affirm the Finding that applicant is not entitled to a new Panel Qualified Medical Examiner list.

Accordingly, we amend Finding #1 to correct the clerical error and for the reasons stated by the WCJ in the Report, we otherwise affirm the March 28, 2022 Findings.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 28, 2022 Findings of Fact of is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant claims to have sustained an injury to his back and left shoulder while working as a flooring and drywall installer on September 9, 2021.

* * *

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 15, 2023

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

**CURT DOEHRMANN
LAW OFFICE OF TOM R. JOHNSON
DIETZ, GILMOR & CHAZEN**

TLH/mc

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