

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

MICKEY THORNTON, *Applicant*

vs.

**NORTHWEST LINEMAN COLLEGE/GRID TRAINING CORPORATION; ALASKA
NATIONAL INSURANCE COMPANY; LASSEN MUNICIPAL UTILITY DISTRICT;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ8883423; ADJ11327965
Sacramento District Office**

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

Defendant State Compensation Insurance Fund (SCIF) seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of November 28, 2022, wherein, as relevant to the instant Petition, it was found that there "is good cause to reopen" applicant's November 17, 2015 stipulated Award regarding a March 21, 2013 injury to now include "new and further disability to the low back." Previously, in a stipulated Award of November 17, 2015, it was found that while employed on March 21, 2013 by Lassen Municipal Utility District, insured by SCIF, applicant sustained industrial injury to the cervical spine causing permanent disability of 15% after apportionment.

Defendant contends that the WCJ erred in finding new and further disability in the form of a low back injury. We have received an Answer from the applicant, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant reconsideration and defer the issue of new and further disability with regard to the March 21, 2013 injury so that the record may be further developed and clarified.

Applicant was evaluated by agreed medical evaluator orthopedist Beth Bathgate, M.D. both with regard to the reopening proceedings as well as the claim for a later injury with a different employer, Northwest Lineman College. In an October 19, 2017 report, Dr. Bathgate wrote:

In my opinion, based on his history and the difficulty of climbing poles several times a day while working for Northwest Lineman College, this represents a new injury to the cervical spine. He also had some low back pain at that time. The records from Advanced Neurology on June 8, 2017, stated that he had sciatica. Diagnostic studies were recommended. Mr. Thornton states that the low back pain has improved although he does have numbness in the legs. Evaluation for this should be allowed as recommended by Advanced Neurology in June of 2017. This is considered related to his work at Northwest Lineman College.

(October 19, 2017 report at p. 18.)

In her April 22, 2021 report, Dr. Bathgate wrote, “At the time of the October 2017 evaluation, he indicated that his low back was not hurting him. He states that it has been hurting him related to the injury at Northwest Lineman College.” (April 22, 2021 report at p. 20.)

In a report of February 4, 2022, Dr. Bathgate wrote:

The history that I had from the prior report was that Mr. Thornton had injured his low back in 1999 while reading meters when he slipped and fell. He had no time off work and no ongoing restrictions. There was no settlement. He received future medical care for life. He had occasional low back pain following that. His subsequent work injuries of July 19, 2006 and March 21, 2013, as well as a non-work-related motor vehicle accident in September 2013, involved the cervical spine and did not involve the lumbar spine except one record ... with regard to the motor vehicle accident and the lumbar spine.

There is clearly contribution to his low back condition based on his description of his work and pain at Northwest Lineman College. The medical records support this. Nonetheless, the records also support some low back pain while working at Lassen Municipal Utility District. Therefore, in my opinion, he should be allowed treatment for his low back based on his work for Lassen Municipal Utility District.

(February 4, 2022 report at pp. 5-7.)

We agree with SCIF that, on the current record, there is insufficient evidence to tie applicant’s low back condition to his March 21, 2013 injury. In her reports, Dr. Bathgate appears to associate applicant’s low back condition to a 1999 injury as well as to his subsequent work at Northwest Lineman College. Even indulging the proposition that Dr. Bathgate concluded that the March 21, 2013 cervical spine injury was causing a need for medical treatment to the low back, “any decision of the WCAB must be supported by substantial evidence.” (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 [Appeals Bd. en banc].) “In order to constitute substantial

evidence, a medical opinion must be predicated on reasonable medical probability. [Citation.]” (*E.L. Yeager Construction v. Workers’ Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687].) “Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician’s opinion, not merely his or her conclusions. [Citation.]” (*Id.*) Here, even assuming she was concluding that the March 21, 2013 cervical spine injury was contributing to the low back condition, there was no explanation of her reasoning behind such a conclusion.

Accordingly, we will grant reconsideration and defer the issue of new and further disability with regard to the March 21, 2013 injury. The WCJ and the Appeals Board have a duty to further develop the record when there is a complete absence of (*Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) medical evidence on an issue. The WCAB has a constitutional mandate to ensure “substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) Since, in accordance with that mandate, “it is well established that the WCJ or the Board may not leave undeveloped matters” within its acquired specialized knowledge (*Id.* at p. 404), pursuant to Labor Code section 5906, we will defer the issues of new and further disability with regard to the March 21, 2013 injury so the record may be clarified, by way of substantial medical evidence, regarding whether the March 21, 2013 injury caused the need for medical treatment or disability with regard to the low back.

For the foregoing reasons,

IT IS ORDERED that that Defendant SCIF’s Petition for Reconsideration of the Findings of November 28, 2022 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the Findings of November 28, 2022 is **AMENDED** as follows:

FINDINGS OF FACT – ADJ11327965

1. The following stipulations of the parties are adopted as findings of fact:
 - a. Mickey Thornton, age 59 on the date of injury, while employed during the period December 5, 2016 through July 17, 2017 as a training specialist at Oroville, California by Northwest Lineman College / Grid Training

Corporation, claims to have sustained injury arising out of and in the course of employment to his neck and low back.

b. At the time of the injury, the employer's workers' compensation carrier was Alaska National Insurance Company.

c. At the time of the injury, the employee's earnings warranted the maximum rate for permanent disability indemnity.

d. The employer has furnished no medical treatment.

e. No attorney fees have been paid and no attorney fee arrangements have been made.

f. Dr. Daniel Shalom is the Agreed Medical Evaluator.

g. There was no lost time due to this alleged injury.

2. Applicant sustained an injury arising out of and in the course of employment to the low back and cervical spine while working for Northwest Lineman College / Grid Training Corporation.

FINDINGS OF FACT – ADJ8883423

1. The following stipulations of the parties are adopted as findings of fact:

a. Mickey Thornton, age 55 on the date of injury, while employed on March 21, 2013, as a Troublemaker, Occupational Group No. 482, at Lassen County, California by Lassen County Municipal Utility District, sustained injury arising out of and in the course of employment to the cervical spine.

b. At the time of the injury, the employer's workers' compensation carrier was State Compensation Insurance Fund.

c. At the time of the injury, the employee's earnings warranted an indemnity rate of \$1,066.72 for temporary disability and \$230 for permanent disability.

d. The carrier/employer has paid compensation as follows: temporary disability at the weekly rate of \$1,066.72 for the period February 22 2013 through July 27, 2014 and permanent disability with \$11,615 paid per the Stipulated Award dated November 17, 2017.

e. The employer has furnished some medical treatment.

f. Dr. Beth Bathgate is the Agreed Medical Evaluator.

2. The issue of new and further disability to the low back is deferred, with jurisdiction reserved.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER /

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 21, 2023

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

**MICKEY THORNTON
MASTAGNI HOLSETDT
STATE COMPENSATION INSURANCE FUND
LAUGHLIN, FALBO, LEVY & MORESI**

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