

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

MIRNA JANET CACERES, *Applicant*

vs.

**ACADIA MANAGEMENT, INC., and TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA administered by TRAVELERS, *Defendants***

Adjudication Numbers: ADJ10918846 ADJ11980943

Los Angeles District Office

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

Applicant seeks reconsideration of the Joint Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on September 2, 2023, wherein the WCJ found in pertinent part that as to the injury claim in case number ADJ11980943, applicant did not sustain a psychiatric injury; that applicant did not sustain any periods of temporary disability subsequent to December 23, 2019; that the injury caused 39% permanent disability; and that the Employment Development Department (EDD) “is entitled to recover partial sums paid from the date January 10, 2020 through January 3, 2021 at the rate of \$290.00 per week, plus applicable interest.” (F&A, p. 3.)

Applicant contends that the report from urology qualified medical examiner (QME) Alec Koo, M.D., is not substantial evidence on the issue of applicant’s temporary disability status so the record should be further developed; that the reports from urology treating physician Alexander Gershman M.D., are substantial evidence regarding the permanent disability caused by applicant’s urinary incontinence and the report from Dr. Koo is not substantial evidence as to that issue; and that the reports from treating psychologist Judith Schwafel, Ph.D., are substantial evidence that applicant sustained a psychiatric injury as claimed, or in the alternative if they are found not to be substantial evidence, then the record should be further developed in regard to that issue.

We received a Joint Report and Recommendation (Report) from the WCJ recommending the Joint Petition for Reconsideration (Petition) be denied, but that the F&A should be clarified to

state it is defendant's responsibility to pay the interest to the EDD, and the interest payable by defendant is not to be included in the amount credited against the permanent disability indemnity owed to applicant. We did not receive an Answer from defendant.

We have considered the allegations in the Petition, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&A, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

Applicant claimed injury to her lumbar spine, left hip, right hip, bilateral thighs/legs, waist, pelvis, psyche, and urinary system in the form of urinary incontinence while employed by Acadia Management Inc., as an L.E.D. Department Head on February 19, 2019 (ADJ11980943; see the April 29, 2019 Application for Adjudication of Claim.). She had previously claimed injury to her coccyx/lumbar spine while employed by 4 Wall Entertainment on May 31, 2016 (ADJ10918846; see the June 8, 2017 Application for Adjudication of Claim).¹ Travelers Property Casualty Company of America was the workers' compensation insurance carrier for both employers.

Applicant underwent a course of treatment and was evaluated by various medical-legal physicians.

The parties proceeded to trial on May 8, 2023, and the trial was continued. (Minutes of Hearing and Summary of Evidence (MOH/SOE), May 8, 2023.) At the June 28, 2023 trial the matter was submitted for decision. (MOH/SOE, June 28, 2023, p. 1.) The issues submitted for decision regarding case number ADJ11980943 included parts of body injured; temporary disability during the period from December 24, 2019, through July 21, 2020; permanent disability/apportionment; and the EDD lien. (MOH/SOE, May 8, 2023, pp. 4 – 5.) Regarding case number ADJ10918846, the parties stipulated that the injury caused 0% whole person impairment and 0% permanent disability; the issue submitted for decision was the EDD lien. (MOH/SOE, May 8, 2023, p. 6.)

¹ On March 12, 2019, applicant filed an amended Application for Adjudication of Claim alleging injury to additional body parts; the Application identified Acadia Management Inc., as the employer.

DISCUSSION

Having reviewed the entire record, it appears that as it now stands, the trial record is not adequate to make a final determination on the issues submitted for decision.

We note that the initial report from orthopedic agreed medical examiner (AME) Yuri Falkinstein, M.D., indicates the “Insured’s name – 4 Wall Entertainment” (Joint Exh. Q, Yuri Falkinstein, M.D., June 28, 2019, p. 1, original capitalized) and then states, “Employer: Acadia Management / 4 Wall Entertainment.” (Joint Exh. Q, p. 1 [EAMS p. 3].) The doctor later stated, “Ms. Caceres started working for Acadia Management/4 Wall Entertainment as a LED programming tech on December 7, 2014.” (Joint Exh. Q, p. 2 [EAMS p. 4]; see also p. 5 [EAMS p. 7].) Also, in his initial report, consulting/treating physician Brian S. Grossman, M.D., stated, “The patient has been employed by 4 Wall Entertainment for 3+ years as a Supervisor Lighting Technician.” (App. Exh. 8, Brian S. Grossman, M.D., March 14, 2019, p. 2.) Psychologist Judith A Schwafel, Ph.D., stated in her report that, “Ms. Caceres began her employment at Acadia Management in 2016. She is still employed by Acadia Management.” (App. Exh. 2, Judith A Schwafel, Ph.D., August 22, 2019, p.2 [EAMS p. 5].) Finally, we note that the WCJ’s summary of applicant’s trial testimony included the following:

The last day that she worked for any employer was December 23, 2019 while working for 4 Wall. She has not looked for any other job because she has a lifting restriction of no more than five pounds since the 2019 date of injury as well as no lifting or bending.

(MOH/SOE, June 28, 2023, p. 3.)

She confirmed [in] her testimony that she first had incontinence after the 2016 date of injury. She would urinate all the time after the 2016 date of injury, but it got worse after the 2019 date of injury and she estimates it might have gotten three times more frequent.

(MOH/SOE, June 28, 2023, p. 4.)

“... [T]he Labor Code and the Board's rules contain explicit instructions concerning the contents of the record of a case. It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record.” (*Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 477 (Appeals Board *en banc*)). It is the responsibility of the parties to properly identify the injured worker’s employer. (Cal.Code Regs., tit. 8, § 10390; see also: *Coldiron v. Compuware Corporation* (2002) 67 Cal.Comp.Cases 289 (Appeals Board *en banc*)).

As discussed above, the record contains numerous inconsistencies regarding the entity that was applicant's employer on the two dates of injury at issue herein. The record contains no information as to whether Acadia Management and 4 Wall Entertainment are in any way related or if they are in fact two separate employers. Review of the entire record in both cases does not indicate that 4 Wall Entertainment was joined as a party defendant, but the F&A includes an award of further medical treatment in case number ADJ10918846 which initially identified 4 Wall Entertainment as the employer.

Based thereon, it is appropriate that we rescind the F&A and return the matter to the WCJ in order to have the parties properly identify the employers, including applicant's job title and duties at the time of and/or during the period of her employment.

Accordingly, we grant reconsideration, rescind the F&A, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Joint Findings and Award issued by the WCJ on September 2, 2023, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the September 2, 2023 Joint Findings and Award is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 15, 2023

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

**MIRNA JANET CACERES
LEVIN & NALBANDYAN, LLP
WOOLFORD & ASSOCIATES**

TLH/mc

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