

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

PABLO PALMA, *Applicant*

vs.

**SHAW INDUSTRIES GROUP INC.; SAFETY NATIONAL CASUALTY
CORPORATION, Administered By GALLAGHER BASSETT SERVICES, INC.,
*Defendants***

**Adjudication Number: ADJ10266348
Santa Ana District Office**

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

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) 1st Amended Findings, Award and Order of July 14, 2023 wherein it was found that while employed during a cumulative period ending December 15, 2015, applicant sustained admitted injury to his hearing, right knee and left knee, as well as non-admitted injury to his "lumbar spine and cervical spine with symptomology radiating into his bilateral shoulders and upper extremities" causing broken periods of compensable temporary disability totaling 104 weeks. It was also found that applicant did not sustain industrial injury to the head, hands, wrists, trunk, waist, "dental," "urological" or in the forms of hypertension or diabetes. It was further found that "there is insufficient medical evidence to determine if the injury to the applicant in the form of anxiety, depression, sleep problems, vision (eyes) and gastrointestinal problems are nonindustrial or industrial." The WCJ ordered further development of the medical record with regard to these body parts, and deferred all other outstanding issues.

Applicant contends the WCJ erred in finding that applicant did not sustain industrial injury to "dental," "urological," and in the forms of hypertension and diabetes. Applicant argues that the WCJ should have allowed further development with regard to industrial causation of these alleged conditions. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

We will grant reconsideration and amend the decision to reflect that the issue of industrial injury to “dental,” “urological,” and in the forms of hypertension and diabetes are deferred pending further development of the medical record.

Applicant’s current counsel first appeared in this matter in September of 2022. Soon after applicant’s counsel was substituted into the case, defendant filed a Declaration of Readiness to Proceed which was objected to on the basis that applicant’s counsel had only just substituted in, and had not yet received the prior attorney’s file. Nevertheless, a mandatory settlement conference took place on December 6, 2022. In the pretrial conference statement prepared on that date, applicant’s counsel objected to setting a trial date, stating, “Applicant’s counsel was attempting to conduct discovery but due to tactics by Defense counsel, has been unable to complete said discovery.” The mandatory settlement conference was continued to February 21, 2023. On December 7, 2022, applicant filed an Amended Application for Adjudication alleging injury to the psyche, “internal,” “dental,” and in the forms of irritable bowel syndrome, gastroesophageal reflux disorder, diabetes, and hypertension. At the February 21, 2023 mandatory settlement conference, the matter was set for trial on May 8, 2023 with discovery left open only for the deposition of the orthopedic agreed medical evaluator.

We will afford the applicant the opportunity to procure evidence from treating physicians and medical-legal evaluators that that there is some industrial component to his alleged diabetes, hypertension, dental and urological conditions, given that applicant’s counsel had only recently been substituted into the case, and given that the WCJ has already ordered further development of the record with regard to other conditions such and the psyche and gastrointestinal issues, despite the fact that applicant did not procure any comprehensive medical reports from those specialities. Since the discovery is already open with regard to these other conditions, any prejudice from allowing discovery into the cause of applicant’s diabetes, hypertension, dental and urological conditions is lessened.

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].) 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.) We therefore grant reconsideration and amend the Findings and Award to defer the issues of diabetes, hypertension, dental and urological conditions, so that the applicant be afforded an opportunity to

develop the medical record. Although we afford applicant this opportunity to seek further discovery, we remind applicant's counsel that "[t]he applicant for workers' compensation benefits has the burden of establishing the 'reasonable probability of industrial causation'" (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] citing *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660]), and that in the further proceedings it is his burden to procure and introduce evidence of industrial causation of his claimed injuries. Any further extensions of time to seek discovery must be accompanied by a showing of diligence.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the 1st Amended Findings, Award and Order of July 14, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the 1st Amended Findings, Award and Order of July 14, 2023 is **AMENDED** as follows:

FINDINGS OF FACT

1. The applicant Pablo Palma, age 59 on the date of injury, while employed during the period of December 1, 2011 through December 15, 2015, in Santa Fe Springs, California, by Shaw Industries Group, sustained an injury arising out of and in the course of employment to his hearing, right knee, left knee, lumbar spine, and cervical spine with symptomology radiating into his bilateral shoulders and upper extremities.

2. The applicant did not sustain an injury arising out of and in the course of employment to his head, hands, wrists, trunk, and/or waist.

3. There is insufficient medical evidence to determine if the injury to the applicant in the form of anxiety, depression, sleep problems, vision (eyes), gastrointestinal problems, hypertension, dental problems, urological problems, and/or diabetes are nonindustrial or industrial.

4. Further development of the record on the issues of causation of the applicant's anxiety, depression, sleep problems, vision (eyes), gastrointestinal problems, hypertension, dental problems, urological problems, and diabetes is necessary. These issues are deferred, with jurisdiction reserved.

5. At the time of injury, Shaw Industries Group's workers' compensation carrier was Safety National Casualty Corporation, administered by Gallagher Bassett Services

6. The applicant's earnings were \$777.77 per week, warranting indemnity rates of \$518.51 for temporary disability and \$290 for permanent disability.

7. The applicant is entitled to temporary total disability benefits from June 26, 2014 to June 9, 2015, and then again between June 28, 2016 to July 13, 2017, for a total of 104 weeks, payable at the weekly rate of \$518.51 for a total of \$53,925.04 less credit for benefits paid.

8. The issue of permanent and stationary date is deferred, with jurisdiction reserved.

9. The applicant is in need of future medical care to cure or relieve the effects of the industrial injuries to the applicant's right knee, left knee, lumbar spine, and cervical spine, with symptomology radiating into his bilateral shoulders and upper extremities and hearing.

10. The applicant's attorney is entitled to a fee of 15% of the balance of the award for temporary total disability benefits after credit for disability payments paid.

11. All other outstanding issues are deferred, with jurisdiction reserved.

AWARD

AWARD is made in favor of PABLO PALMA against SAFETY NATIONAL CASUALTY CORPORATION of:

- a. Temporary partial disability in accordance with paragraph 7 above.
- b. Future medical care in accordance with paragraph 9 above.
- c. The applicant's attorney is awarded fees in accordance with paragraph 10 above.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 25, 2023

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

**PABLO PALMA
WACHTEL LAW
JMY LAW**

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