

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

TONY DIFFENBAUGH, *Applicant*

vs.

**COUNTY OF KERN FIRE DEPARTMENT,
permissibly self-insured, administered by
COUNTY OF KERN RISK MANAGEMENT, *Defendants***

**Adjudication Numbers: ADJ12877716, ADJ11814948, ADJ12877669
Bakersfield District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

Applicant Tony Diffenbaugh and defendant County of Kern each petition for reconsideration of the Joint Findings of Fact, Award and Orders issued by the workers' compensation administrative law judge (WCJ) in this matter on June 7, 2023. In that decision, the WCJ found in case ADJ12877716 that applicant Tony Diffenbaugh sustained cumulative injury to his right knee, neck, back, right hip, right shoulder, feet, skin, psyche, cardiopulmonary system including heart and in the forms of gastroesophageal reflux disorder and sleep apnea arising out of and in the course of his employment as a fire captain by defendant during the period from 1983 to June 1, 2019, resulting in permanent partial disability of 96% and need of further medical treatment. The WCJ also found in cases ADJ11814948 and ADJ12877669 that applicant did not sustain an injury to his hands arising out of and in the course of his employment on February 26, 2017.

Applicant contends in his petition for reconsideration that the WCJ erred in: (1) apportioning to non-industrial causes liability for hypertensive heart disease in case ADJ12877716; and (2) not finding injury to applicant's hands arising out of and in the course of employment resulting in permanent disability and need for medical treatment in case ADJ11814948.

Defendant contends in its petition for reconsideration that the WCJ denied defendant due process by denying defendant the right to examine witnesses at trial and conduct discovery and there is new evidence which should be considered by the WCJ.

We granted reconsideration to further study the factual and legal issues presented.¹

Subsequently, the parties participated in a commissioners' settlement conference at our request.

On January 8, 2024, the parties filed executed Stipulations With Request for Award.

In order to expedite review and approval of the Stipulations, we will rescind the June 7, 2023 Joint Findings of Fact, Award and Orders and return this matter to the WCJ to consider the Stipulations. The WCJ may conduct such further proceedings as he deems appropriate.

Our decision should not be construed as a ruling on the merits of the petitions for reconsideration. If the WCJ does not approve the Stipulations, he can issue an order reinstating his decision and any aggrieved party may timely seek reconsideration from the reinstated decision.

Finally, we commend the parties for successfully resolving this matter without the need of further litigation.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings of Fact, Award and Orders issued on June 7, 2023, be **RESCINDED**.

¹ Commissioner Katherine Williams Dodd, who signed the Opinion and Order Granting Petition for Reconsideration dated August 28, 2023, is not currently available. Accordingly, a new panel member has been substituted in her place.

IT IS FURTHER ORDERED that this matter be **RETURNED** to the workers' compensation administrative law judge for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 11, 2024

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

**TONY DIFFENBAUGH
STRAUSSNER SHERMAN LONNE TREGER HELQUIST
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

DH/ara

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