

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

SAMANA KASSAMALI, *Applicant*

vs.

**KIDANGO, INC.; NATIONAL LIABILITY AND FIRE INSURANCE COMPANY,
*Defendants***

**Adjudication Number: ADJ1082010 (OAK 0341109); ADJ1958378 (OAK 0341110)
Oakland District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.

In the Joint Findings and Award of October 10, 2019, the workers' compensation judge (WCJ) found, in relevant part, that applicant Samana Kassamali, while employed as a preschool teacher, sustained injury to her head and neck on April 12, 2007 (ADJ1958378), this case being settled by Compromise and Release (C&R) in 2017; applicant, while employed as a preschool teacher, sustained injury to her nose on December 1, 2006 (ADJ1082010), this case also being settled by C&R in 2017; and applicant is not entitled to reimbursement of medical mileage expenses in ADJ1082010 or ADJ1958378. The WCJ also found, in ADJ1958378, that defendant unreasonably delayed the payment of medical mileage reimbursement to applicant in payments made in the total amount of \$342.50, warranting a Labor Code section 5814 penalty of 25% of this amount (\$85.63); in ADJ1082010, defendant unreasonably delayed the payment of medical mileage reimbursement to applicant in payments made in the total amount of \$409.46, warranting a Labor Code section 5814 penalty of 25% of this amount (\$102.37). Finally, the WCJ found that applicant is entitled to interest at 10% annually on each late payment of medical mileage reimbursement made to applicant, from the August 7, 2017 Order Approving Compromise and Release (OACR) in each case, through the date of payment of each medical mileage reimbursement payment made to applicant.

Applicant, who is self-represented, filed a timely petition for reconsideration of the WCJ's decision. Applicant contends, in substance, that the WCJ erred in not awarding all medical mileage accrued by applicant in attending all the treatment appointments necessitated by the two physical injuries at issue herein, and that the WCJ erred in not awarding all mileage accrued by applicant in attending psychological counseling sessions related to the two injuries.

Defendant filed an answer.

We did not receive a Report and Recommendation from the WCJ.

Based on our review of the record and applicable law, we conclude that the WCJ correctly found that applicant is not entitled to further reimbursement of medical mileage expenses in ADJ1082010 or ADJ1958378. We also note that the penalties assessed by the WCJ have not been challenged upon reconsideration. Therefore, we will affirm the WCJ's decision in its entirety.

Reviewing applicant's petition for reconsideration as paginated in the Electronic Adjudication Management System (EAMS), applicant apparently alleges at pages five through eight that she is entitled to additional mileage for injury-related medical treatment visits she made to Fremont Urgent Care and to a Kaiser facility located in Milpitas. However, the WCJ explained in his Opinion on Decision that he did add up mileage for the Kaiser and Fremont Urgent Care visits, as set forth in applicant's exhibits 1 and 3 (admitted into evidence at trial on June 21, 2019). For the injuries in both case numbers, the WCJ even concluded that defendant actually paid more mileage than applicant was entitled to, and again this is according to applicant's own trial exhibits 1 and 3. Further, though applicant states in her petition for reconsideration that she travelled to Kaiser appointments at its Milpitas location because it was closer to her home, the WCJ calculated mileage reimbursement based on Kaiser's Fremont location, farther away from applicant's home. For this reason, it appears that applicant is not aggrieved by the WCJ's calculation of medical mileage. (Lab. Code, § 5900.) Nevertheless, at EAMS pages 22 through 36 of her petition for reconsideration, applicant attaches mileage logs that she claims accurately represent the mileage she travelled to all her medical treatment appointments, in excess of the mileage calculated by the WCJ.

WCAB Rule 10974 states in relevant part, "[w]here reconsideration is sought on the ground of newly discovered evidence that could not with reasonable diligence have been produced before submission of the case...the petition must contain an offer of proof, specific and detailed, providing [...] As to newly discovered evidence, a full and accurate statement of the reasons why

the...exhibits could not reasonably have been discovered or produced before submission of the case. A petition for reconsideration sought upon these grounds may be denied if it fails to meet the requirements of this rule, or if it is based upon cumulative evidence.” (Cal. Code Regs., tit. 8, § 10974, WCAB Rules of Practice and Procedure.)

Here, contrary to Rule 10974, applicant does not explain why the mileage logs attached to her petition for reconsideration could not reasonably have been discovered or produced before submission of her case for decision. Applicant also does not explain why the attached mileage logs should be considered true and correct, as opposed to the mileage reflected in the log of Kaiser visits and Fremont Urgent Care visits presented by applicant herself at trial, in exhibits 1 and 3. In the absence of any such explanations, applicant’s presentation of new evidence of mileage in her petition for reconsideration is not persuasive evidence sufficient to overturn the WCJ’s findings. (Lab. Code, § 3202.5.)

At EAMS pages 10 through 21 of her petition for reconsideration, applicant attaches a series of psychological counseling records and alleges that she is entitled to mileage for attending the counseling sessions. However, the psychological counseling records attached to applicant’s petition for reconsideration were not presented at trial. As with the mileage log attachments, applicant does not explain why the counseling records could not reasonably have been discovered or produced before submission of her case for decision. (See WCAB Rule 10974, *supra*.)

In addition, we note that Labor Code section 3208.3(b)(1) provides: “In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.”

Applicant is not entitled to reimbursement for mileage for attending psychological treatment appointments in the absence of a finding that she sustained a compensable psychiatric injury as a result of her physical injuries, in accordance with section 3208.3(b)(1). (See *Lockheed Martin Corp. v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1237 [67 Cal.Comp.Cases 245].)

There is no stipulation or finding of record in the instant matter that applicant sustained an industrial injury to her psyche. Likewise, there is no substantial medical evidence that she sustained such an injury or that she required psychological counseling to cure or relieve the effects of her physical injuries. We note that applicant was evaluated by Dr. Gupta for her neurological

complaints, and two of the doctor's reports were admitted into evidence at trial on June 21, 2019. (Defense exhibits C and D.) Even though Dr. Gupta is a specialist in both psychiatry and neurology, the doctor did not evaluate applicant for her psychiatric complaints and the doctor did not offer an opinion as to whether she sustained an industrial injury to her psyche. Dr. Gupta also did not state that applicant needed psychological counseling to cure or relieve the effects of her physical injuries. Accordingly, there is no legal basis to award reimbursement for mileage accrued by applicant in attending the psychological counseling sessions reflected in the attachments to her petition for reconsideration.

Finally, we note that Labor Code section 5904 provides, "[t]he petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration." Here, neither applicant nor defendant challenges the WCJ's findings on penalties. Therefore, we will affirm the WCJ's findings on penalties, as with the rest of his decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Joint Findings and Award of October 10, 2019 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 30, 2021

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

**SAMANA KASSAMALI
KARASOFF & ASSOCIATES**

JTL/bea

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