

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

MATTHEW CONLEY, *Applicant*

vs.

**NORTHROP GRUMMAN CORPORATION, and AIG administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

Adjudication Number: ADJ16819991

Van Nuys District Office

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

Applicant seeks reconsideration of the Findings and Order (F&O)¹ issued by the workers' compensation administrative law judge (WCJ) on August 22, 2023, wherein the WCJ found that applicant did not sustain an injury arising out of and occurring in the course of employment (AOE/COE) to his back on May 25, 2021; and the WCJ ordered that applicant take nothing.

Applicant contends that the trial record contains substantial evidence that he sustained injury AOE/COE to his back and that the “minor inconsistencies in Petitioner's [applicant's] testimony concerning whether he was injured on May 24, 2021 or May 25, 2021” is not evidence that applicant did not sustain the injury as claimed.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We received an Answer from defendant.

We have considered the allegations in the Petition and the Answer, 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&O, 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.

¹ The WCJ's decision is actually titled “Findings and Award” which appears to be a clerical error and need not be addressed.

BACKGROUND

Applicant claimed injury to his back while employed by defendant as a structural mechanic on May 25, 2021.

Orthopedic qualified medical examiner (QME) John Santaniello, M.D., evaluated applicant on February 9, 2023. Dr. Santaniello examined applicant, took a history, and reviewed the limited medical record (41 pages) he was provided. (App. Exh. 4, John Santaniello, M.D., February 9, 2023, pp. 2 – 4.) The doctor diagnosed applicant as having a lumbosacral spine strain/sprain and an L5-S1 disc herniation, and he determined that applicant’s condition had not reached maximum medical improvement. As to the cause of applicant’s condition, Dr. Santaniello stated, “Mr. Conley's account of the injury, which he reported and was referred for medical in-house evaluation, in my opinion is medically reasonable.” (App. Exh. 4, p. 7.) After reviewing an additional 304 pages of medical records, Dr. Santaniello stated:

When I evaluated Mr. Conley on 02/09/2023, he said he did not have any previous problems with his lower back. ¶ There are two potential issues for apportionment which would be a prior history of low back pain before the injury of 05/25/2021 and the yard work injury of 04/28/2022. ¶ After reviewing these medical records, I will stand by my QME report of 02/09/2023 except for my statement regarding apportionment.

(Court Exh. X, John Santaniello, M.D., April 6, 2023, pp. 2 - 6.)

The parties proceeded to trial on June 22, 2023. Applicant’s counsel objected to defendant’s exhibits being admitted into evidence; and the WCJ stated: “Applicant's counsel further objects to Defendant's Exhibit B on the basis that it is incomplete and can't be verified as a true and correct copy because there is a page that is missing as indicated on the exhibit and moves to strike that at this time.” (Minutes of Hearing and Summary of Evidence (MOH/SOE) June 22, 2023, p. 3.) Over applicant’s objection, Defendant’s Exhibit B was admitted into evidence. (MOH/SOE, June 22, 2023, p 3.) Applicant testified at the trial; the WCJ’s summary of applicant’s testimony included:

The witness testifies that he had been on his back drilling the chines all day, starting at the beginning of his shift. He was doing this job until finished. He finished as much as he could before he was injured. ¶ The witness testifies that the injury occurred when he got up. To get up, you must roll onto your stomach. Then when he pulled his knees in, he felt a pop in his back. He felt a lot of pain in his low back. ¶ The witness testifies that he reported his injury to his manager, Jeffrey Allen, immediately. The manager did not provide the applicant with a

claim form. After reporting, Mr. Allen sent the witness to the medical on-site location. This is a nurse station on the plant site. ¶ The witness confirms that he went to the nurse station and spoke to the nurse. The witness explained to the nurse as to how he was injured. She did not ask anything in return. (MOH/SOE, June 22, 2023, pp. 4 – 5.)

The matter was continued; at the August 10, 2023 trial, the March 7, 2023 report, “by Panel Qualified Medical Evaluator John Santaniello, M.D., ... signed April 6, 2023” was admitted into evidence as Court Exh. X, and the matter was submitted for decision. The issue submitted for decision was injury AOE/COE. (MOH/SOE, August 10, 2023, pp. 1 - 2.)

DISCUSSION

Any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Universal City Studios, Inc. v. Workers' Compensation Appeals Bd. (Lewis)* (1979) 99 Cal.App.3d 647 [44 Cal.Comp.Cases 1133].) To be substantial evidence a medical opinion must be based on pertinent facts, on an adequate examination and accurate history, and it must set forth the basis and the reasoning in support of the conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) A medical opinion is not substantial evidence if it is based on an inadequate medical history or examination. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls, supra.*)

In his Report, the WCJ explains the basis for his decision, in part, as follows:

The evidence points to an injury on 05/24/2023. The only actual report pointing to injury on 05/25/2023 would be the report of Dr. Santianello. It seems he did not check the calendar for Monday [sic] being 05/24/2023. Still, the Applicant insisted that the injury was 5/25/2021 and he saw the nurse that day. Again, this only points to 05/24/2021. And, that note says he was injured on Saturday, 05/22/2021. (Report, pp. 2 – 3.)

The “note” referred to by the WCJ is the May 24, 2021 Illness and Injury Report signed by Sandra LeBlanc RN. (Def. Exh. B, Illness and Injury Report, Sandra LeBlanc RN, May 24, 2021.) As we noted above, applicant’s counsel objected to the Illness and Injury Report being admitted into evidence based on it being an incomplete document “because there is a page that is missing as indicated on the exhibit.” (MOH/SOE, June 22, 2023, p. 3.) The document title includes

“Continuation Sheet.” Applicant’s argument that a “Continuation Sheet” is not in and of itself a complete medical document and that it “can’t be verified as a true and correct copy” may well be correct. More importantly, having reviewed the reports from QME Dr. Santaniello, it appears that he was not provided the Illness and Injury Report (whether complete or incomplete) to review. Since the substance of the Illness and Injury Report is inconsistent with Dr. Santaniello’s conclusion regarding injury AOE/COE, absent his review of that document (in its complete format) Dr. Santaniello’s opinion is not based on an accurate history and in turn, is not substantial evidence.

Having reviewed the trial record, it is clear that the trial record does not contain substantial medical evidence upon which a decision on the issue of injury AOE/COE may be based. The Appeals Board has the discretionary authority to further develop the record where there is insufficient evidence to determine an issue that was submitted for decision. (*McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].)

Under the circumstances of this matter, it is necessary that it be returned to the WCJ, and that the complete Illness and Injury Report, plus any additional records (including the summary of applicant’s trial testimony) deemed appropriate by the WCJ, be sent to Dr. Santaniello with a request that he review the records and submit a supplemental report addressing the issue of injury AOE/COE. We note that WCAB Rule 10517 (Cal. Code Regs., tit. 8 §10517) provides that pleadings may be amended to conform to proof by the WCAB.

Accordingly, we grant reconsideration, rescind the F&O, 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 Findings and Order issued by the WCJ on August 22, 2023, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 22, 2023 Findings and Order 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/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 9, 2023

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

**MATTHEW CONLEY
THE BRIDGEMORE LAW OFFICE, APC
STOCKWELL HARRIS**

TLH/mc

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