

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

AGAZIO CATANIA, *Applicant*

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendant*

**Adjudication Numbers: ADJ8544742; ADJ8544743
San Francisco District Office**

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

In these proceedings to secure benefits from the Subsequent Injuries Benefits Trust Fund (SIBTF), applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact and Orders of December 8, 2023, wherein, as applicable to the instant Petition, it was found that applicant did not have pre-existing labor-disabling disability at the time of his May 18, 2012 industrial injury besides a 10% permanent disability to the lumbar spine that was stipulated between the parties. SIBTF admits to applicant being 84% permanently disabled, with 10% attributable to pre-existing disability to the lumbar spine and 74% attributable to the subsequent industrial injury. However, applicant contends that he is permanently totally disabled and had pre-existing, labor-disabling permanent disability in the forms of migraines, gastroesophageal reflux disease, hepatitis C, hypertension, urinary dysfunction, vision loss, sleep disorder, cognitive impairment, psychiatric disability, and lower digestive tract disability.

Applicant contends that the WCJ erred in not finding additional pre-existing, labor-disabling permanent disability in addition to the 10% pre-existing lumbar spine disability. We have received an Answer from SIBTF, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

Although we agree with the WCJ that the current record does not support a finding of additional pre-existing, labor-disabling permanent disability, we believe that the record should be further developed and clarified, and that the WCJ should then make a decision on the augmented

record. We therefore grant reconsideration, rescind the WCJ's decision, and return this matter for further development of the medical record and decision.

Any award of a WCJ or the Appeals Board must be supported by substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246, 255 [54 Cal.Comp.Cases 349]; *County of San Luis Obispo v. Workers' Comp. Appeals Bd. (Martinez)* (2005) 133 Cal.App.4th 641, 648 [70 Cal.Comp.Cases 1247].) Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and must be more than a mere scintilla. (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566].)

The WCJ in this case has carefully crafted a thorough Report which details why the claims for additional pre-existing labor-disabling permanent disability are not supported by substantial medical evidence. Although we agree with the WCJ's analysis that the evidence presented does not constitute substantial medical evidence upon which the WCAB may base findings of entitlement to additional SIBTF benefits, we will exercise our discretion under Labor Code section 5906 as interpreted in *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924] and *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261], and order further development of the record on the issues of pre-existing labor disabling disability to the alleged body parts other than the lumbar spine. The decision to augment the record in this case is further buttressed by the fact that the WCJ has already ordered further development of the record on other issues relevant to SIBTF's ultimate liability.

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].) Since, 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), pursuant to Labor Code section 5906, we will return this matter to the trial level for development of the record and decision by the WCJ as outlined in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Bd. en banc) on the issue of pre-existing, labor-disabling permanent disability as well as the other issues requiring further development already identified by the WCJ.

Although we afford the applicant another opportunity to present substantial medical evidence and cure the deficiencies identified by the WCJ in the evidence presented, applicant is reminded that he has the burden of showing his entitlement to benefits. (Lab. Code, § 5705; see § 3202.5.)

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings of Fact and Orders of December 8, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Orders of December 8, 2023 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

CRAIG SNELLINGS, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 4, 2024

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

**AGAZIO CATANIA
BRIDGES LAW FIRM
DEPT OF INDUSTRIAL RELATIONS, OFFICE OF THE DIRECTOR, LEGAL UNIT**

DW/oo

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