

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

**LUIS ALVARADO ARELLANO, *Applicant***

**vs.**

**C&R RESTAURANT GROUP dba TACO BELL;  
PENNSYLVANIA MANUFACTURERS ASSOCIATION, *Defendants***

**Adjudication Numbers: ADJ12800076; ADJ12800078  
Marina Del Rey District Office**

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

Applicant seeks reconsideration of the August 17, 2021 Finding of Fact and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a janitor on May 1, 2019, and December 1, 2018 to September 30, 2019, did not sustain a specific injury or a cumulative trauma injury arising out of or in the course of his employment (AOE/COE) by defendant C&R Restaurant Group dba Taco Bell.

Applicant contends that defendants failed to reject liability within 90 days, as required by Labor Code section 5402; that the reporting and testimony of Panel Qualified Medical Examiner (PQME) Dr. Robinson, as well as the testimony of the defense witnesses and applicant, support a finding that applicant endured difficult and repetitive work that could contribute to an orthopedic injury; and that the applicant sustained cumulative trauma injury.

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

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant reconsideration, rescind the WCJ's August 17, 2021, F&O and return these matters to the trial level for further proceedings consistent with this opinion. When the WCJ issues a new decision any aggrieved party may timely seek reconsideration.

## FACTS

Applicant claimed that, while employed by defendant as a janitor on May 1, 2019, and from December 1, 2018, to September 30, 2019, he sustained an industrial injury to his back, right knee, neck, and bilateral wrists.

In ADJ12800076, applicant filed an application for adjudication on December 2, 2019, alleging a specific injury to his back and knee in May 2019, sustained while lifting supplies as a janitor. In ADJ12800078, applicant filed an application for adjudication on December 2, 2019, alleging a cumulative injury to his back, knee, hand, psyche, and stress from December 2018, to September 30, 2019, due to repetitive work.

The parties proceeded to trial in both cases on August 2, 2021. The only issue at the trial was whether applicant's injuries arose out of and in the course of employment. All other issues were deferred. According to the Minutes of Hearing (MOH), defendants submitted Exhibits 1 to 7, and the parties submitted joint Exhibits AA and BB.

On August 10, 2021, by way of a letter, the parties stipulated to admitting the medical report of PQME Dr. Karl Robinson into evidence as joint Exhibit CC. The WCJ did not issue an order based on this stipulation and made no changes to the MOH.

In the F&O, the WCJ found that applicant did not sustain a specific injury or a cumulative trauma injury. There is no reference in the F&O to the parties' stipulation regarding Exhibit CC, and it was not marked or admitted into evidence. According to his Opinion, the WCJ reviewed the August 20, 2020 QME report, presumably because he mistakenly believed that it was properly admitted into evidence. In his Opinion, the WCJ stated that he did not find the testimony of the applicant that he sustained a specific injury to be credible, and that he found the testimony of the defense witnesses to be more credible.

## DISCUSSION

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313.<sup>1</sup> "The Labor Code and the Board's rules set forth what must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton v. Lockheed*

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<sup>1</sup> All statutory references not otherwise identified are to the Labor Code.

*Corporation* (2001) 66 Cal.Comp.Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Bd. en banc) (*Hamilton*.) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Id.* at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) “For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Hamilton, supra*, 66 Cal. Comp. Cases at p. 476.)

The Appeals Board’s record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator’s file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, former § 10750, now § 10803 (eff. Jan. 1, 2020).) The WCJ’s decision “must be based on admitted evidence in the record.” (*Hamilton, supra*, at p. 476.) In *Hamilton*, we held that the record of proceeding must contain, at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Id.* at p. 477.)

The issue that we face on reconsideration is that there is an insufficient record to evaluate the WCJ’s Order. Exhibit CC, the August 20, 2020 report of the PQME, is not listed on the MOH, and was not properly identified or admitted into evidence. Accordingly, we grant the Petition, rescind the Order, and return the matter to the trial level for further proceedings consistent with this decision. When the WCJ issues a new decision any aggrieved person can timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the August 17, 2021 Order is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 17, 2021 Findings & Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ DEIDRA E. LOWE, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**NOVEMBER 2, 2021**

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

**LUIS ALVARADO ARELLANO  
WACHTEL LAW  
DONNA LAW FIRM**

**JMR/pc**

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