

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

SERGIO ORTIZ, *Applicant*

vs.

**A-Z MANUFACTURING, INC.;
ARCH BY GALLAGHER BASSET SERVICES, INC., *Defendants***

**Adjudication Number: ADJ10309928
Santa Ana District Office**

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

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and based on the recommendation in the WCJ's report, which we adopt and incorporate, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision. At that time, the WCJ should conduct further proceedings to ensure a correct application of the law under the Appeals Board's en banc decision in *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803 (Appeals Board en banc). This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the October 18, 2021 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the October 18, 2021 Findings and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 10, 2022

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

**SERGIO ORTIZ
LAW OFFICES OF J. FELIX MCNULTY
DIXON COOPER BROWN**

PAG/abs

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION AND/OR REMOVAL

Applicant was employed by defendant A-Z manufacturing during the period January 1, 1993 through February 18, 2016 as a machine operator and claims he sustained injury as a result of his employment to his head, neck, back, upper, extremities, shoulders, wrists, arms, elbows, knees, ankles, feet, hands, fingers, respiratory system, skin, suffers diabetes, internal issues, hypertension, a sleep disorder and psychological issues.

Arch Insurance insured the employer from September 1, 2015 through September 1, 2016 with Sentinel Insurance providing coverage from September 1, 2012 through September 1, 2015.

Applicant was examined by his PTP, PQME Leslie Shoakes, and thereafter by Agreed Medical Examiner Dr. Alexander Angerman.¹

In addition to issues involving issues of AOE/COE and nature of extent of applicant's injury, defendant filed a Petition to Strike the reporting of Dr. Angerman due to improper communication by applicant's counsel that they alleged tainted the doctor's opinion. The matter proceeded to trial with the Court indicating that it would rule at that time on Defendant's Petition as a preliminary issue.

A Findings and Order and Opinion on Decision issued by the undersigned finding that applicant's counsel had improperly communicated with AME Dr. Angerman by serving discovery that was objected to by defendant, and that the reporting of Dr. Angerman was to be stricken from the record.

Applicant's counsel filed a timely and verified Petition for Reconsideration alleging the undersigned erred in striking the reporting of Dr. Angerman and should have ruled upon the reporting instead.

DISCUSSION

The threshold issue in this matter was defendant's Petition to Strike AME Dr. Angerman. In defendant's Petition, they alleged that Dr. Angerman was served discovery consisting of the vocational rehabilitation report of Laura Wilson that was not agreed to by defendant. Defendant's Petition included communication with applicant attorney's office where they specifically object to the report being provided to Dr. Angerman. (Petition to Strike, Exhibit C).

At the Trial setting of January 8, 2020, the matter was continued and the Minutes of Hearing reflect that a second deposition of AME Dr. Angerman was to remain on calendar as the parties sought to obtain supplemental reporting reviewing documents Dr. Angerman had previously requested on page six of his deposition transcript. The undersigned does not recall any specific statements made by either party at the hearings on this matter, but does recall the

¹ Dr. Angerman passed away in 2020.

discussion as to documents needing to be reviewed were contained in the transcript. The documents requested by Dr. Angerman at his January 30, 2019 deposition at page six in the transcript were applicant's prior deposition transcript, MRI reports, and other reports issued around the time of the date of injury in 2011. (Exhibit 37, page 6, line 13). Instead of these documents, what was provided to Dr. Angerman by applicant's attorney was a vocational rehabilitation report of Laura Wilson.² In Dr. Angerman's final report of April 29, 2020, he confirms that he received an advocacy letter from applicant's counsel that requested the supplemental reporting comment on Laura Wilson's findings. (Exhibit 34, page 8).

After having determined that the vocational rehabilitation report was improperly provided to AME Angerman according to Labor Code section 4062.3(c), the undersigned struck the reporting of Dr. Angerman under Labor Code section 4062.3(g) and ordered the parties to meet and confer as to the selection of a new AME or that a Regular Physician may be appointed by the Court. In lieu of this, applicant's counsel filed their Petition for Reconsideration.

After re-review of the Court's file upon receipt of applicant's Petition for Reconsideration, the undersigned consulted the deposition transcript that was filed in the case as Exhibit 37. Upon review, the undersigned notes that Dr. Angerman on page 13 of the transcript was questioned about review of pending vocational rehabilitation reporting and indicated such would be important to review. (Exhibit 37, page 14, line 5).

No objection to that reporting was voiced at that time by defendant. More importantly, from the transcript it appears that Dr. Angerman highlighted the importance of reviewing any vocational rehabilitation report. As such, it may be a mistake on behalf of the undersigned to have stricken the reporting of Dr. Angerman in light of the fact that he apparently wished to review the document that applicant's counsel indicated would be forthcoming.

RECOMMENDATION

It is respectfully recommended that applicant's Petition for Reconsideration be granted to determine if the undersigned erred in striking the reporting of Dr. Angerman in light of his now apparent request to view such discovery, and return the matter to the trial level for further adjudication.

DATE: December 6, 2021

Jeremy Clift
WORKERS' COMPENSATION JUDGE

² Further complicating the matter, Dr. Angerman's report indicates that at his initial deposition on January 30, 2019, in addition to Applicant's deposition transcript and MRI studies he was told he would also be provided with a vocational rehabilitation report. (Exhibit 34, page 7)