

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

VICTOR OROZCO, *Applicant*

vs.

**OASIS, A PAYCHEX COMPANY;
AMERICAN ZURICH INSURANCE COMPANY,
ADMINISTERED BY ESIS; FAIRWAY PARK LLC;
ICW GROUP/ EXPLORER INSURANCE,
ADMINISTERED BY SEDGWICK CMS,
*Defendants***

**Adjudication Numbers: ADJ12153570, ADJ9256604
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 for the reasons stated below, we will grant reconsideration, rescind the WCJ's Findings and Award, and Order in ADJ12153570 and Findings and Award, and Order in ADJ9256604 and substitute a new joint decision.

We note that this matter (ADJ12153570) was consolidated with ADJ9256604. (February 8, 2023, Minutes of Hearing, Summary of Evidence, and Order of Consolidation) Therefore, the WCJ should have issued a joint decision in the consolidated files.

Additionally, because the WCJ deferred the issue of permanent disability, for the sake of clarity, we will also defer the finding of the permanent and stationary date on the continuous trauma injury.

Accordingly, we rescind the WCJ's FA&Os and issue a new joint FA&O addressing both files and also defer the issue of permanent and stationary date for the continuous trauma injury.

For the reasons stated in the WCJ's report, which we adopt and incorporate, we affirm the remainder of the WCJ's decision.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of March 13, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decisions of March 13, 2023 in ADJ12153570 and ADJ9256604 are **RESCINDED** and substituted with the following Joint Findings, Award and Order for the consolidated cases ADJ12153570 and ADJ9256604:

FINDINGS OF FACT

ADJ12153570

1. Victor Orozco, while employed during the period of January 1, 1994 through October 25, 2019, as a maintenance supervisor, Occupational Group No. 380, in Orange, California, by Oasis, a Paychex Company, and Fairway Park LLC, sustained injury arising out of and in the course of employment to his bilateral knees and lumbar spine.
2. At the time of injury, Oasis, a Paychex Company's workers' compensation carrier, was American Zurich.
3. At the time of injury, Fairway Park LLC's workers' compensation carrier was Explorer Insurance.
4. At the time of injury, the employee's earnings were \$1,330.32 per week.
5. The applicant's date of injury, per Labor Code Section 5412, is May 30, 2017.
6. The applicant's permanent and stationary date is deferred.
7. The record needs to be developed on the issue of apportionment of the applicant's industrial injuries to his lumbar spine and bilateral knees.
8. The applicant is in need of future medical care to cure or relieve the effects of the industrial injuries the applicant sustained between January 1, 1994 and October 25, 2019.

AWARD in ADJ12153570 is made in favor of **VICTOR OROZCO** against **ICW GROUP/EXPLORER INSURANCE** of:

Future medical care in accordance with paragraph 8 above.

FINDINGS OF FACT

ADJ9256604

1. Victor Orozco, while employed on September 7, 2012, as a maintenance supervisor, Occupational Group No. 380, in Orange, California, by Fairway Park LLC, sustained injury arising out of and in the course of employment to his bilateral knees and in the form of stress.
2. At the time of injury, Fairway Park LLC's workers' compensation carrier was Explorer Insurance.
3. At the time of injury, the employee's earnings were \$1,330.32 per week.
4. The record needs to be developed on the issue of apportionment of the applicant's industrial injuries to his lumbar spine and bilateral knees.
5. The applicant is in need of future medical care to cure or relieve the effects of the industrial injuries the applicant sustained on September 7, 2012.

AWARD in ADJ9256604 is made in favor of **VICTOR OROZCO** against **ICW GROUP/EXPLORER INSURANCE** of:

Future medical care in accordance with paragraph 5 above.

ORDERS

ADJ12153570 and ADJ9256604

After review of the medical reporting submitted, the Court has determined that the existing medical evidence is insufficient to determine the issue of apportionment presented to the Court and that the record is to be developed.

IT IS HEREBY ORDERED THAT:

The determination on the issues of permanent disability and attorney fees is deferred.

The parties are to obtain a supplemental report from Dr. John Dorsey, M.D., and Alexander T. Latteri, M.D., addressing the issue of causation.

Specifically, Dr. John Dorsey, M.D., and Alexander T. Latteri, M.D. are requested to answer the following questions as to the apportionment of the applicant's bilateral knees and lumbar spine injuries:

1. What percentage of the applicant's lumbar spine permanent disability, if any, is a result of the continuous trauma injury the applicant sustained while employed by FAIRWAY PARK LLC?
2. What percentage of the applicant's lumbar spine permanent disability, if any, is nonindustrial? If there are nonindustrial causes of the applicant's lumbar spine, please provide the reasoning for this determination.
3. What percentage of the applicant's right knee permanent disability, if any, is a result of the continuous trauma injury the applicant sustained while employed by FAIRWAY PARK LLC?
4. What percentage of the applicant's right knee permanent disability, if any, is a result of the September 7, 2012, specific injury?
5. What percentage of the applicant's right knee permanent disability, if any, is nonindustrial? If there are nonindustrial causes of the applicant's lumbar spine, please provide the reasoning for this determination.
6. What percentage of the applicant's left knee permanent disability, if any, is a result of the continuous trauma injury the applicant sustained while employed by FAIRWAY PARK LLC?
7. What percentage of the applicant's left knee permanent disability, if any, is a result of the September 7, 2012, specific injury?

8. What percentage of the applicant's left knee permanent disability, if any, is nonindustrial? If there are nonindustrial causes of the applicant's lumbar spine, please provide the reasoning for this determination.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 5, 2023

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

**VICTOR OROZCO
SARGAZY LAW FIRM
HANNA BROPHY MACLEAN, MCALEER & JENSEN
D'ANDRE LAW**

LN/pm

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**

I. INTRODUCTION

- | | | |
|----|--|--|
| 1. | Applicant's occupation:
Applicant's Age:
Date of Injury:

Parts of Body Injured :

Manner in which it occurred: | Maintenance Supervisor
53
January 1, 1994 to
October 12, 2019
Knees, low back, neck,
and feet.
Continuous Trauma |
| 2. | Identity of Petitioner:

Timeliness:
Verification: | Defendant American Zurich
Insurance Company
Petition is timely
Petition is verified |
| 3. | Date of Order: | March 13, 2023 |
| 4. | Petitioner contends that the WCJ erred in finding that the applicant's date of injury pursuant to California Labor Code 5412 was May 30, 2017. | |

II. BACKGROUND

The applicant, Victor Orozco, while employed on September 7, 2012, as a maintenance supervisor, in Orange, California, by Fairway Park LLC, sustained injury arising out of and in the course of employment to his bilateral knees and in the form of stress. [Minutes of Hearing, Summary of Evidence, and Order of Consolidation, 2-8-2023, Page 3, Lines 18-21]

The applicant, Victor Orozco had also alleged that while employed during the period of January 1, 1994 through October 25, 2019, as a maintenance supervisor, in Orange, California, by Oasis, a Paychex Company, and Fairway Park LLC, claimed to have sustained an injury arising out of and in the course of employment to his knees, low back, neck, and feet. [Minutes of Hearing, Summary of Evidence, and Order of Consolidation, 2-8-2023, Page 2, Lines 30-23]

The defendants denied liability for the applicant's continuous trauma claim.

The matters proceeded to trial, and the Undersigned Judge issued Findings and Awards in ADJ9256604, finding that the applicant sustained an injury to his

bilateral knees and in the form of stress while employed as a maintenance supervisor, in Orange, California, by Fairway Park LLC on September 7, 2012.

The Undersigned Judge issued a Findings and Awards in ADJ12153570, finding that the applicant sustained an injury to his bilateral knees and lumbar spine while employed as a maintenance supervisor, in Orange, California, by Oasis, a Paychex Company, and Fairway Park LLC, between January 1, 1994 through October 25, 2019.

The Undersigned Judge also found that the applicant's date of injury per California Labor Code Section 5412 was May 30, 2017.

Defendant American Zurich Insurance Company/ Oasis, a Paychex Company, filed its Petition for Reconsideration to the Undersigned Judge's, finding that the applicant's date of injury was May 30, 2017.

III. DISCUSSION

The defendant asserts that the applicant's California Labor Code 5412 date of injury should be the date of the applicant's specific injury, September 7, 2012, or at the latest, April 17, 2013, the date the applicant first went on temporary disability.

The date of injury in cases of occupational diseases or cumulative injuries is the date upon which the employee first suffered disability therefrom and either knew or, in the exercise of reasonable diligence, should have known that such disability was caused by his present or prior employment. [Cal Lab Code § 5412]

To establish disability, the Court must find either compensable temporary disability or permanent disability. Medical treatment alone is not disability, but it may be evidence of compensable permanent disability, as may the need for modified work. [*State Compensation Ins. Fund v. Workers' Compensation Appeals Bd.*, 69 Cal. Comp. Cases 579, 2004, 119 Cal. App. 4th 998, 14 Cal. Rptr. 3d 793 (Cal. App. 2d Dist. June 24, 2004)]

The records submitted in this matter show that the applicant received temporary total disability benefits for various periods starting April 17, 2013. The last period of temporary total disability benefits paid to the applicant was from May 2, 2017 and July 10, 2017. [Minutes of Hearing, Summary of Evidence, and Order of Consolidation, 2-8-2023, Page 4, Lines 1-4]

Based on the records submitted to the Undersigned Judge, there was definitive evidence that the applicant had compensable temporary disability as of April 17, 2013.

Knowledge of industrial causation does not occur until an applicant receives a medical opinion expressly stating so. This is true even when an applicant believes the disability is due to employment. [(*Freuhauf Corp. v. Workmen's Comp. Appeals Bd. (Standbury)* (1968) 68 Cal.3d 569 [33 Cal.Comp.Cases 300, 306])]

However, an applicant will not be charged with knowledge that his disability is job-related without medical advice to that effect unless the nature of the disability and the applicant's training, intelligence, and qualifications are such that the applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability. [*City of Fresno v. Workers' Comp. Appeals Bd.*, 163 Cal. App. 3d 467; *County of Riverside v. Workers' Comp. Appeals Bd.*, 10 Cal. App. 5th 119]

The defendant points to a medical review summary by Dr. Alexander Latteri in which he notes that the applicant was post right knee meniscectomy on May 6, 2010. The summary further states that the applicant did not want to file a worker's compensation claim or be treated through Workers' Compensation. [Applicant's Exhibit 2, Report of PQME Dr. Alexander Latteri, dated, 02/23/21 Page 42 last paragraph (review of 04/06/10 - Rick Csintalan, M.D. - Office Visit)]

From this medical review summary, the defendant would like the Court to infer that the applicant knew that he had sustained an industrial continuous trauma injury.

The Undersigned Judge disagrees. A review of the records, in their entirety, shows that the above record discusses the applicant's treatment for a specific twisting injury in which the applicant felt a pop with immediate swelling. [Applicant's Exhibit 2, Report of PQME Dr. Alexander Latteri, dated, 02/23/21 Page 41, paragraph 8 (review of 06/14/2010 – Robert Vu, M.D. - Office Visit)]

The defendant's assertion that the applicant's knowledge of having sustained a specific industrial injury is to be inputted as the knowledge that he also sustained a cumulative trauma claim is misplaced.

The disability suffered, as identified in Labor Code 5412, is a disability suffered as a result of the continuous trauma. Likewise, the knowledge that the disability suffered is industrial is the knowledge that the disability suffered was caused by a continuous trauma injury.

No evidence was submitted that the applicant's training, intelligence, and/or qualifications were such that he should have recognized the relationship between his continuous trauma injury and his employment.

The evidence submitted upon which knowledge of a continuous trauma injury can be inputted upon the applicant is the May 30, 2017 report of Dr. John Dorsey, M.D. that stated that the applicant had sustained an injury to his right knee and lumbar spine due to a continuous trauma arising out of and during his employment.[JOINT S: PQME Re-Evaluation Report, Dr. John Dorsey, dated 5-30-2017, Page 47]

Based on the above, the applicant had disability and knew that such disability was caused by his present or prior employment on May 30, 2017.

Wherefore, the Undersigned Judge was not in error in finding that the applicant's California Labor Code Section 5412 date of injury was May 30, 2017.

IV. RECOMMENDATION

For the reasons stated above, it is respectfully recommended that the applicant's Petition for reconsideration be denied.

DATED: 04/13/2023

OLIVER CATHEY
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE