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

**ROBERTO DURAN, *Applicant***

**vs.**

**FOTO-KEM INDUSTRIES;**
**UNITES STATES FIRE INSURANCE COMPANY**
**as administered by KRUM & FORESTER, *Defendants***

**Adjudication Number: ADJ401657**
**Los Angeles District Office**

# OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Defendant seeks reconsideration of the Findings and Orders (F&O) issued by a workers' compensation administrative law judge (WCJ) on January 28, 2021, wherein the WCJ found in pertinent part that: "[d]efendant is bound by the prior stipulations on February 16, 2010 and July 7, 2015 that Applicant sustained injury arising out of and in the course of employment during the period January 1, 1995 through June 28, 2007 while employed by Foto-Kem Industries, Inc."; that there is no good cause to set aside the stipulations; and that the issue of whether the reports of regular physician Dr. Brourman are "substantial evidence on the issue of causation of injury is moot."

Defendant contends in relevant part that the stipulations were not approved by the WCJ and so were not final orders, and alternatively, that there is good cause to set them aside; and that Dr. Brourman's reporting is substantial medical evidence to support a finding that applicant did not sustain cumulative injury arising out of and in the course of employment (AOE/COE).

We did not receive an Answer from applicant.

We received a Report and Recommendation from the WCJ, which recommends that the Petition for Reconsideration be denied.

Based on our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will rescind the F&O and substitute a new F&O that finds that applicant sustained cumulative injury to his cervical spine, right shoulder, right upper extremity, lumbar spine, left knee, and right knee while employed by defendant from January 1, 1995 to June 28, 2007 and defers the issue of whether applicant sustained injury to any other body parts.

## BACKGROUND

Applicant filed two cases alleging injury against defendant employer: an injury of July 30, 2003 (ADJ300152) and a cumulative injury up to June 28, 2007 (ADJ401657). The specific injury was previously resolved by way of a Compromise & Release in 2020, and thus, our discussion in this opinion is limited to consideration of the cumulative injury case.

On April 14, 2010, the parties proceeded to trial. As relevant here, with respect to ADJ401657, the parties stipulated that while employed by defendant up to June 28, 2007, applicant sustained cumulative injury AOE/COE to his cervical spine, lumbar spine, right shoulder, right upper extremity, and bilateral lower extremity and claimed injury in the form of gastro-intestinal, diabetes and sleep. As relevant here, among the issues submitted were injury to the parts of body parts of gastro-intestinal, diabetes and sleep, but the case was actually submitted on all issues.

On May 17, 2010, the WCJ issued a Findings and Order finding that the 2005 Schedule applied and that further development of the record was appropriate.

Richard M. Siebold, M.D., acted in the capacity of an agreed medical evaluator (AME) in orthopedics, and issued eight reports (WCAB Exhibit 8, June 1, 2011; WCAB Exhibit 7, August 22, 2011; WCAB Exhibit 6, March 28, 2012; WCAB Exhibit 5, June 28, 2012; WCAB Exhibit 4, June 6, 2014; WCAB Exhibit 3, July 7, 2014; WCAB Exhibit 2, July 26, 2014; and WCAB Exhibit 1, April 1, 2015 [listed in date order]) and was cross-examined by way of deposition on three occasions (WCAB Exhibit 11, March 19, 2012; WCAB Exhibit 10, May 13, 2014; WCAB Exhibit 9, March 13, 2015 [listed in date order].) While we have reviewed WCAB Exhibits 1-11, since the only issue before us is AOE/COE, our discussion is limited to those reports where AME Dr. Siebold rendered an opinion as to AOE/COE. (WCAB Exhibits 8, 7, 5.)

On July 1, 2011, applicant was evaluated by Dr. Seibold. Dr. Seibold opined that applicant sustained cumulative injury AOE/COE to his neck, right shoulder, right elbow, and left knee, and possibly to his lower back. (Exhibit 8, pp. 105-113.)

On August 22, 2011, Dr. Seibold opined that applicant sustained cumulative injury AOE/COE to his cervical spine, right shoulder, right upper extremities, lumbar spine, and left knee, and possibly to his right knee. (Exhibit 7, pp. 11-25.)

On June 28, 2012, Dr. Seibold opined that applicant sustained cumulative injury to his cervical spine, right shoulder, right upper extremity, lower back, left knee, and right knee. (Exhibit 5, pp. 25-38.)

On January 4, 2016, the parties proceeded to trial. As relevant here, with respect to ADJ401657, the parties stipulated that while employed by defendant up to June 28, 2007, applicant sustained cumulative injury AOE/COE to his right shoulder, right elbow, low back, and cervical spine and claimed cumulative injury to his diabetes, sleep disorder, upper G.I., headaches, right knee, and left knee. As relevant here, among the issues submitted was "parts of body injured," although the case was submitted on all issues.

On March 9, 2016, the WCJ issued an Order Vacating Submission on the grounds that "the record does not constitute substantial evidence." The WCJ did not issue an opinion.

On June 24, 2016, the WCJ issued an Order appointing Dr. Brourman as a regular physician to evaluate applicant in both cases. Dr. Brourman issued four reports (WCAB Exhibit 12, August 24, 2016; WCAB Exhibit 13, September 21, 2016; WCAB Exhibit 14, July 12, 2017; WCAB Exhibit 15, September 9, 2018) and was cross-examined by way of deposition on two occasions (WCAB Exhibit 16, February 6, 2017; WCAB Exhibit 17, April 24, 2018). While we have reviewed WCAB Exhibits 12-17, since the only issue before us is AOE/COE, our discussion is limited to those reports where regular physician Dr. Brourman rendered an opinion as to AOE/COE. (WCAB Exhibits 13, 15.)

On September 21, 2016, Dr. Brourman re-evaluated applicant and issued a supplemental report after a review of medical records. He stated that he could not find evidence in the records that applicant sustained cumulative injury from June 20, 2006 to June 20, 2007; his only discussion with respect to causation of disability is to the body parts of right and left knees. (WCAB Exhibit 13, pp. 44-46.)

On September 9, 2018, Dr. Brourman re-evaluated applicant and issued a supplemental report after a review of medical records; he stated that he had no changes to his previous opinion and again, his only discussion with respect to causation of disability is to the body parts of right and left knees. (WCAB Exhibit 15, pp. 38-39.)

On October 26, 2020, the parties proceeded to trial. They stipulated that applicant claims to have sustained injury arising out of and in the course of employment to internal, sleep, cervical spine, lumbar spine, right shoulder, right upper extremity, and bilateral lower extremities. As relevant herein, the issues raised were injury AOE/COE and whether defendant was bound by the prior stipulations.

In his decision, the WCJ concluded that defendant was bound by the prior stipulations on February 16, 2010 and July 7, 2015 that applicant sustained injury AOE/COE during the period from January 1, 1995 through June 28, 2007; that there was no good cause to set aside the stipulations; and that the issue of whether the reports of regular physician Dr. Brourman were substantial evidence on the issue of injury AOE/COE was moot.

**DISCUSSION**

There is no dispute that the parties entered into stipulations with respect to AOE/COE on February 16, 2010 and January 4, 2016. Rather the issue here is whether the stipulations are enforceable.

The manifest purpose of trial stipulations is "to expedite trials and hearings and their use in workers' compensation cases should be encouraged." (*Robinson v. Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784, 791 [52 Cal.Comp.Cases 419]; see *County of Sacramento v. Workers' Comp. Appeals Bd.* (*Weatherall*) 77 Cal.App.4th 1114, 1120 [65 Cal.Comp.Cases 1].)

Section 5702 provides:

> The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. *The appeals board may thereupon make its findings and award based upon such stipulation*, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

(Lab. Code, § 5702, italics added.)

The WCAB is thus authorized to reject a stipulation by the parties and to determine the underlying issues by directing investigation or in supplemental proceedings. However, the WCAB is also specifically authorized to "make its findings and award based on such stipulation."

Here, the orders of May 17, 2010 and March 9, 2016 by the WCJ are silent with respect to the stipulations. That is, the WCJ did not make findings as to the stipulations, and without a findings, award or order by the WCJ regarding the stipulations, they are not enforceable. Said

another way, by not exercising his authority with respect to the stipulations, and issuing other orders instead, the WCJ implicitly rejected the stipulations.

An employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5.) The Supreme Court of California has long held that an employee need only show that the "proof of industrial causation is reasonably probable, although not certain or 'convincing.'" (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].) We observe, moreover, it is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].) The parties presumably choose an AME because of the AME's expertise and neutrality, and we will follow the opinions of the AME unless good cause exists to find their opinion unpersuasive. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

Here, AME Dr. Siebold issued eight reports and was deposed on three occasions. Dr. Siebold concluded that applicant sustained cumulative injury to his cervical spine, right shoulder, right upper extremity, lumbar spine, left knee, and right knee. While the WCJ may have had some qualms about the sufficiency of the reporting with respect to more complex issues such as applicant's level of permanent disability and causation of permanent disability and apportionment, we believe that Dr. Siebold's reporting more than meets the standard articulated in *Clark*, *supra*, as to causation of injury. Therefore, we will rescind the F&O and substitute a new F&O that finds that applicant sustained injury AOE/COE to his cervical spine, right shoulder, right upper extremity, lumbar spine, left knee, and right knee.

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence ". . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent

facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97].)

As set forth above, Dr. Brourman described the date of cumulative injury as from June 20, 2006 to June 20, 2007, an apparent reference to the division of liability in section 5500.5 when there are multiple defendants, rather than considering the actual period of exposure of January 1, 1995 through June 28, 2007. He failed to discuss AOE/COE with respect to all of the claimed body parts, and he instead focused on causation of disability to applicant's right and left knees. Thus, we conclude that Dr. Brourman's reporting is not substantial evidence with respect to causation of injury AOE/COE because it is based on an inadequate history and applies an incorrect legal standard for the date of injury, and because it fails to discuss the issue presented here, which is whether applicant sustained cumulative injury to his cervical spine, right shoulder, right upper extremity, lower back, left knee, and right knee while employed by defendant from January 1, 1995 to June 28, 2007.

Accordingly, as our Decision After Reconsideration, we rescind the F&O and substitute a new F&O that applicant sustained cumulative injury to his cervical spine, right shoulder, right upper extremity, lumbar spine, left knee, and right knee while employed by defendant from January 1, 1995 to June 28, 2007 and defers the issue of whether applicant sustained injury to any other body parts.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of January 28, 2021 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

**FINDINGS OF FACT**

1. Applicant sustained cumulative injury arising out of and in the course of employment to his cervical spine, right shoulder, right upper extremity, lumbar spine, left knee, and right knee during the period from January 1, 1995 through June 28, 2007, while employed as a video quality controller technician, Occupational Group No. 212 at Burbank, California by Foto-Kem Industries, Inc. The issue of injury to any other claimed body parts is deferred.

2. At the time of the injury, the employer's workers' compensation insurance carrier was U.S. Fire Insurance Company.

3. All other issues are deferred.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

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

**October 7, 2025**

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

**(SEE SERVICE LIST ATTACHED)**

**AS/mc**

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

*SERVICE LIST*

**ROBERTO DURAN**
**GLAUBER BERENSON VEGO**
**LOWER KESNER**
**MEDICAL LIEN MANAGEMENT, INC.**