

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

ALBERT FONTENOT, III, *Applicant*

vs.

**SAN DIEGO CHARGERS; SUBSEQUENT INJURIES BENEFITS TRUST FUND,
*Defendants***

**Adjudication Number: ADJ2287065 (ANA 0372554)
Oakland District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in this matter to further study the factual and legal issues. Having completed our review, this is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O) issued on October 26, 2021, wherein the workers' compensation administrative law judge (WCJ) found that the application filed against the Subsequent Injuries Benefit Trust Fund (SIBTF) on June 21, 2019 was untimely and, therefore, SIBTF has no liability in this case. The WCJ found that applicant shall take nothing from the SIBTF.

On November 29, 2021, applicant filed a Petition to File Supplemental Petition for Reconsideration and Supplemental Petition for Reconsideration. On September 2, 2022, applicant filed a Petition to File Second Supplemental Petition for Reconsideration and a Second Supplemental Petition for Reconsideration. WCAB Rule 10964 states that supplemental petitions, pleadings, or responses shall be considered only when specifically requested or approved by the Appeals Board. Since applicant sought permission, we accept and consider the supplemental petitions. (Cal. Code Regs., tit. 8, § 10964.)

We received an answer from SIBTF.

We received a Report and Recommendation (Report) from the WCJ, which recommended that the Petition be denied.

We have considered the allegations in the Petition, Answer, the Supplemental Petitions, and the contents of the Report, and we have reviewed the record in this matter. For the reasons set forth below, we will rescind the F&O and return this matter to the trial level for further proceedings consistent with this decision.

FACTS

On January 28, 2003, applicant filed an Application for Adjudication of Claim, claiming to have sustained injury arising out of and in the course of employment (AOE/COE) to multiple body parts while employed by defendant the San Diego Chargers as a professional football player during the period from May 12, 1999 to December 30, 2002.

On December 1, 2003, the parties submitted, and a WCJ approved, a Compromise and Release with respect to applicant's claim.

On June 21, 2019, applicant filed an Application for Subsequent Injuries Fund Benefits, alleging that prior to his subsequent industrial injury as a professional athlete, he had pre-existing disabilities to his shoulders and his lower legs as a result of prior work injury.

According to a Pretrial Conference Statement dated June 16, 2021 (PTCS), discovery was ordered closed and the case was set for trial on October 13, 2021. The parties stated:

The only issue to be set for trial is whether Applicant's SIBTF claim was timely filed within the applicable statute of limitations period.

Within the PTCS, the parties each submitted a list of trial exhibits and both listed applicant as a witness. (PTCS, at pp. 5-6.)

On October 12, 2021, the parties submitted a stipulation agreeing to conduct the trial remotely.

The case apparently proceeded to trial on October 13, 2021, but the adjudication file contains no minutes of hearing and/or summary of evidence from the SIBTF trial proceedings.

On October 18, 2021, the WCJ issued an Order vacating an order of October 13, 2021 submitting the case for decision and permitting defendant to file a post-trial brief by Monday, October 25, 2021. However, the record contains no order of October 13, 2021.

On October 26, 2021, the WCJ issued the F&O for which defendant seeks reconsideration.

In his Report, the WCJ states:

The salient facts, at least as are relevant here, are few and undisputed. Applicant played professional football in the National Football League (NFL) from 1993

through 2002, as a defensive lineman for three teams including the San Diego Chargers. He had several injuries in the course of that career (which was longer than the NFL average), and ultimately retired from the game. In his workers' compensation case, he was represented by counsel and negotiated a settlement by way of compromise and release [approved October 1, 2003] for \$220,000. From the available evidence, Mr. Fontenot continued to see physicians for his various conditions over the years. In 2019, he heard from another former player about the possibility of receiving additional compensation, retained new counsel and, on June 21, 2019, filed his application for benefits from the Fund. Reportedly, he arranged for further medical-legal evaluations to establish his entitlement to subsequent-injury benefits. The Fund has challenged that entitlement, on the basis of the passage of time since his industrial injury...

(Report, p. 2.)

Furthermore, he states:

After trial, in which applicant alone testified, I ruled that applicant, who was represented by counsel when he negotiated his compromise and release, had constructive knowledge of the substantial likelihood of entitlement to SIBTF benefits, and his application against the Fund, filed over sixteen years after his settlement, was therefore untimely.

(*Ibid.*)

DISCUSSION

Labor Code section 5313 requires the WCJ to,

... make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made. (§ 5313.)

When a case proceeds to trial, WCAB Rule 10787(c) provides:

Minutes of hearing and summary of evidence shall be prepared at the conclusion of each trial and filed in the record of proceedings. They shall include:

- (1) The names of the commissioners, deputy commissioner or workers' compensation judge, reporter, the parties present, attorneys or other agents appearing therefor and witnesses sworn;
- (2) The place and date of said trial;

- (3) The admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence (with the identity of the party offering the same);
- (4) The disposition, and if the disposition is an order taking off calendar or a continuance, the reasons for the order which shall include the time and action, if any, required for submission;
- (5) A summary of the evidence required by Labor Code section 5313 that shall include a fair and unbiased summary of the testimony given by each witness;
- (6) If motion pictures are shown, a brief summary of their contents or a stipulation that parties waive a summary; and
- (7) A fair statement of any offers of proof.

(Cal. Code Regs., tit. 8, § 10787(c).)

WCAB Rule 10803(a) provides that the record of proceedings is maintained in the adjudication file and contains all documents filed by any party, attorney or other agent of record and also includes:

- (2) The record of proceedings, which consists of: the pleadings, minutes of hearing, summaries of evidence, certified transcripts, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.

(Cal. Code Regs., tit. 8, § 10803(a)(1)-(2).)

Section 5313 requires the WCJ to state the “reasons or grounds upon which the [court’s] determination was made.” (See also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22.) A decision “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Board en banc).) The decision must also be supported by substantial evidence. (§§ 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. Workers’ Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16]). As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Id.*, at p. 475.)

The WCJ is also charged with preparing the minutes of hearing and a summary of evidence at the conclusion of each hearing. (Cal. Code Regs., tit. 8, § 10787; *Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.) The minutes of hearing and summary of evidence must include all interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence, the disposition of the matter, and a fair and unbiased summary of the testimony given by each witness. (Cal. Code Regs., tit. 8, § 10787; *Hamilton, supra*, at p. 476.)

The record does not contain the minutes of the trial proceedings such that we cannot discern the place and date of the proceedings, nor who was present. (Cal. Code Regs., tit. 8, § 10787(c)(1)-(2).) There is no record reflecting the admissions and stipulations, the issue(s) presented, nor any descriptive listing of all exhibits received for identification or in evidence. (Cal. Code Regs., tit. 8, § 10787(c)(3).) The Report references applicant's testimony, but the record contains neither a summary of the evidence nor summary of testimony as required by Labor Code section 5313. (Cal. Code Regs., tit. 8, § 10787(c)(3).)

An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] ... For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350] [a full and complete record allows for a meaningful right of reconsideration]; *Lewis v. Arlie Rogers & Sons* (2003) 69 Cal.Comp.Cases 490, 494, emphasis in original ["decision [must] be based on an ascertainable and adequate record," including "an *orderly identification* in the record of the evidence submitted by a party; and *what evidence is admitted or denied admission*."; "An organized evidentiary record assists an arbitrator in rendering a decision, informs the parties what evidence will be utilized by the

arbitrator in making a determination, preserves the rights of parties to object to proffered evidence, and affords meaningful review by the Board, or reviewing tribunal.”].)

Here, we are unable to conduct meaningful review of the Petition or render a decision until we have received a complete record. Therefore, we must return this matter to the trial level for further proceedings.

Accordingly, we rescind the October 26, 2021 Findings & Order, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings & Order of October 26, 2021 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

CRAIG L. SNELLINGS, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 6, 2026

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

**ALBERT FONTENOT, III
MANGOSING LAW GROUP
OFFICE OF THE DIRECTOR – LEGAL UNIT**

CS

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