

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

ANGELO PAREDES, *Applicant*

vs.

**SCAFFOLD SOLUTIONS, INC., and OLD REPUBLIC GENERAL INSURANCE
CORPORATION, administered by GALLAGHER BASSETT SERVICES, INC.
*Defendants***

**Adjudication Numbers: ADJ11692676
San Francisco District Office**

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

Applicant seeks reconsideration of the Findings and Order (F&O) issued by the Arbitrator (Arbiter) on September 30, 2020, wherein the Arbiter found that applicant did not sustain injury arising out of and in the course of employment (AOE/COE) to his left thumb, left forearm, left shoulder, back and/or neck while employed by defendant on April 15, 2018.

Applicant contends that the reports of orthopedic qualified medical examiner (QME) William R. Campbell D.O., and applicant's trial testimony, are substantial evidence that applicant sustained injury AOE/COE; and that applicant needs to be re-evaluated by Dr. Campbell to determine whether applicant's neck and back injuries are industrially related.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the Arbiter recommending the Petition for Reconsideration (Petition) be denied. We received an Answer from defendant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and substitute a new Findings and Order, finding that applicant sustained injury AOE/COE to his left forearm and left thumb; deferring the issue of whether applicant sustained injury AOE/COE to his to his neck, left shoulder, and back; and returning the matter to the Arbiter for development of the record and for further proceedings consistent with this

opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

Applicant claimed injury to his neck, back, left shoulder, left forearm, and left thumb, while employed by defendant as a scaffolder on April 15, 2018.

QME Dr. Campbell evaluated applicant on April 19, 2019. Dr. Campbell examined applicant, took a history, and reviewed the medical record. The diagnoses were: cervical strain with myofascial pain; lumbar strain with myofascial pain; left forearm strain, essentially resolved; and left thumb strain with DeQuervain's/extensor synovitis. (App. Exh. 2, Dr. Campbell, April 19, 2019, p. 13.) Regarding the cause of applicant's symptoms, Dr. Campbell stated:

It is my opinion, the patient's need for treatment, periods of temporary disability, current symptoms and level of permanent disability with regard to the left forearm and left thumb should be accepted as meeting AOE/COE criteria and of industrial origin relative to DOI 4/15/18. ¶ ... With regard to the patient's neck and back frankly, the history provided is confusing. Given the history, which again is difficult for me to understand today, paired with an apparent paucity of medical records surrounding the neck and back, at this time I cannot confidently connect the neck and back injury to the specific events of 4/15/18. (App. Exh. 2, p. 15, underlining deleted.)

Dr. Campbell was provided additional medical records to review, and in his supplemental report he stated:

I have gone through prior medical records, and they don't appear to show any left shoulder complaints (as do the current set of records). That said, it did appear the patient had neck pain....although again, appeared to be late onset and the history was confusing/patient seemed to connect this late onset with basketball activities. All that said, the mechanism of injury is one that could have produced shoulder injury to the labrum and undiagnosed shoulder injury can masquerade as neck pain (referred). I probably should re-evaluate him relative to the shoulder. (App. Exh. 1, Dr. Campbell, March 16, 2020, p. 3.)

The parties appeared at the arbitration proceeding on August 20, 2020. Applicant's exhibits 1 - 6 (including Dr. Campbell's reports and deposition transcript) and defendant's exhibits A - L (including the objection to Dr. Campbell's supplemental report) were admitted into evidence.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), August 20, 2020, p. 3.) The issue submitted for decision was injury AOE/COE to the claimed body parts.¹

DISCUSSION

As a preliminary matter, applicant's Petition for Reconsideration is timely. Applicant filed the Petition on October 14, 2020. However, the Petition did not come to the attention of the Appeals Board until August 26, 2022. Applicant's Petition was not timely acted upon by the Appeals Board, which has 60 days from the filing of a petition for reconsideration to act on that petition. (Lab. Code, § 5909.) Here, however, through no fault of applicant, the timely-filed Petition did not come to the attention of the Appeals Board until after the expiration of the statutory time period. Consistent with fundamental principles of due process, and in keeping with common sensibilities, we are persuaded, under these circumstances, that the running of the 60-day statutory period for reviewing and acting upon a petition for reconsideration begins no earlier than the Appeals Board's actual notice of the petition, which occurred on August 26, 2022. (See *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1107-1108 [57 Cal.Comp.Cases 493]; *State Farm Fire and Casualty v. Workers' Comp. Appeals Bd. (Felis)* (1981) 119 Cal.App.3d 193 [46 Cal.Comp.Cases 622, 624].)

Regarding the issues of injury AOE/COE and body parts injured, as noted above, Dr. Campbell stated that after examining applicant and reviewing the medical record, he believed that from a medical perspective, applicant's left thumb and forearm injury claims should be accepted "as meeting AOE/COE criteria." (App. Exh. 2, p. 15.) Based thereon, we agree with the Arbiter that, "The preponderance of the medical evidence confirms that the Applicant sustained an injury to his thumb on or about 4-15-18." (F&O, p. 3, Opinion on Decision.) However, we also agree with Dr. Campbell's conclusion that since, "... the mechanism of injury is one that could have produced shoulder injury to the labrum and undiagnosed shoulder injury can masquerade as neck pain (referred). I probably should re-evaluate him relative to the shoulder." (App. Exh. 1, p. 3.)

It is well established that an award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.*

¹ The MOH/SOE indicate the admissibility of Dr. Campbell's March 16, 2020 report and the transcript of his deposition were at issue (see p. 2) but those exhibits were admitted into evidence (see p. 4) and their admission into evidence was not subsequently disputed.

(1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500].) To be substantial evidence a medical opinion 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 (Appeals Board en banc).) The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence to determine a threshold issue, such as injury AOE/COE. (Lab. Code, §5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) Dr. Campbell's stated that he should re-evaluate. Dr. Campbell's statement is quite clear that absent a re-evaluation of applicant, the record does not contain substantial medical evidence regarding the shoulder, neck, and back injury claim. Based thereon, the record needs to be further developed. Normally, when the medical record requires further development, the record should first be supplemented by physicians who have already reported in the case. (See *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Under the circumstances of this matter it is appropriate that applicant be re-evaluated by Dr. Campbell relative to the neck, shoulder, and back injury claims. We also note that upon return of this matter to the Arbiter it is necessary that the exhibits identified in the MOH/SOE be uploaded into the Electronic Adjudication Management System (EAMS) ADJ file and properly identified pursuant to the MOH/SOE.

Accordingly, we find that applicant sustained injury AOE/COE to his left forearm and left thumb, and we defer the issues of whether applicant sustained injury AOE/COE to his neck, left shoulder and back.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Order issued by the Arbitrator on September 30, 2020, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the September 30, 2020 Findings and Order is **RESCINDED**, and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant, Angelo Paredes, sustained injury arising out of and in the course of employment to his left forearm and left thumb, while employed by Scaffold Solutions, Inc. on April 15, 2018; the issues of injury arising out of and in the course of employment to his neck, left shoulder and back are deferred with jurisdiction reserved.
2. All remaining issues regarding the injury claim at issue herein, including but not limited to temporary disability indemnity, permanent disability indemnity, and medical treatment, are deferred with jurisdiction reserved.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the Arbitrator for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 24, 2022

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

**ANGELO PAREDES
LAW OFFICES OF KURLANDER, BURTON, & MACK
KARLIN, HIURA & LASOTA, LLP
RAY FROST, ARBITRATOR**

TWH/mc

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