WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FERNANDO MUNIZ VILLALPANDO, ***Applicant***

vs.

DOHERTY BROTHERS; MARTIN DUSTERS;
STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Numbers: ADJ599176 (SAC 0333692), ADJ2396484 (RDG 0122019), ADJ7950339
Redding District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration to further study the factual and legal issues in this case.[1] Having completed our review, we now issue our decision after reconsideration.

Applicant seeks reconsideration of the Joint Findings and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on January 12, 2018, wherein the WCJ found in relevant part that the WCAB did not have jurisdiction to grant applicant's request to self-administer his Medicare Set Aside (MSA) agreement, as applicant did not demonstrate that there was fraud or an extrinsic mistake as grounds to set aside the part of the Compromise and Release agreement (C&R) containing the MSA, and that his request was not made within the five year provision in Labor Code section 5804; and that the purpose of the MSA was not frustrated.

Applicant contends that the law does not prohibit an MSA administration change; that the purpose of the MSA will be frustrated when he moves to Mexico; and that transferring the administration of the MSA to him is in his best interest.

We received an answer from defendant State Compensation Insurance Fund (SCIF). SCIF contends that there is no contractual basis for applicant to change administrators; that the WCAB

[1] Commissioner Brass, who previously served as a panelist in this matter, no longer serves on the Appeals Board. Another panel member was assigned in his place.

lacks jurisdiction to alter the award; that frustration of purpose is not applicable nor has the purpose of the C&R been frustrated; and that applicant should not be allowed to self-administer the MSA.

We also received a response from applicant to SCIF's answer, which we accept as a supplemental pleading. (Cal. Code Regs., tit. 8, § 10964.)

The WCJ prepared a Report and Recommendation on Petition for Removal (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the supplemental pleading, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, as our decision after reconsideration, we will rescind the F&O and substitute a new F&O, which finds that applicant may self-administer his MSA account and grants applicant's request to do so, and returns the matter to the WCJ for further proceedings consistent with this opinion.

FACTS

Applicant sustained injury to his back and neck while working as a laborer in 2002. All three of applicant's cases were settled by way of a C&R and an order approving compromise and release (OACR) issued on August 24, 2011. The terms of the C&R included establishment of an MSA account pursuant to a structured annuity that SCIF purchased to fund the MSA Account. (C&R, Addendum A, pp. 1-8.) The Department of Health & Human Services, Centers for Medicare & Medicaid Services (CMS), reviewed the initial C&R and suggested an increase in the amount in the MSA to $513,390 to cover future medical treatment and prescription drug costs to adequately consider Medicare's interests. (7/25/11 CMS letter attached to C&R.) Applicant released defendants from liability to Medicare related to the named injuries, and for any failure to create and correctly administer the MSA and any failure to obtain Medicare's approval of any allocation or set aside arrangement. (C&R, p. 5; C&R, Addendum A, pp. 7-8.)

The settlement included an MSA custodial agreement between applicant and a custodian, Bridge Pointe, for payment of applicant's injury-related expenses that would otherwise be paid by Medicare. (Ex. 24.) The MSA provided that Bridge Pointe could reimburse applicant or a medical provider for allowable expenses that would otherwise be covered by Medicare. (Ex. 24.)

Applicant was concerned with the administration of the MSA, and WCJ held a trial on the issue of MSA administration in December 2016. Following that trial, the WCJ found that there

was no evidence that Bridge Pointe/ NuQuest[2] had inappropriately administered the MSA and therefore the issue of whether applicant could self-administer the MSA based on inappropriate administration by Bridge Pointe/ Nu Quest was moot. (Joint Findings of Fact & Order, January 9, 2017, Findings of Fact ("FF") nos. 3-4; Opinion on Decision, January 9, 2017, pp. 3-4.)

Applicant filed a Petition for Reconsideration from the January 9, 2017, F&O. On March 17, 2017, we granted the Petition for Reconsideration, rescinded the F&O, and returned the matter to the trial level for further proceedings. We concluded that it was premature to consider applicant's request to modify the terms of the C&R as there had not been adequate consideration of the full nature of the agreement that led to the appointment of Bridge Pointe as the administrator of applicant's MSA. We further determined that the MSA was part of the larger C&R, yet its terms with regard to future contingencies were unknown. The WCJ did not address whether the terms of the parties' agreement to use a professional administrator included any provision for change in administration if Bridge Pointe stopped operating or withdrew from providing the administration service. We directed the WCJ to consider the nature of the agreement between SCIF, applicant, and Bridge Pointe and determine whether there was any provision for a change in administration based on either a request or a finding of good cause. Finally, we found that applicant should establish his competency to manage his affairs and comply with the CMS requirements for self-administration. (*Villalpando v. Doherty Brothers* (March 21, 2017, ADJ599176, ADJ2396484, ADJ7950339) [2017 Cal. Wrk. Comp. P.D. LEXIS 142, *8-10].)

The WCJ held further proceedings on November 16, 2017. The parties agreed that all of the issues had been resolved other than the issue of self-administration of the MSA. (Minutes of Hearing and Summary of Evidence ("MOH/SOE"), p. 2.) The parties stipulated that there had been no improper administration by Bridge Pointe. (MOH/SOE, p. 2.) The parties also agreed that there is nothing in the MSA that provides for a change of administrator if Bridge Pointe could no longer administer it; Bridge Pointe could terminate the MSA upon malfeasance by applicant.

Applicant testified that he currently lives in California but intends to move to Mexico and not return to the United States. (MOH/SOE, p. 4.) He further testified that he had the mental capacity to self-administer the MSA and did not have a gambling problem. (MOH/SOE, pp. 4-5.)

The WCJ concluded that the Appeals Board does not have jurisdiction to terminate the MSA and provide for self-administration due to applicant's proposed move to Mexico as applicant

[2] Nuquest also professionally administered the MSA. (12/5/16 MOH/SOE, p. 5.)

had not shown that there was any fraud or extrinsic mistake. (F&O, FF nos. 5, 8.) She further found that the purpose of the MSA had not been frustrated. (F&O, FF no. 6.) Finally, she found that applicant appeared to be mentally competent to self-administer the MSA, but it was not in his best interests to do so due to his gambling issues, interest in monetary gain, and because he may not use the MSA for the reason it was established. (F&O, FF no. 7.)

DISCUSSION

As a preliminary matter, Labor Code section 5900(a) states in pertinent part that "[a]ny person aggrieved directly or indirectly by any final order, decision, or award… may petition the appeals board for reconsideration..." Here, we acknowledge that applicant was the petitioning party, but note that defendant has made no showing that it would be aggrieved by a decision to allow applicant to self-administer the MSA, and thus it is unclear whether defendant can ultimately challenge the decision. (See Lab. Code, § 5900(a).) As discussed further below, the rights of defendant are protected because it already paid the specified amount in the C&R to applicant. Moreover, since the settlement included a specified amount to fund the MSA account, the amounts of future payments will remain the same regardless of the identity of the administrator. And, as set forth in the agreement, Medicare has no recourse against defendant, and thus, defendant cannot be liable to Medicare. Consequently, as shown in more detail below, the obligations of defendant will not change if applicant self-administers the MSA.

Here, applicant seeks to change the administration of his MSA from a professional administrator to himself, which raises the issues of jurisdiction, competency, and protection of Medicare's interests. As explained below, we conclude that the Appeals Board has jurisdiction to change the administrator of the MSA. We further conclude that applicant is competent to manage his MSA and that Medicare's interests have been considered.

I. Jurisdiction

We first address the issue of whether the Appeals Board has jurisdiction to change the administrator of the MSA. The Appeals Board has continuing jurisdiction over all its orders, decisions, and awards made and entered. (Lab. Code, § 5803.)[3] The Appeals Board may rescind, alter, or amend any order, decision, or award, for good cause. (Lab. Code, § 5803.)

[3] All further statutory references are to the Labor Code unless otherwise stated.

However, section 5804 provides that "No award of compensation shall be rescinded, altered, or amended after five years from the date of the injury." "An approved workers' compensation compromise and release rests 'upon a higher plane than a private contractual release; it is a judgment, with "the same force and effect as an award made after a full hearing."'" (*Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1169, quoting *Johnson v. Workmen's Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 973.) Consequently, after the five year period has expired, the OACR constitutes a final judgement with the full effect of res judicata. (*Smith v. Workers' Comp. Appeals Bd*., *supra*, 168 Cal.App.3d at p. 1169.) Therefore, after five years, an award may only be set aside on the showing of fraud or mistake. (*Id*.)

In contrast to the limitations imposed by the statute on the Appeals Board to *set aside* an entire award, the Appeals Board continues to have jurisdiction after five years to *enforce* its awards. (*Barnes v. Workers' Comp. Appeals Bd.* (2000) 23 Cal.4th 679, 687.) Consequently, collateral changes may be made to an award so long as the merits of the basic decision determining the worker's right to benefits are not altered, and the amount of benefits remains unchanged. (*Hodge v. Workers' Comp. Appeals Bd.* (1981) 123 Cal.App.3d 501, 509 (*Hodge*).)

In *Hodge*, the applicant sustained severe back injuries from a fall while working and filed a claim for workers' compensation benefits. (*Hodge, supra,* 123 Cal.App.3d at p. 504.) Two years later, the applicant had surgery as a result of his back injury. (*Id*.) Following the surgery, the ambulance service dropped applicant while transporting him on a stretcher into his home. (*Id*.) Two years after that, the WCJ found that as a result of the industrial injury, the applicant sustained total permanent disability. (*Id*.) Subsequently, the applicant obtained a judgement against the ambulance company in a civil case. (*Id*. at p. 505.) The WCJ then granted the employer's petition for a credit from the civil suit, and the Appeals Board denied reconsideration. (*Id.* at pp. 505-506.)

The Court of Appeal agreed with the Appeals Board on this issue and found that a credit could be allowed beyond the five year limitation of section 5408. (*Hodge, supra,* 123 Cal.App.3d at pp. 507-508.) "[Al]lowing the employer a credit for sums paid which are properly attributable to a third party tortfeasor's negligence does not alter the award of compensation to the injured employee within the meaning of section 5804." (*Id*. at p. 508.) Thus, this change was collateral and therefore allowable beyond the time limit.

Similarly, in *Garcia*, the Court of Appeal concluded that the "award of compensation to the employee is not altered or amended within the intended meaning of sections 5803 and 5804 by

the allowance of the attorneys' lien after the five-year period." (*Garcia v. Industrial Acci. Com.* (1958) 162 Cal.App.2d 761, 767.) In *Garcia*, new attorneys substituted in more than five years after the date of injury to assist the injured worker in resisting a petition to reopen the case by defendant Subsequent Injuries Fund (now Subsequent Injuries Benefits Trust Fund). (*Id*. at pp. 762-763.) The Court determined that the ultimate award of compensation remained the same even if a lien for attorney's fees was allowed. (*Id*. at p. 767.)

Here, there is no dispute that applicant's injury occurred more than five years ago as he was injured in 2002, and the OACR issued in 2011. As explained above, and subsequently, however, the amount of compensation that applicant received is fixed, as is defendants' liability, and the identity of the administrator will not change the amount of money funding the MSA or the amount of money paid out pursuant to the terms of the MSA. (See *Hodge, supra,* 123 Cal.App.3d at pp. 507-508.) Instead, applicant only seeks a change in the administration of his MSA from the current administrator to himself, and it is undisputed that the MSA does not address the issue of a change in the identity of the administrator. The issue then becomes whether changing the identity of the administrator of the MSA is such a substantial change that its effect is to alter the underlying award or is simply a change in how the award is enforced.

We have previously concluded that changing the administration of an award does not change the award itself; rather, it is a ministerial function. (*Krause's Custom Crafted Furniture, Fireman's Fund Ins. Co. v. Workers' Comp. Appeals Bd. (Khodavandi)* (2007) 72 Cal. Comp. Cases 262, 263-264 [2007 Cal. Wrk. Comp. LEXIS 24] (writ den.); *Gomez v. Casa Sandoval, Golden Eagle Ins. Co*. (2003) 68 Cal. Comp. Cases 753, 762 [2003 Cal. Wrk. Comp. LEXIS 320] (en banc) (writ den.); *Sherman Loehr Custom Tile Works v. Workers' Comp. Appeals Bd.* (2003) 68 Cal. Comp. Cases 1262, 1264-1265 [2003 Cal. Wrk. Comp. LEXIS 421] (writ den.).) "[T]he Appeals Board has authority to modify the appointment of an administrator. The exercise of such authority does not constitute a modification of the award, it is simply a modification of the administrator." (*Gomez v. Casa Sandoval, Golden Eagle Ins. Co*., *supra*, 68 Cal. Comp. Cases at p. 762.)

For example, in *Khodavandi,* there were two workers' compensation insurance carriers for the applicant's cumulative trauma injury, Fremont Compensation Insurance Company and Fireman's Fund Insurance Company. (*Krause's Custom Crafted Furniture, Fireman's Fund Ins. Co. v. Workers' Comp. Appeals Bd. (Khodavandi)*, *supra*, 72 Cal. Comp. Cases at p. 263.) Fremont

Compensation was originally the administrator of the award but was later in liquidation and its claims were handled by CIGA. (*Id*.) CIGA filed a petition to change administrator more than five years after the date of injury once the applicant returned to the United States and requested medical treatment. (*Id*.) The WCJ granted the request and relieved CIGA as administrator. (*Id*.) The WCJ stated that "administration of the award was only a 'ministerial function' and that changing administrators 'did not equate to altering, amending or rescinding an Award.'" (*Id*. at pp. 263-264.) The Appeals Board agreed and adopted and incorporated the WCJ's report. (*Id*. at p. 264.)

Here, based on our review of the terms of the C&R, a change in administrator will not change defendants' obligations. Specifically, the C&R included the establishment of an MSA account pursuant to a structured annuity that SCIF purchased to fund the MSA Account, and the liability of SCIF is not altered by the change in administrator. (C&R, Addendum A, pp. 1-8.) Further, defendants' release from liability in the C&R will remain unchanged. (C&R, p. 5.) More significantly here, the identity of the administrator, including whether the administrator is now identified as applicant as a self-administrator, does not fundamentally alter the analysis that the change of administrators is a ministerial act. In sum, applicant does not seek to set aside a condition in the C&R that changes his compensation, and thus, the provisions of Labor Code section 5804 do not apply to his request, including the five year limitation and the burden to show fraud or an extrinsic mistake. Therefore, we conclude that changing the administrator of applicant's MSA is not barred by section 5804, and that we have jurisdiction to change the administrator under section 5803.

Here, as explained above, we are not setting aside or rescinding the agreement,[4] rather, we are merely making a ministerial change in administration. However, we also observe that applicant

[4] A stipulation is "'An agreement between opposing counsel … ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,' (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to narrow range of litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118 [65 Cal.Comp.Cases 1].) Stipulations are binding on the parties. (*Id*. at p. 1121.) However, if there is a showing of good cause, the parties may be permitted to withdraw from their stipulations. (*Id*.) Whether "good cause" exists to set aside a settlement depends upon the facts and circumstances of each case. "Good cause" includes mutual mistake of fact, duress, fraud, undue influence, and procedural irregularities. (*Johnson v. Workmen's Comp. Appeals Bd*. (1970) 2 Cal.3d 964, 975 [35 Cal.Comp.Cases 362]; *Santa Maria Bonita School District v. Workers' Comp. Appeals Bd. (Recinos)* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Workers' Comp. Appeals Bd. (Dowdle)* (1997) 62 Cal.Comp.Cases 1691, 1692 (writ den.); *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170 [50 Cal.Comp.Cases 311].) To determine whether there is good cause to rescind the awards and stipulations, the circumstances surrounding their execution and approval must be assessed. (See Lab. Code, § 5702; *Weatherall*, *supra*, 77 Cal.App.4th at pp. 1118-1121; *Robinson v. Workers' Comp. Appeals Bd.* (1987) 194

has shown good cause for his request. Significantly, Medicare will not cover applicant's medical expenses while in Mexico because, as stated below, Medicare excludes any expenses incurred for items or services:

> which are not provided within the United States (except for inpatient hospital services furnished outside the United States under the conditions described in section 1814(f) [42 USCS § 1395(f)] and, subject to such conditions, limitations, and requirements as are provided under or pursuant to this title [42 USCS §§ 1395 et seq.], physicians' services and ambulance services furnished an individual in conjunction with such inpatient hospital services but only for the period during which such inpatient hospital services were furnished. . .

(42 U.S.C. § 1395y(a)(4).) Therefore, applicant may not be able to get treatment from Medicare at his new location outside of the country, so that the exposure for liability to Medicare is minimal at best. And, as explained above, defendants have already been released from liability, and the release from liability in the C&R will remain unchanged with a change in administrator. (C&R, p. 5; C&R, Addendum A, p. 7.)

Therefore, we conclude that the transfer of administration of the award to applicant is appropriate.[5]

II. Competency

As discussed further below, we recommend that the WCJ ensure that applicant understands the limits and responsibilities of self-administering the MSA, however based on our review, we conclude that applicant is competent to administer his MSA.

First, we emphasize that CMS allows self-administration if the claimant is competent as long as they submit annual self-attestations. (CMS Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide, version 3.6, rev. March 2022 ("CMS Guide"), available at https://www.cms.gov, pp. 59, 61.) Moreover, the Appeals Board routinely approves settlements where applicants self-administer their MSAs.

Cal.App.3d 784, 790-792 [52 Cal.Comp.Cases 419]; *Huston v. Workers' Comp. Appeals Bd*. (1979) 95 Cal.App.3d 856, 864-867 [44 Cal.Comp.Cases 798].)

[5] Additionally, section 6.2(d) of the MSA allows for termination of the MSA for cause. (Ex. 24, pp. 5-6.)
"Termination for Cause: This Agreement may be terminated immediately by Custodian for cause, including, but not limited to, the failure of Beneficiary to cure a breach following advance written notice from Custodian and 30-day period to cure, gross negligence or dishonesty. Termination shall become effective upon written notice to the other Party (with notice to CMS or its designated contractor). Upon termination Custodian will disburse all funds in the MSA Account to Beneficiary or Beneficiary's designated successor custodian." (Ex. 24, p. 6.)

The Labor Code does not define incompetency and does not require a finding of competency. (See *Coe v. Professional Ass'n of Diving Instructors, Mission Ins. Co*. (Aug. 11, 2009, ADJ302560) [2009 Cal. Wrk. Comp. P.D. LEXIS 448, *5].) The Appeals Board has previously defined "incompetency" for purposes of workers' compensation as "not insanity, but rather inability to properly manage or take care of oneself or property without assistance." (*County of Santa Clara v. Workers' Comp. Appeals Bd. of California* (1992) 57 Cal. Comp. Cases 377, 379 [1992 Cal. Wrk. Comp. LEXIS 2670].) Although the Appeals Board may appoint a trustee or a guardian ad litem to appear for and represent any "incompetent" injured employee (see Lab. Code, §§ 5307.5, 5408; *Lamin v. City of Los Angeles* (2004) 69 Cal. Comp. Cases 1002, 1005 [2004 Cal. Wrk. Comp. LEXIS 241]), medical evidence is required to establish incompetency. (*Lamin v. City of Los Angeles*, *supra*, 69 Cal. Comp. Cases at p. 1005; see also *Cameron v. Onsite/Allegis Group* (Sept. 9, 2010, ADJ2316866) [2010 Cal. Wrk. Comp. P.D. LEXIS 401].) Therefore, in the absence of substantial evidence of an applicant's inability to properly manage or to take care of themself or their property without assistance, an applicant is presumed competent.

Previously, we directed applicant to establish his competency to manage his affairs and comply with CMS requirements when we granted applicant's previous Petition for Reconsideration.[6] (*Villalpando v. Doherty Brothers, supra,* 2017 Cal. Wrk. Comp. P.D. LEXIS 142, *9.) Applicant testified at the hearing that he had the mental capacity to take care of the MSA for the remainder of his life. (MOH/SOE, pp. 4-5.) Additionally, applicant submitted three letters into evidence from April 2017, two from his doctors and one from a licensed therapist/psychologist, demonstrating that he is competent and able to manage his financial affairs.[7] (Exs. 25-27.) Applicant is an adult, who has not been appointed a guardian ad litem or a conservator, and after considering the evidence, the WCJ did not appoint a trustee or guardian ad litem, and found that applicant was mentally competent to self-administer the MSA.

In her decision, the WCJ determined that applicant was mentally competent to self-administer the MSA, but then concluded that it was not in his best interests. (F&O, FF no. 7.)

[6] Applicant was unrepresented when he filed the previous Petition for Reconsideration but is represented by an attorney for the current Petition for Reconsideration.

[7] In a letter, Dr. Palladino stated that applicant had previously suffered from depression from 2009 to 2012, but that he had recovered and no longer needed psychiatric care. (Ex. 26.) Both Dr. Palladino and Dr. Highman stated that the applicant was able to manage his own financial affairs. (Exs. 25-26.) Psychologist and therapist Dr. Tootell stated in his letter that he supported the change of administrator for the MSA. (Ex. 27.)

However, consideration of whether the change is in applicant's best interests is not part of the evaluation of competency, and it may not be taken into account. In our earlier opinion, we directed applicant to establish his competency and he has done so. We will not disturb the WCJ's finding on the issue of competency, and we conclude that applicant is competent to self-administer his MSA.

III. Consideration of Medicare's Interests

Medicare may not pay for a beneficiary's medical expenses when payment "has been made or can reasonably be expected to be made under a workers' compensation plan." (42 U.S.C. § 1395y(b)(2); CMS Guide, p.2; see also *Alvarenga v. Scope Indus*. (2016) 81 Cal. Comp. Cases 850, 853 [2016 Cal. Wrk. Comp. P.D. LEXIS 252].) A workers' compensation MSA allocates a portion of the workers' compensation settlement for all future work-injury-related medical expenses that are covered and otherwise reimbursable by Medicare. (CMS Guide, p. 4.) Any claimant who receives a workers' compensation settlement, judgment, or award that "includes an amount for future medical expenses must take Medicare's interest with respect to future medicals into account." (*Id*.)

Therefore, the legal duty of the parties and the WCAB is to consider Medicare's interests. The C&R included the establishment of an MSA account pursuant to a structured annuity that SCIF purchased to fund the MSA Account. (C&R, Addendum A, pp. 1-8.) CMS reviewed the MSA and sent a letter stating that the MSA should be funded with $519,390, for future medical and prescription drug costs, to adequately consider Medicare's interest. (CMS letter of 7/25/11, attached to the C&R.) Defendants were released from liability in the C&R, and this release and defendants' obligations under the C&R will remain unchanged with a ministerial change in administrator. (C&R, p. 5; C&R, Addendum A, p. 7.) Additionally, as noted above, applicant's ability to utilize Medicare coverage while out of the United States is limited, resulting in reduced exposure for Medicare. Thus, Medicare's interests were considered at time of the OACR and have been considered as part of this review.

Finally, as we noted previously, CMS allows for self-administration if the claimant is competent as long as they submit annual self-attestations. (CMS Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) Reference Guide, version 3.6, rev. March 2022 ("CMS Guide"), available at https://www.cms.gov, pp. 59, 61.)

We recommend that the WCJ either advise applicant on the record, or have applicant sign an acknowledgement, showing his understanding of the CMS rules for self-administration, his responsibilities in self-administration, the consequences of his failure to follow the CMS rules and responsibilities, and his full release of SCIF. We further recommend that this acknowledgement be made in consultation with the Self-Administration Toolkit for Workers' Compensation Medicare Set-Aside Arrangements (WCMSAs), version 1.3, October 10, 2019.[8]

Accordingly, we rescind the January 12, 2018 F&O, and substitute a new F&O, which finds that applicant may self-administer his MSA account and grants applicant's request to do so, and returns 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 January 12, 2018, Findings and Order is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. FERNANDO MUNIZ VILLAPANDO, while employed on September 24, 2002 in ADJ7950339 and on October 20, 2002 in Case No. ADJ599176, and during the period of CT from August 8, 2002 to August 8, 2003 in Case No. ADJ2396484, as a laborer, Occupational Group No. 491, at Sutter and Colusa Counties, by Martin Dusters and Doherty Brothers, sustained injury arising out of and in the course of his employment to his lumbar spine at both employers and to his cervical spine and bilateral shoulders at Doherty Brothers.

2. A Compromise and Release and Order Approving Compromise and Release that issued on August 24, 2011 resolved all cases.

3. The parties have stipulated that there has been no improper administration of the Medicare Set-Aside Account (MSA) by BridgePointe/Nuquest and that all of the issues raised at the last hearing, which was the basis for the Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration dated March 21, 2017, other than applicant's Motion to self-administer the MSA, have been resolved.

4. The parties further have agreed that there is nothing within the MSA contract that provides for a change of administrator in the event

[8] Resources for self-administration can be found on the CMS website here: https://www.cms.gov/Medicare/Coordination-of-Benefits-and-Recovery/Workers-Compensation-Medicare-Set-Aside-Arrangements/WCMSA-Self-Administration

Bridgepointe no longer can administer the MSA, only that Bridgepointe can terminate the MSA upon malfeasance by the applicant.

5. The WCAB has jurisdiction under Labor Code section 5803 to grant applicant's request to provide for self-administration.

6. Applicant is mentally competent to self-administer the MSA, consistent with CMS requirements.

7. Applicant may self-administer the MSA.

ORDERS

It is hereby ORDERED that applicant's request to self-administer his Medicare Set Aside Account is GRANTED.

It is further ORDERED that the parties shall adjust the C&R and the Medicare Set-Aside Custodial Agreement to reflect that applicant is the Administrator, with any disputes deferred to the WCJ in the first instance.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings by the WCJ consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 23, 2022

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

FERNANDO MUNIZ VILLALPANDO
LARRY BUCKLEY
STATE COMPENSATION INSURANCE FUND

JMR/*pc*

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