WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CHRIS CHANDLER, *Applicant*

vs.

ST. LOUIS RAMS, CHICAGO BEARS; TRAVELERS INDEMNITY, successor in interest by merger to GULF INSURANCE, *Defendants*

Adjudication Number: ADJ9089651
Santa Ana District Office

OPINION AND DECISION AFTER RECONSIDERATION

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.[1]

In the Findings and Order of January 8, 2020, the Workers' Compensation Administrative Law Judge ("WCJ") found that during the period July 1988 through January 15, 2005, applicant, while employed as a professional football player at various locations including within the State of California by the St. Louis Rams (insured by Travelers Indemnity) from March 25, 2004 through January 15, 2005 and by the Chicago Bears (insured by Travelers Indemnity) from April 15, 2002 through March 19, 2004, failed to prove that he sustained industrial injury to his head, neck, right shoulder, wrists, hands, ankles, sleep disorder, kidney and urinary systems, cardiovascular system, cognitive disorder and headaches. The WCJ also found that "the applicant's cumulative trauma exposure is from January 15, 2004 through January 15, 2005," and that "the medical reports and vocational evaluation reports are inadmissible."

Applicant filed a timely petition for reconsideration of the WCJ's decision. Applicant contends that the WCJ erred in concluding all evidence is inadmissible under Labor Code section 4062.2, that the WCJ erred in finding no industrial injury, that the evidence justifies a finding that

[1] Commissioners Deidra E. Lowe and Marguerite Sweeney signed the Opinion and Order Granting Petition for Reconsideration dated February 14, 2020. As Commissioners Lowe and Sweeney are no longer members of the Appeals Board, new panel members have been substituted in their place.

applicant sustained neurological injury, permanent brain damage and psychiatric impairment, that there is no substantial medical evidence that applicant's kidney failure and internal problems were caused by his alleged abuse of alcohol, that if there was any abuse of alcohol it is industrially-related, that the WCJ's finding on the period of injurious exposure is not based on substantial medical evidence, and that there was no injurious exposure after December 19, 2004.

Travelers Indemnity, represented by different counsel for each team, filed two separate answers, one for the St. Louis Rams and one for the Chicago Bears. The answers have been considered.

The WCJ submitted a Report and Recommendation ("Report").

Based on our review of the record and applicable law, we conclude that there are various unresolved issues that must be revisited and redetermined by the WCJ. Therefore, we will rescind the WCJ's decision and return this matter to the trial level for further proceedings and new decision by the WCJ.

At the outset, we observe that if a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include but are not limited to, injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd.* (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or Court of Appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petition challenging a hybrid decision disputes a determination made on an interlocutory question, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions, i.e., significant prejudice or irreparable harm. (Cal. Code Regs., tit. 8, § 10955.)

In this case, the WCJ's decision is a hybrid decision because it included the interlocutory finding that "the medical reports and vocational evaluation reports are inadmissible," while also determining the threshold issue of industrial injury, with the WCJ denying applicant's claim of cumulative trauma injury. Therefore, we address applicant's petition as a petition for reconsideration taken from a "final order," and we also address the WCJ's interlocutory ruling that "the medical reports and vocational evaluation reports are inadmissible."

Turning to the merits of applicant's petition, we find several unexplained inconsistencies in the WCJ's decision. The first one has to do with the issue of industrial injury. As noted before, the WCJ found that applicant failed to prove he sustained industrial injury to his head, neck, right shoulder, wrists, hands, ankles, sleep disorder, kidney and urinary systems, cardiovascular system, cognitive disorder and headaches. However, it appears from the record that applicant was relieved of his burden to prove injury, because it was stipulated at trial that applicant sustained industrial injury to his head, neck, right shoulder, wrists, hands, ankles, sleep disorder, kidney and urinary systems, cardiovascular system, cognitive disorder and headaches. It also appears the parties stipulated that the period of the industrial cumulative trauma injury was "approximately" July 23, 1988 through December 31, 2004. (Minutes of Hearing, January 24, 2019, p. 2:16-21.)

The very purpose of a stipulation is to obviate the need for proof, and ordinarily a trial stipulation is binding on the parties absent a showing of good cause. (*Robinson v. Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784 [52 Cal.Comp.Cases 419]; *Brannen v. Workers' Comp. Appeals Bd.* (1996) 46 Cal.App.4th 377 (61 Cal.Comp.Cases 554) [party not permitted to withdraw from stipulation absent showing of good cause].)

Here, if the WCJ believed there was any uncertainty in the parties' stipulation to industrial injury, the correct approach would have been to clarify and confirm the nature and extent of the stipulation, as opposed to issuing a summary-like denial of applicant's claim of injury. (See *Telles Transport, Inc. v. Workers' Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159, 1164 (66 Cal.Comp.Cases 1290) [WCAB may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence].)

We further note that the WCJ's rejection of applicant's claim of cumulative trauma injury seems largely based on the WCJ's supposition that alcoholism caused most if not all of applicant's medical problems. We find the WCJ's reasoning unsound on this point. The issue of applicant's alleged alcoholism is potentially relevant to apportionment of permanent disability. (Lab. Code,

§ 4663.) However, in light of the parties' stipulation that applicant sustained industrial injury by reason of his seventeen-year football career, the WCJ's supposition that alcoholism caused his medical problems is contradicted by the stipulated facts and by the law. That is, the percentage to which an applicant's injury is causally related to his or her employment is not necessarily the same as the percentage to which an applicant's permanent disability is causally related to his or her injury. The analyses of these issues are different and the medical evidence for any percentage conclusions may be different. (*Reyes v. Hart Plastering* (2005) 70 Cal.Comp.Cases 223 [Significant Panel Decision].) Moreover, it appears the WCJ disregarded any possibility that applicant's alcoholism, or the worsening of it, was aggravated by the serious injuries he evidently sustained while playing professional football. (See *City of Los Angeles v. Workers' Comp. Appeals Bd.* (*Clark*) (2017) 82 Cal.Comp.Cases 1404 (writ den.) [exacerbation of preexisting condition is not an industrial injury, but the acceleration, aggravation or lighting-up of a preexisting condition by the injured employee's job may constitute an industrial injury].)

In connection with the WCJ's ruling that "the medical reports and vocational evaluation reports are inadmissible," the WCJ provides two main reasons in his Report.

First, the WCJ reasons that applicant claimed injury by way of cumulative trauma during the period ending December 31, 2004 in order to take advantage of the "dueling doctors" medical-legal process that prevailed before Senate Bill 899 was enacted on April 19, 2004. (See Report and Recommendation, p. 8.) To avoid the "dueling doctor" scenario, the WCJ found that "applicant's cumulative trauma exposure is from January 15, 2004 through January 15, 2005," in which case the WCJ suggests the date of cumulative trauma injury is after January 1, 2005, thereby limiting the parties to medical reports obtained pursuant to the Panel Qualified Medical Evaluator process under Labor Code section 4062.2, as amended by SB 899. Specifically, the WCJ states on page ten of his Report, "all the doctors are invalid [sic] because they are pre-2005 QMEs. The applicant's CT injury ends on 1/15/05 which means the parties should have requested state-issued panel QMEs per Labor Code section 4060 and section 4062.2."

Preliminarily, we observe that *Nunez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 584 [71 Cal. Comp. Cases 161] (*Nunez*) and its companion case, *Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, [71 Cal. Comp. Cases 155] (*Cortez*) are sometimes cited for the proposition that the date of injury, pursuant to section 5412, establishes the appropriate procedure by which the parties are to obtain medical-legal reporting. However,

we further observe that in both *Nunez* and *Cortez*, the Court of Appeals considered the appropriate medical-legal procedure as it applied to *specific injuries* (July 15, 2002 in *Nunez*, June 29, 1999 in *Cortez*). The Court in both cases was neither asked nor required to consider whether the date of injury pursuant to section 5412 was dispositive of the appropriate medical-legal procedure, and there is no discussion in either case of a cumulative injury or section 5412. Thus, when the Court in *Nunez* and *Cortez* agreed with the Appeals Board that "the Legislature intended former sections 4060 et seq. to remain operative for represented cases with a date of injury before January 1, 2005," the term "date of injury" in those cases referred to the date of the occurrence of the specific injury, rather than a judicial determination as to the date of injury in a cumulative injury pursuant to section 5412.

In the absence of appellate authority relevant to a cumulative injury, we turn to the en banc decision of the Appeals Board in *Simi v. Sav-Max Foods, Inc.* (2005) 70 Cal.Comp.Cases 217, [2005 Cal. Wrk. Comp. LEXIS 3] (*Simi*), which provides instructive authority herein, and which the court in *Nunez* and *Cortez* specifically approved. (*Nunez, supra*, at p. 593.) In *Simi*, the parties stipulated that applicant sustained a cumulative injury ending September 5, 2002. (*Id.* at p. 218.) The Board held that because the Legislature did not provide a medical-legal procedure for cases occurring prior to the effective date of SB899, "section 4062, as it existed before its amendment by SB 899, continues to provide the procedure by which AME and QME medical-legal reports are obtained in cases involving represented employees." (*Id.* at p. 221.)

Conversely, in the significant panel decision in *Ward v. City of Desert Hot Springs* (2006) 71 Cal.Comp.Cases 1313 [2006 Cal. Wrk. Comp. LEXIS 313] (writ den.) (*Ward*), the Board held that pursuant to section 4060(c), disputes regarding compensability with respect to a claimed cumulative injury ending June 8, 2005 (i.e., after the effective date of SB899) were subject to the medical-legal procedure set forth in section 4062.2. In addition, because the injury occurred after the effective date of SB899, reports obtained pursuant to section 4064(d) would not be admissible. (*Id.* at p. 1314.)

Applying these principles in *Tanksley v. City of Santa Ana* (January 25, 2010, ADJ2005173) [2010 Cal. Wrk. Comp. P.D. LEXIS 74], a case involving a claimed cumulative injury from December, 2003 to December 2004, the Board panel explained:

> *...[T]he question of the process that applies to applicant's claim does not first require a finding of the date of injury.* Instead, for injuries that are claimed to

> have occurred prior to January 1, 2005, as alleged in this case, section 4062 as it existed before its amendment by SB 899 continues to provide the procedure by which medical-legal reports are to be obtained. (*Nunez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 584 [38 Cal. Rptr. 3d 914, 71 Cal.Comp.Cases 161] (*Nunez*); *Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596 [38 Cal. Rptr. 3d 922, 71 Cal.Comp.Cases 155]; *Simi v. Sav-Max Foods, Inc.* (2005) 70 Cal.Comp.Cases 217 (Appeals Board en banc); c.f. *Ward v. City of Desert Hot Springs* (2006) 71 Cal.Comp.Cases 1313 (significant panel decision), 71 Cal.Comp.Cases 1900 (writ den.).) (*Id.* at pp. 9-10.)

The panel's decision in *Tanksley* emphasized that the parties to a claim of injury occurring prior to January 1, 2005 should not be required to obtain a judicial determination as to the date of injury pursuant to section 5412 in order to determine the appropriate procedure by which to obtain medical-legal reporting. (*Ibid*.) Such a holding would be inconsistent with the California Constitutional mandate that the workers' compensation law "shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., Article XIV, § 4.)[2]

Having considered the rationale for avoiding delay in obtaining medical-legal reporting as discussed in *Tanksley*, as well as the Board's en banc decision in *Simi*, we conclude here that the WCJ erred in ruling that "all the doctors are invalid [sic] because…applicant's CT injury ends on 1/15/05 which means the parties should have requested state-issued panel QMEs per Labor Code section 4060 and section 4062.2."[3]

The second reason the WCJ found all the medical reports inadmissible is "because they are corrupted by false and inaccurate histories told by the applicant to the doctors; and they are inadmissible because of internal inconsistencies and speculative conclusions by [applicant's qualified medical evaluators] and [by the defense qualified medical evaluators]." Again, we disagree with the WCJ's approach here. The fact that a medical report may be insubstantial

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[2] In *Hale v. Bills* (2022) 2022 Cal. Wrk. Comp. P.D. LEXIS 310, the panel of the Appeals Board stated that since the claimed date of injury therein was September 12, 2018, the proper way (for applicant) to obtain a QME was to comply with Labor Code sections 4060 and 4062.2. We take the panel's statement in *Hale* as unpersuasive *dicta* because the panel's actual disposition of the case was to defer the date of cumulative trauma injury, which may have pre-dated 2005, and to defer the admissibility of the medical reports that supposedly had not been properly obtained by applicant.

[3] Moreover, the WCJ's finding that applicant had "injurious exposure" in early January 2005, while warming up in pre-game practice as a third-string quarterback for the St. Louis Rams, is undercut by the WCJ's twin finding that applicant suffered no industrial injury at all. As a logical matter, if applicant suffered no industrial injury as found by the WCJ, he could not have suffered "injurious exposure" in January 2005.

evidence does not make it inadmissible; nor does the fact that a medical report may be substantial make it admissible. Furthermore, the trial record shows that *after* defendants raised the issue of "AMA Guides dates of employment/injuries exposure through 2-22-05 and need for Panel QME evaluations," all the medical and vocational reports presented by applicant, and all the medical reports presented by defendants, were admitted into evidence *without objection*. (Minutes of Hearing, 01/24/19, pp. 4-7.) At minimum, the WCJ's admission of all this evidence into the record and then reversing himself to support rejection of applicant's injury claim, raises significant due process concerns. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157 [65 Cal.Comp.Cases 805]. See also, *Urlwin v. Workers' Comp. Appeals Bd.* (1981) 126 Cal.App.3d 466 [46 Cal.Comp.Cases 1276].)

Finally, we note the minutes of the first trial date show that applicant contended the 1997 Schedule for Rating Permanent Disabilities ("PDRS") applies herein, while defendants contended the 2005 PDRS applies. (Minutes of Hearing, 01/24/19, p. 4.)

Subdivision (d) of Labor Code section 4660, applicable to injuries before January 1, 2013, provides as follows:

> "The schedule shall promote consistency, uniformity, and objectivity. The schedule and any amendment thereto or revision thereof shall apply prospectively and shall apply to and govern only those permanent disabilities that result from compensable injuries received or occurring on and after the effective date of the adoption of the schedule, amendment or revision, as the fact may be. For compensable claims arising before January 1, 2005, the schedule as revised pursuant to changes made in legislation enacted during the 2003–04 Regular and Extraordinary Sessions shall apply to the determination of permanent disabilities when there has been either no comprehensive medical-legal report or no report by a treating physician indicating the existence of permanent disability, or when the employer is not required to provide the notice required by Section 4061 to the injured worker."

Thus, section 4660 requires injuries occurring before January 1, 2005 to be rated under the 2005 PDRS absent one of the two exceptions listed in subdivision (d). Although we express no final opinion, it appears that neither of the exceptions apply here, so any permanent disability suffered by applicant should be rated under the 2005 PDRS. (See *Genlyte Group, LLC v. Workers' Comp. Appeals Bd.* (*Zavala*) (2008) 158 Cal.App.4th 705 [73 Cal.Comp.Cases 6]; *Zenith Ins. Co. v. Workers' Comp. Appeals Bd.* (*Cugini*) (2008) 159 Cal.App.4th 483 [73 Cal.Comp.Cases 81].)

In summary, we conclude that the WCJ must revisit this case anew, in light of the outstanding issues discussed above. To the extent the WCJ remains persuaded there is no substantial medical or vocational evidence (even though it is admissible), he should further develop the record as necessary or appropriate, including authority to appoint "regular physicians" in the appropriate medical specialties. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473 [Appeals Board en banc].)

We further note that because the WCJ found no industrial injury, he did not resolve the numerous issues (twenty-one) raised by the parties on the first trial date of January 24 2019. (Minutes of Hearing, 01/24/19, pp. 3-4.) As noted before, the parties stipulated that applicant sustained an industrial cumulative trauma injury by reason of his football career. Since it appears there is no good cause to relieve the parties of their stipulation, the WCJ must address and finally resolve all the other issues raised by the parties. It should be noted, however, that we express no final opinion on any substantive issue. When the WCJ issues a new decision, any aggrieved party may seek reconsideration as provided in Labor Code sections 5900 *et seq*.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order of January 8, 2020 is **RESCINDED**, and this matter is **RETURNED** to the trial level for further proceedings and new decision by the WCJ, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 23, 2024

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

CHRIS CHANDLER
GLENN, STUCKEY & PARTNERS
FLOYD SKEREN MANUKIAN LANGEVIN, LLP
WALL MCCORMICK BAROLDI & DUGAN

JTL/*ara*

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