

1 **WORKERS' COMPENSATION APPEALS BOARD**

2
3 **STATE OF CALIFORNIA**

4
5 **Case No. MON 0223961**

6 **MAXINE HAMILTON,**

7 *Applicant,*

8 **vs.**

9 **LOCKHEED CORPORATION;
10 WAUSAU INSURANCE COMPANY,**

11 *Defendant(s).*

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14 **OPINION AND DECISION
15 AFTER RECONSIDERATION
16 (EN BANC)**

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18 On December 27, 2000, the Workers' Compensation Appeals Board (Board) granted
19 reconsideration of the Findings and Award of October 4, 2000, in which the workers'
20 compensation administrative law judge (WCJ) found that applicant was totally permanently
21 disabled and in need of further medical treatment as the result of the cumulative industrial injury
22 to the psyche sustained from December 1990 to September 30, 1992. The WCJ further found
23 that apportionment of permanent disability was not appropriate.

24 Defendant carrier contended (1) that the WCJ's findings of fact were not based on
25 consideration of the entire record; (2) that apportionment of permanent disability was supported
26 by the opinion of the agreed medical evaluator (AME); and (3) that defendant had been deprived
27 of due process of law in the proceedings. Applicant filed an answer to the petition for
reconsideration.

This case presents an important issue that frequently arises in Board proceedings, i.e.,
what must be included in the Board's record when a case is submitted to the WCJ for decision on
the record. To secure uniformity in proceedings and decisions in the future, the Chairman of the

1 Board, on a majority vote of the members, has reassigned this case to the Board as a whole for an
2 en banc decision. (Lab. Code §115.)

3 We hold that the record of proceedings in a case submitted for decision on the record
4 must be properly organized and must contain at the minimum: a list of the issues submitted to the
5 WCJ for decision; the stipulations of the parties, if any; and the admitted evidence.

6 **I. BACKGROUND**

7 The relevant facts of this case are as follows. Applicant sustained admitted cumulative
8 industrial injury to the psyche from December 1990 through September 30, 1992. After
9 applicant's evaluation by an AME, the matter was submitted for decision "on the record" at the
10 hearing of July 25, 2000. The Minutes of Hearing contain neither the issues submitted for
11 decision, nor the stipulations of the parties, if any, nor a list of the evidence submitted by the
12 parties and admitted into evidence by the WCJ. Filed behind the minutes is a large collection of
13 documents with numbered tabs, which include medical reports and deposition transcripts. These
14 documents are not listed, identified, or described anywhere in the record. There is no way to
15 ascertain which, if any of them, were admitted into evidence.

16 On August 24, 2000, the WCJ issued a Notice of Submission, which states:

17 **"IT APPEARING THAT** the parties having requested submission
18 and court review of file indicating the matter is ready for
19 submission

20 **"NOTICE IS HEREBY GIVEN** that this matter stands submitted
21 for decision based upon the existing record

22 **"30 days after service hereof unless Good Cause to the contrary is**
23 shown in writing within 10 days."

24 The notice does not state the issues submitted for decision.

25 On October 4, 2000, the WCJ issued the Findings and Award, which initially states that
26 the matter was submitted for decision "based on the record on the issue of extent of permanent
27 disability and apportionment." The WCJ found that applicant is totally permanently disabled,
and that apportionment is not applicable. The Opinion on Decision states in its entirety:

1 "The Court finds the opinion of the Agreed Medical Examiner, Dr.
2 Thomas Preston noted in his reports of 9/22/97; 7/29/98 and
3 3/16/99 along with his deposition of 2/5/98 and 11/8/99 to be
4 credible and persuasive. In reliance upon same the Court is of the
5 opinion that applicant is totally (100%) disabled due to her
6 employment at Lockheed Corporation from 12/90 to 9/30/92.

7 "Upon review of the Agreed medial [sic] Examiner's opinion noted
8 in his reports and deposition wherein he states that he could not say
9 when applicant[']s mental problems would have been disabling
10 absent the stress arising from her employment, legal apportionment
11 to non-industrial causes is not warranted nor shown to exist.

12 "In view of same there is no persuasive evidence supporting
13 apportionment in conformance with legal principles. Accordingly
14 applicant is entitled to an unapportioned award."

15 Defendant then filed the petition for reconsideration now before us, making the
16 contentions noted above.

17 **II. DISCUSSION**

18 The Labor Code and the Board's rules set forth what must be included in a proper trial
19 record. It is the responsibility of the parties and the WCJ to ensure that the record of the
20 proceedings contains at a minimum, the issues submitted for decision, the admissions and
21 stipulations of the parties, and the admitted evidence.

22 The issues and stipulations of the parties set forth the matters to be decided by the WCJ
23 and enable the WCJ to understand exactly which matters the parties agree upon and which must
24 be decided.

25 The evidence submitted by the parties must be formally admitted and must be included in
26 the record to enable the parties to comprehend the basis for the decision.

27 Furthermore, a proper record enables any reviewing tribunal, be it the Board on
reconsideration or a court on further appeal, to understand the basis for the decision. As
discussed below, 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.

1 The responsibilities of the WCJ and the parties in preparing a case for submission are set
2 forth in Labor Code section 5502 and in the Board's rules. Section 5502(d)(2) provides that
3 when a dispute cannot be resolved at the mandatory settlement conference (MSC), the WCJ must
4 frame the issues and stipulations for trial. Section 5502(d)(3) sets forth additional requirements,
5 providing that if the claim is not resolved, the parties must file a pretrial conference statement
6 noting the specific issues in dispute, listing the evidentiary exhibits, and disclosing their
7 respective witnesses. (See also Cal. Code Regs., tit. 8, §10353.)

8 The WCJ is required to prepare, file, and serve a summary of the conference proceedings,
9 including the joint pre-trial conference statement and the disposition, on a form prescribed and
10 approved by the Appeals Board. (Cal. Code Regs., tit. 8, §10353.)

11 The Rules of Practice and Procedure of the Workers' Compensation Appeals Board (Cal.
12 Code Regs., tit. 8, subchapter 2) specifically set forth the contents of the Record of Proceedings
13 in a workers' compensation case:

14 "The Record of Proceedings consists of: the pleadings, declarations
15 of readiness to proceed, minutes of hearing and summary of
16 evidence, transcripts, if prepared and filed, proofs of service,
17 evidence received in the course of a proceeding, exhibits marked
but not received in evidence, notices, petitions, briefs, findings,
orders, decisions and awards." (Cal. Code Regs., tit. 8, §10750.)

18 The WCJ must prepare the minutes of hearing and a summary of evidence at the
19 conclusion of each hearing. These must include all interlocutory orders, admissions and
20 stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for
21 identification or in evidence and the disposition of the matter. (Cal. Code Regs., tit. 8, §10566.)

22 The WCJ's decision must be based on admitted evidence in the record. Such evidence
23 may include: the recorded admissions and stipulations of the parties; the testimony of witnesses,
24 if any; and documentary evidence including admitted medical records and physicians' reports
25 (Cal. Code Regs., tit. 8, §10626), permanent disability evaluation reports (Cal. Code Regs., tit.
26 8, §10602), and other documents such as employment, payroll, and vocational rehabilitation
27 records, as appropriate (Cal. Code Regs., tit. 8, §10601).

1 Medical reports and other admitted documentary evidence must be clearly listed in the
2 recorded minutes of the conference hearing or trial. Such admitted evidence should be clearly
3 labeled with exhibit numbers conforming to the list of admitted evidence.

4 The filing of a document does not signify its receipt in evidence, and only documents that
5 have been received in evidence or are listed in Board rule 10750 shall be included in the record
6 of proceedings on the case. (Cal. Code Regs., tit. 8, §10600.) Legal argument is not evidence.

7 When a decision is reached, the WCJ must make and file findings upon all facts involved
8 in the controversy and issue an award, order, or decision stating the determination as to the rights
9 of the parties. The findings and the decision must be served upon all the parties together with a
10 summary of the evidence received and relied upon and the reasons or grounds upon which the
11 determination was made. (Lab. Code §5313.)

12 The WCJ is also required to prepare an opinion on decision, setting forth clearly and
13 concisely the reasons for the decision made on each issue, and the evidence relied on. (Lab. Code
14 §5313.) The opinion enables the parties, and the Board if reconsideration is sought, to ascertain
15 the basis for the decision, and makes the right of seeking reconsideration more meaningful. (See
16 *Evans v. Workers' Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755, 68 Cal. Rptr. 825, 826, 33
17 Cal. Comp. Cases 350, 351.) For the opinion on decision to be meaningful, the WCJ must refer
18 with specificity to an adequate and completely developed record.

19 In summary, the Labor Code and the Board's rules contain explicit instructions
20 concerning the contents of the record of a case. It is the responsibility of the parties and the WCJ
21 to ensure that the record is complete when a case is submitted for decision on the record. At a
22 minimum, the record must contain, in properly organized form, the issues submitted for decision,
23 the admissions and stipulations of the parties, and admitted evidence.

24 **III. DISPOSITION**

25 The record of the case before us contains no list of issues presented, no admissions and
26 stipulations of the parties, if any (excepting the minutes of the April 20, 2000 hearing), and no
27 list of evidence submitted or admitted into evidence. We are unable therefore to determine the

1 basis for the decision. We will accordingly rescind the Findings and Award, and return the
2 matter to the WCJ for development of the record consistent with this opinion and for a new
3 decision thereafter.

4 For the foregoing reasons,

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