

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

THERESA THOMAS, *Applicant*

vs.

**VOLT INFORMATION SCIENCES, INC.; GALLAGHER BASSET SERVICES, INC.,
*Defendants***

**Adjudication Number: ADJ10713815
Santa Rosa District Office**

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

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

Contrary to the WCJ, we find applicant's petition timely filed. There are 20 days allowed within which to file a petition for reconsideration from a "final" decision. (Lab. Code, §§ 5900(a), 5903.) This time is extended by 10 calendar days if service is made to an address outside of California but within the United States. (Cal. Code Regs., tit. 8, § 10605(a)(1).) While applicant and her attorney received service of the decision within California, defendant was served at an address outside of California. Accordingly, and to observe due process for all parties, we interpret WCAB Rule 10605 as extending the time to file for all parties being served.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the January 18, 2022 Amended Joint Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the January 18, 2022 Amended Joint Findings and Award is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 18, 2022

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

**THERESA THOMAS
RAYMONDE. FROST & ASSOCIATES
LLARENA, MURDOCK, LOPEZ & AZIZAD**

PAG/pc

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Although the law office of Raymond E. Frost and Associates continues to represent Applicant, injured worker Theresa Thomas filed an untimely, verified Petition for Reconsideration challenging Amended Findings and Award dated January 18, 2022 in case number ADJ10713815, which involves a specific injury to the cervical spine. Applicant does not seek reconsideration of the Amended Findings and Award in companion case ADJ14897410, which is a cumulative injury to the bilateral wrists.

Petitioner contends that she has newly discovered evidence that could not be produced at the July 14, 2021 trial with the exercise of reasonable diligence.

II
FACTS

1. Procedural history

The parties stipulate that Applicant requires future medical care. (7/14/21 Minutes of Hearing, Stipulation 5). The issues of permanent disability, apportionment and attorney fees were submitted for decision.

The first Findings and Award (F&A I) is dated August 9, 2021. Both Applicant and Defendant petitioned for reconsideration. On November 2, 2021, a panel of Commissioners denied Applicant's petition. The panel granted Defendant's petition, and returned the case to the undersigned trial judge to calculate disability correctly and issue a new decision.

2. Timeliness

The undersigned issued the Amended Joint Findings, Award, and Opinion on Decision (F&A II) on January 18, 2022. The deadline to file a petition for reconsideration was 26 days later, on Monday, February 14, 2022. Applicant filed the petition one day late, on Tuesday, February 15, 2022.

3. Newly discovered evidence

Petitioner filed imaging reports dated September 6, 2021, attached to the petition. The imaging reports are for a cervical spine x-ray, cervical spine CT scan without contrast, x-ray scoliosis study, and a brain MRI without contrast. Petitioner also filed a report of Aaron John Clark, MD dated October 5, 2021

which contains a recommendation for cervical spine surgery. The surgical recommendation and the scans did not exist at the time of the July 14, 2021 trial.

Applicant contends that the newly discovered evidence may show that the opinions of QME Alfred Fernandez expressed in Joint Exhibit I 03 are mistaken regarding the true level of impairment and work restrictions.

Applicant also requests that she should be granted an award for cervical spine surgery recommended by Aaron John Clark, MD on October 5, 2021.

III DISCUSSION

1. THE UNDERSIGNED JUDGE IS NOT QUALIFIED TO DETERMINE IF THE OCTOBER 5, 2021 SCANS AND SURGICAL RECOMMENDATION ARE MATERIAL REGARDING THE ISSUE OF DISABILITY.

A medical opinion is necessary to determine if the newly discovered evidence raises questions regarding the validity of the opinions reached by QME Fernandez.

2. PETITIONER HAS AN AWARD OF FUTURE MEDICAL CARE.

Applicant has an award of future medical care pursuant to F&A II. If Dr. Clark submits a request for authorization for cervical spine surgery, Defendant will have an obligation to address the request through utilization review, pursuant to Labor Code 4610 et. seq.

IV RECOMMENDATION

I recommend that the Petition for Reconsideration be denied as untimely. If the WCAB determines that untimeliness is excusable in this case, I recommend that Reconsideration be granted to further develop the record.

March 7, 2022
Peter H. Hink
PRESIDING WORKERS' COMPENSATION ADMINISTRATIVE LAW
JUDGE