

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

EVA CHANG, *Applicant*

vs.

**COSTCO WHOLESALE CORPORATION, permissibly self-insured, administered by
HELMSMAN MANAGEMENT, *Defendants***

**Adjudication Numbers: ADJ15336311; ADJ15336257
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant, Helmsman Management Services, seeks reconsideration of the Joint Findings of Fact and Awards (F&A) issued by the workers' compensation administrative law judge (WCJ) on December 5, 2023. In the F&A, the WCJ found, among other things, that applicant sustained specific injury arising out of and in the course of employment (AOE/COE) to the lumbar spine (ADJ15336311) and cumulative trauma AOE/COE to the right upper extremities, right arm, and right wrist (ADJ1533625), and awarded applicant permanent disability (PD) benefits and future medical treatment reasonably required for both injuries.

Defendant contends that the WCJ's award is defective, as it did not address a lien claim filed by the Employment Development Division (EDD) for \$29,291.71 in state disability insurance (SDI) benefits paid to applicant during a period in which applicant also received PD benefits from defendant. Defendant contends that adjudication of EDD's lien claim was necessary in order to prevent a double recovery by applicant in the form of SDI and PD benefits.

We received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons stated below, we will deny reconsideration.

FACTS

The WCJ's Report provides the following undisputed factual background, as relevant herein:

Applicant has one admitted industrial claim: a specific October 7, 2019, injury to the lumbar spine (Master File ADJ15336311), and one denied claim: a period of cumulative trauma ending on January 22, 2020, injury to the right upper extremities, right arm, and right wrist (ADJ15336257).

There was a mandatory settlement conference (MSC) held on August 7, 2023 at which the parties submitted a pretrial conference statement [PTCS]. The applicant's attorney, defendant's attorney and a representative from the Employment Development Department (EDD) appeared at the MSC.

All parties including the EDD representative signed all pages of the pretrial conference statement. On page 3 of the pretrial conference statement, the EDD lien is checked as an issue and "EDD Overlap" is listed under "Other Issues."

The matter proceeded to trial on October 2, 2023.

* * *

The EDD lien was not raised by either party as an issue on the day of trial. There was no EDD representative present at the trial.

(Report, pp. 1-3; see also Minutes of Hearing and Summary of Evidence (MOH/SOE), October 3, 2023, pp. 3-4.)

On December 5, 2023, the WCJ issued the disputed F&A. The WCJ did not issue a finding or award on EDD's lien claim, but noted in the Report that this issue was deferred, as it was not raised and adjudicated at trial.

Defendant filed a timely, verified petition seeking reconsideration of the F&A.

DISCUSSION

In its Petition for Reconsideration, defendant contends that the WCJ's award is defective because it did not address EDD's lien claim.

Upon review, we agree with the WCJ's stance in her Report that the issue of EDD's lien claim was deferred, as it was not raised and adjudicated at the trial level. (Report, p. 3.) The rationale is this: EDD's lien claim was identified as an issue in the PTCS; however, because the parties did not yet raise and adjudicate the issue, it must be deferred and tried separately, at which point the WCJ will render a decision so as to ensure full adjudication of the case. (Cal. Code

Regs., tit. 8, § 10330 [the WCJ must “determine all issues of fact and law presented and to issue any...decisions and awards as may be necessary to the full adjudication of the case[.]”]; see also Cal. Code Regs., tit. 8, § 10787(a).)

Although we are denying reconsideration, it is important to note that the WCJ is incorrect insofar as she stated in her Report that, if EDD’s lien had been allowed, defendant would not be entitled to petition for reconsideration as a party “aggrieved.” (Report, p. 3.)

Labor code section 5900 provides that any person aggrieved directly or indirectly by a final decision may petition for reconsideration of any matters determined by the final order, decision, or award. (Lab. Code, § 5900(a).) The WCAB has found that a party is “aggrieved” when its interests are impacted by an issue raised and adjudicated. (See, e.g., *Riel v. State* (November 13, 2023, ADJ7176518) [2013 Cal. Wrk. Comp. P.D. LEXIS 576].) Here, defendant would be “aggrieved” in the event that EDD’s lien is allowed and it seeks reimbursement from defendant. (Lab. Code, §§ 4903, 4904, 5900, 5903; Unemp. Ins. Code, § 2629.1; cf. *Dept. of Employment Development v. Workers’ Comp. Appeals Bd.* (1974) 61 Cal.App.3d 470, 474 [41 Cal.Comp.Cases 489].)

Based on the foregoing, we deny reconsideration of the December 5, 2023 F&A.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the F&A issued on December 5, 2023 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 15, 2024

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

**EVA CHANG
LAW OFFICES OF NADEEM MAKADA
GILSON DAUB
EMPLOYMENT DEVELOPMENT DEPARTMENT**

AH/cs

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