

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

ROBERTO GUEVARA, *Applicant*

vs.

**PLAZA DE MARISCOS;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ7238534, ADJ7437728
Marina del Rey District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted the parties' Petitions for Reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

By his Petition for Reconsideration (Petition), applicant seeks reconsideration of the Findings of Fact and Award (F&A) in case number ADJ7437728, issued by the workers' compensation administrative law judge (WCJ) on October 13, 2021, wherein the WCJ found in pertinent part that on January 31, 2010, applicant sustained an injury AOE/COE, to his nervous system, psyche, chest, head, nose, neck, back, and face; that applicant did not sustain injury AOE/COE to his eyes; and that the injury caused 89% permanent disability.¹

Applicant's contentions in case number ADJ7437728 include:

The problem is that the insurance company ordered to falsify medical studies to deny medical treatment. ... [T]he Judge... denied me the right to discuss this in trial process. ... The parties involved in this fraud are the defendant Insurance Company, the doctors who participated in the falsification of these documents and the attorney who represented me.

Applicant also seeks reconsideration of the F&A in case number ADJ7238534, issued by the WCJ on October 13, 2021, wherein the WCJ found that:

... Applicant failed to sustain his burden of proving that he sustained a continuous trauma injury arising out of and in the course of his employment

¹Neither the October 18, 2021 Amended Findings of Fact, Award and Order, nor the October 22, 2021 Second Amended Findings of Fact and Award, effected the award of benefits made in the October 13, 2021 Findings of Fact and Award. Thus, applicant's Petition will be addressed on the merits.

[AOE/COE] during the period of June 15, 2009, through April 15, 2020, to his nervous system, psyche, brain, left leg, eyes, left shoulder, left upper arm, lower back, right wrist, neck, face, elbows, ankles, left wrist, right shoulder, hernia and internal.²

Applicant's contentions in case number ADJ7238534 include:

During this trial process, the court was informed that there is a fraud by the defendant and at the trial conference on August 19, 2019, five medical studies were mentioned that the State Compensation Insurance Fund company ordered to falsify to deny all my medical treatments. ...Medical evaluators from URAC, ANTHEM and UTILIZATION REVIEW ASSESSMENT, made medical evaluations with such false medical studies, and the Appeals Board filed some of these evaluations with false medical studies on behalf of another person. ¶ All these aspects were discussed in court during the trial process, but due to my racial profile I was ignored by the judge. ... This case was resolved based on fraud by the defendant (Insurance Company) and covered up by the parties involved in this case. ... The above said, is proof that there is fraud to deny me all the medical, treatments suggested by specialists and for surgeries that were necessary for my medical treatment. ...

Defendant seeks reconsideration of the Second Amended Findings of Fact and Award in case number ADJ7437728, issued by the WCJ on October 22, 2021, wherein the WCJ found in pertinent part that:

[A] reasonable attorney's fee is found to be \$50,358.59, as set forth in the attached, and fully incorporated herein, Attorney Fee Calculation, dated October 18, 2021. Defendant to hold the lump sum in trust pending agreement of the parties or further Order of the Court. Jurisdiction reserved.
(Second Amended Findings of Fact and Award, p. 3)

Defendant contends that the correct attorney fee commutation date is November 18, 2021, not October 18, 2021.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ regarding both of applicant's Petitions and defendant's Petition, recommending that each of the Petitions be denied. We received an Answer from defendant in case number ADJ7238534, we did not receive an Answer from applicant.

We have considered the allegations in the Petitions and the Answer, and the contents of the Reports. Based on our review of the record, and for the reasons discussed below, we will affirm

² In the October 22, 2021 Amended Findings of Fact and Order, the WCJ did not alter the previous finding that applicant did not sustain injury AOE/COE. Based thereon, applicant's Petition will be addressed on the merits.

the F&A in case number ADJ7437728. As to case number ADJ7238534, we will rescind the F&A, and substitute a new Findings of Fact, finding that the issue of injury AOE/COE is deferred; and the matter will be returned to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

Applicant claimed injury to his head, face, eyes, nose, nervous system, psyche, neck, back, and chest, while employed by defendant as retail sales/warehouse person on January 31, 2010 (ADJ7437728). Applicant also claimed injury to his brain, nervous system, psyche, face, eyes, neck, left shoulder, right shoulder, left upper arm, elbows, right wrist, left wrist, lower back, left leg, ankles, internal system, and in the form of a hernia, while employed by defendant during the period from June 15, 2008, through April 15, 2010 (ADJ7238534). He underwent a course of treatment including a left shoulder arthroscopy on October 14, 2011. (Joint Exh. 2, Joseph C. Hohl, M.D., February 16, 2016, p. 17, review of medical records.)

The parties proceeded to trial on April 8, 2019, and the WCJ ordered that, “case numbers ADJ7238534 and ADJ7437728 be consolidated for hearing.” (Minutes of Hearing and Order of Consolidation (MOH/OOC), April 8, 2019.) The stipulations in case number ADJ7238534 included that while employed by defendant during the period from June 15, 2008, through April 15, 2010, applicant:

... sustained injury arising out of and occurring in the course of employment to his nervous system, psyche, brain, left leg, eyes, left shoulder, left upper arm, lower back, right wrist, and neck and claimed injury to face, elbows, ankles, left wrist, right shoulder, hernia and internal.
(MOH/OOC, p. 2.)

The issues included parts of body injured, with applicant claiming, “...face, elbows, ankles, left wrist, right shoulder, hernia, and internal.” (MOH/OOC, p. 3.)

Regarding case number ADJ7437728, the parties’ stipulations included that while employed by defendant on January 31, 2010, applicant:

... sustained injury arising out of and in the course of employment to his nervous system, psyche, chest, head, nose, neck, back, and face and claims to have sustained injury arising out of and in the course of employment to his eyes.
(MOH/OOC, p. 3.)

The issues included, “Parts of body injured.” (MOH/OOC, p. 4.) The matter was continued to May 20, 2019, for further development of the record, and at that hearing it was again continued for development of the record. (MOH, May 20, 2019.)

At the December 2, 2020 trial, the parties stipulated that the April 8, 2019 stipulations had not changed and they amended the issues as follows:

In case no. ADJ7238534, the master file, the issues are:

1. Parts of body according to medical proof.
2. Permanent disability/apportionment.
3. Need for further medical treatment.
4. Attorney fees.
5. All other issues are deferred.

In case no. ADJ7437728, the issues are:

1. Parts of body according to medical proof.
 2. Permanent disability/apportionment.
 3. Need for further medical treatment.
 4. Attorney fees.
 5. All other issues are deferred.
- (MOH, December 2, 2020, p. 2, capitalization edited.)

Applicant testified at the January 6, 2021 trial and the matter was continued. (MOH/SOE, January 6, 2021.) The May 26, 2021 Minutes of Hearing indicate that applicant:

... waived his right to testify further in his cases regarding the psychiatric component of the cases and requests that the cases be submitted for decision. (MOH, May 26, 2021, p. 2.)

The parties were given the opportunity to file trial briefs, and the matter was submitted for decision as of June 28, 2021. (MOH, May 26, 2021, p. 1.)

The WCJ issued decisions and/or orders regarding case number ADJ7437728 as follows:

On October 13, the WCJ issued an F&A awarding 89% permanent disability and ordering that case number ADJ7437728 and case number ADJ7465024 were duplicative and both cases were dismissed.

On October 15, she rescinded the F&A.

On October 18, the WCJ issued an amended F&A that included an award of attorney fees.

On October 22, she rescinded the F&A.

On October 22, the WCJ issued a second amended F&A as to ADJ7437728 only.

On October 28, the WCJ issued an order that ADJ7437728 and ADJ7465024 were duplicative, and ADJ7465024 was dismissed.

The WCJ issued decisions and/or orders regarding case number ADJ7238534 as follows:

On October 13, the WCJ issued an F&A with “jurisdictional facts” stating that applicant sustained injury to the claimed body parts, during the period from June 15, 2008, to April 15, 2010. In the Findings of Fact, [listed as ADJ7437728], she found no injury for the period from June 15, 2009, to April 15, 2020, The WCJ ordered that applicant take nothing, and that ADJ7238534 and ADJ7465007 were duplicative claims and both were dismissed.

On October 22, she rescinded the F&A.

On October 22, the WCJ issued an amended F&A, with “jurisdictional facts” stating that applicant claimed injury to the listed body parts, from June 15, 2008 to April 15, 2010, and found no injury for June 15, 2009 to April 15, 2020. The WCJ ordered that applicant take nothing

On October 28, she issued an order that ADJ7238534 and ADJ7465007 were duplicative, and she dismissed ADJ7465007.

DISCUSSION

We first note that, applicant did not testify or submit any evidence in support of his numerous contentions regarding “fraud” and “falsification” of medical records. Applicant’s Exhibit 1 contains various medical records that applicant contends are “False Medical Studies.” According to the Merriam-Webster Thesaurus, “contention” is synonymous with “argument.” Clearly, a party’s arguments are not, in and of themselves, evidence. As the WCJ states in her Report:

In his Petition for Reconsideration, Applicant makes broad and unspecific statements of fraud by Defendant, the Information & Assistance officer(s), the Disability Evaluation Unit and this judge. However, Applicant’s allegations of fraud are merely statements without any factual basis and there have been no specific legal issue(s) set forth by Applicant that are able to be addressed by the court in any meaningful manner.

(Report, ADJ7238534, p. 11.)

Based on our review of the entire record, we see no factual support for applicant’s

arguments and we agree with the WCJ's analysis of applicant's contentions.

Regarding defendant's Petition in case number ADJ7437728, in her Report the WCJ explained:

The DEU Attorney Fee Calculation date was properly dated on October 18, 2021. Although the DEU Attorney Fee Calculation is dated October 18, 2021, the commutation date is noted on the left hand column of the document as November 18, 2021. ¶ The November 18, 2021 date that is set forth on the DEU Attorney Fee Calculation is the end date the commutation is valid. (Report, ADJ7437728, p. 2.)

Having reviewed the record of these proceedings, we agree with the WCJ that October 18, 2021, was the date of the attorney fee calculation, and November 18, 2021, was the end date that the attorney fee commutation was valid. Also, we note that in its Petition, defendant did not state or explain how it was aggrieved by the Second Amended Findings of Fact and Award. Thus, we will not disturb the WCJ's decision.

Finally, it has long been the law that once reconsideration has been granted, the Appeals Board has the authority to address issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (Lab. Code, §§ 5906, 5908) A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]); (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98]); *Pasquotto v. Hayward Lumber* (2006) 71 Cal.Comp.Cases 223, 229, fn. 7 (Appeals Board en banc).)

As noted above, at the April 8, 2019 trial, in case number ADJ7238534, the parties stipulated that during the period from June 15, 2008, through April 15, 2010, applicant sustained injury AOE/COE to his "nervous system, psyche, brain, left leg, eyes, left shoulder, left upper arm, lower back, right wrist, and neck and claimed injury to face, elbows, ankles, left wrist, right shoulder, hernia and internal." (MOH/OOC, p. 2.) At the December 2, 2020 trial, the parties stipulated that the April 8, 2019 stipulations had not changed. (MOH, December 2, 2020, p. 2.)

The October 13, 2021 Findings of Fact and Award include the parties' stipulation that applicant sustained injury to his "nervous system, psyche, brain, left leg, eyes, left shoulder, left upper arm, lower back, right wrist, and neck and claimed injury to face, elbows, ankles, left wrist,

right shoulder, hernia and internal.” (Findings of Fact and Award, October 13, 2021, p. 1.)
However, the WCJ found that:

... Applicant failed to sustain his burden of proving that he sustained a continuous trauma injury arising out of and in the course of his employment during the period of June 15, 2009 through April 15, 2020, to his nervous system, psyche, brain, left leg, eyes, left shoulder, left upper arm, lower back, right wrist, neck, face, elbows, ankles, left wrist, right shoulder, hernia and internal.
(Findings of Fact and Award, October 13, 2021, p. 2.)

The WCJ issued an Order Rescinding Findings of Fact and Award, and subsequently, the October 22, 2021 Amended Findings of Fact and Order stated that the “Admitted Facts” were:

Roberto Guevara, while employed during the period of June 15, 2008 through April 15, 2010, as a retail sales/warehouse person, at 2416 East Gage Avenue, Huntington Park, California, by Plaza de Mariscos, claims to have sustained injury arising out of and in the course of employment to his nervous system, psyche, brain, left leg, eyes, left shoulder, left upper arm, lower back, right wrist, neck, face, elbows, ankles, left wrist, right shoulder, hernia, and internal.
(Amended Findings of Fact and Order, October 22, 2021, p. 2, underlining added.)

The WCJ again found that, based primarily on the reports of the orthopedic and psychiatric QMEs, applicant had not sustained his burden of proof as to injury AOE/COE. (Amended Findings of Fact and Order, October 22, 2021, p. 2.) The WCJ’s Finding is inconsistent with the parties’ previous stipulations that applicant sustained injury AOE/COE to his “nervous system, psyche, brain, left leg, eyes, left shoulder, left upper arm, lower back, right wrist, and neck and claimed injury to face, elbows, ankles, left wrist, right shoulder, hernia and internal.” (MOH/OOC, p. 2.)

It is well established that while stipulations between adversary parties concerning the existence or nonexistence of material facts are permissible in workers’ compensation cases, under Labor Code, section 5702, the stipulations are not binding on the Appeals Board or the WCJ and the Appeals Board or the WCJ may reject or amend a stipulation and base the decision on the evidence presented at the hearing. (Lab. Code, § 5702; Cal. Code Regs., tit. 8, § 10517; *Draper v. Workers’ Comp. Appeals Bd.* (1983) 147 Cal. App. 3d 502 [48 Cal.Comp.Cases 748]; *Turner Gas Co. v. Workmen’s Comp. Appeals Bd.*, (1975) 47 Cal.App.3d 286 [40 Cal.Comp.Cases 253]; *Memorex Corp. v. Workmen’s Comp. Appeals Bd. (Kraton)* (1977 W/D) 42 Cal.Comp.Cases 458.)
However, pursuant to Appeals Board Rule 10835:

(a) Findings awards and orders may be based upon stipulation of parties in open court or upon written stipulation signed by the parties.

(b) No finding shall be made contrary to a stipulation of the parties without giving the parties notice and an opportunity to be heard.
(Cal. Code Regs., tit. 8, § 10835)

Based thereon, if a finding is going to be made that is contrary to a stipulation of the parties, the parties are to be given the opportunity to appear and present their respective positions regarding the stipulations, prior to a WCJ issuing the decision that is inconsistent with the stipulations previously submitted by the parties. (*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 [65 Cal.Comp.Cases 805].)

Here, in case number ADJ7238534 the parties were not given the opportunity to appear prior to the decision being issued, which is inconsistent with their stipulations. It is also important to note that the issue of injury AOE/COE was not identified as an issue to be submitted for decision in either case. Raising and determining such an issue without providing prior notice to the parties, and an opportunity for them to be heard, is contrary to due process. (*Gangwish v. Workers' Comp. Appeals Bd., supra*; *Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449 [56 Cal.Comp.Cases 381].)

Again, the finding of injury AOE/COE is consistent with the parties' stipulations in case number ADJ7437728 but is inconsistent with the stipulations submitted by the parties in case number ADJ7238534. Also, the finding that applicant did not sustain an injury during the period of June 15, 2009, through April 15, 2020, is inconsistent with the cumulative period from June 15, 2008, through April 15, 2010, as claimed by applicant and stipulated to by both parties.

For the reasons discussed herein, and as noted above, we will be returning this matter to the WCJ for further proceedings consistent with this decision. However, it is important to note that we are not addressing the merits of the cumulative injury claim. We are returning this matter to the WCJ to provide the parties the opportunity to be heard if the WCJ intends to make Findings that reject or amend the parties' previously stated stipulations and to have the inconsistencies in the record, discussed above, to be clarified.

Accordingly, we affirm the F&A in case number ADJ7437728. As to case number ADJ7238534, we rescind the F&A, and substitute a new Findings of Fact, finding that the issue of injury AOE/COE is deferred; and the matter is returned to the WCJ for further proceedings

consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that applicant's Petition for Reconsideration of the Findings of Fact and Award in case number ADJ7437728, issued by the workers' compensation administrative law judge on October 13, 2021, is **AFFIRMED**.

IT IS FURTHER ORDERED that the October 13, 2021 Findings of Fact and Award in case number ADJ7238534, is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Roberto Guevara, while employed during the period from June 15, 2008, through April 15, 2010, as a retail sales/warehouse person, at 2416 East Gage Avenue, Huntington Park, California, by Plaza de Mariscos, claims to have sustained injury arising out of and occurring in the course of employment to his nervous system, psyche, brain, left leg, eyes, left shoulder, left upper arm, lower back, right wrist, neck, face, elbows, ankles, left wrist, right shoulder, internal system, and in the form of a hernia; the issue of whether Roberto Guevara sustained a cumulative injury arising out of and occurring in the course of employment, as claimed, is deferred.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 13, 2024

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

**ROBERTO GUEVARA, IN PRO PER
STATE COMPENSATION INSURANCE FUND, LEGAL**

TLH/pc/mc

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