

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

BENJAMIN STA ISABEL, *Applicant*

vs.

**FORTUNE MANAGEMENT CORPORATION; SPRINGFIELD INSURANCE
COMPANY, administered by AMTRUST NORTH AMERICA, *Defendants***

**Adjudication Numbers: ADJ9079416; ADJ10334659
Anaheim 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, we will grant reconsideration, rescind the March 15, 2021 Joint Findings and Order, substitute it with a new Findings and Order that affirm the WCJ's order placing these matters off calendar pending further development of the record, for the reasons stated in the WCJ's report, which we adopt and incorporate to the extent it addresses the issue of development of the record. For the reasons stated below, we will also defer the issue of penalties and sanctions and otherwise restate the WCJ's findings.

WCAB Rule 10955 provides that in seeking removal a petitioner must "demonstrate that reconsideration will not be an adequate remedy after the issuance of a final order, decision or award." (Cal. Code Regs., tit. 8, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020).) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410, 413]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661, 665]) or determines a "threshold"

issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650, 650-651, 655-656].) Here, the WCJ's decision makes a final finding denying defendant's petition for penalties and sanctions. This finding makes the WCJ's decision a final order subject to reconsideration rather than removal.

However, the WCJ did not provide any reasoning for the denial of penalties and sanctions. Moreover, we note that the petition to reopen, which is the basis for the request for penalties and sanctions, has been deferred pending further development of the record. Therefore, we will also defer the related petition for penalties and sanctions. The WCJ should address it when she adjudicates the Petition to Reopen.

An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313) A decision "must be based on admitted evidence in the record" (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Board en banc) and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, "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." (*Hamilton, supra*, at p. 475.) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton, supra*, at pp. 475-476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the March 15, 2021 Joint Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the March 15, 2021 Joint Findings and Order is **RESCINDED** and **SUBSTITUTED** with a new Findings and Order, as provided below.

FINDINGS OF FACT

1. The applicant, BENJAMIN STA ISABEL, while employed at Fortune Management Corporation of Pomona, whose workers compensation insurance was Springfield Insurance Company administered by AmTrust North America, sustained injury arising out of and in the course of his employment on June 24, 2013 to his right ankle and on August 18, 2015 to his left elbow.
2. There is a need to develop the medical record as to whether the applicant now has new and further disability since his prior awards.
3. The applicant needs to be re-evaluated by the Agreed Medical Examiner who previously examined applicant for these injuries; Dr. Ray L. Craemer.
4. Defendant's petition for sanctions and penalties is deferred.

ORDER

IT IS ORDERED that the cases are placed off calendar pending receipt of a new medical report from Dr. Ray C. Craemer.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 18, 2021

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

**BENJAMIN STA ISABEL
SILBERMAN & LAM, LLP
FLOYD SKEREN MANUKIAN LANGEVIN, LLP**

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 & RECOMMENDATION ON PETITION FOR
RECONSIDERATION AND REMOVAL**

**I
INTRODUCTION**

The applicant, Benjamin Sta Isabel, sustained three injuries arising out of and in the course of his employment with Fortune Management Corporation in Pomona, California. The employer's insurance was Springfield Insurance Company administered by Amtrust North America.

Three separate stipulations and request for award were submitted to the Hon. Christine Nelson, now retired, who was assigned these cases. Judge Nelson approved all three settlements. The settlements are as followed: 1) ADJ9079428, which is a 7/19/2012 injury solely to the applicant's lumbar spine. The parties settled for 12% permanent disability. No petition to reopen was filed on this case.

The second case is ADJ9079416, which is a 6/24/2013 injury solely to the applicant's right ankle. It was stipulated that this injury resulted in 29% permanent disability.

The third case is ADJ10334659, which is an 8/18/2015 injury solely to the applicant's left elbow. The parties stipulated to 12% permanent disability.

The applicant's attorneys filed Petitions to Re-open on the second and third cases, which are the subject of this trial. The terms of the three settlements all stipulate that the settlements are based on the opinion of the Agreed Medical Examiner, Dr. Ray L. Craemer.

Trial proceeded on applicant's two petitions for new and further disability. On 3/15/2021, this court found the parties needed to comply with Labor Code §4067 and have the applicant examined by Dr. Ray Craemer, the AME.

On 3/19/2021, defense counsel, Jeffrey Sardell, filed a timely Petition for Reconsideration, or in the alternative, a Petition for Removal arguing that the record contains no evidence of new or further disability.

**II.
FACTS**

The only medical evaluation attended by the applicant since the filing of the petitions to re-open is the 4/23/2019 examination by Dr. Scott Small, D. O. Applicant's attorney acknowledges that none of Dr. Ray L. Craemer's medical reports were sent to Dr. Small to review. Applicant's counsel never set up an examination with Dr. Craemer after the filing of the petitions to re-open.

III.
DISCUSSION

Applicant relies on Labor Code §4067, which includes language that when an AME makes a formal medical evaluation of the same or similar issues now being raised in a petition to reopen for new and further disability, the AME “shall” then conduct a formal evaluation.

Defense counsel argues that defendant is aggrieved due to applicant’s counsel having done nothing to schedule such an appointment in the more than one year since the filing of the petitions to re-open. He does not address the mandatory language in the statute.

Dr. Small seems to have some incorrect history of the applicant’s working history. Dr. Small’s report describes the applicant as working full time but without restrictions at the time of his examination. Applicant testified that at that time he was working full time, but with restrictions. Defense counsel moved to strike the report from evidence for not having a correct history. At one point, defense counsel even called applicant a liar because the history was not accurate.

Defendant’s petition for sanctions and penalties against applicant’s counsel was denied.

The cases, including the issues of the petitions for new and further disability were placed off calendar pending receipt of a new medical report from AME, Dr. Ray. L. Craemer. Applicant’s counsel was ordered to schedule the reevaluation without further delay. There must be competent reliable medical evidence for the court to review in making its decision.

IV.
RECOMMENDATION

For the reasons set forth above, it is recommended that the Petition Reconsideration, or in the alternative, a Petition for Removal be Denied.

DATE: 3/30/2021
Nancy M. Gordon
WORKERS' COMPENSATION JUDGE