

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

JONATHAN SANARRUCIA, *Applicant*

vs.

TOBIN WORLD; STATE COMPENSATION INSURANCE FUND; WINWARD SCHOOL, INC.; OAK RIVER INSURANCE COMPANY c/o BHHC, *Defendants*

**Adjudication Numbers: ADJ3444089 (LAO 0880240) ADJ2257185 (LAO0880241)
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The Appeals Board previously granted reconsideration to further study the factual and legal issues.¹ This is our Decision After Reconsideration.

Defendant State Compensation Insurance Fund (SCIF) seeks reconsideration of the September 19, 2019 Findings and Order issued after an arbitration proceeding on petitions for contribution/reimbursement filed by SCIF and Oak River Insurance Company. The arbitrator found that both defendants failed to prove entitlement to either statutory or equitable relief on their petitions and ordered that they take nothing.

SCIF contends in essence that the arbitrator erred in addressing the entirety of the petition and requests that the matter be returned to the trial level for a WCJ to address the issue of reimbursement.

We have reviewed Oak River Insurance Company's Answer. The arbitrator prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed by the arbitrator in the Report, which we adopt and incorporate by reference and for the reasons discussed below, we will affirm the September 19, 2019 Findings and Order.

¹ Commissioner Dodd, who previously served as a panelist in this matter is unavailable to participate further. Another panel member was assigned in her place.

A primary purpose of the workers' compensation system is to provide an injured worker prompt payment of benefits. (*S.G. Borello & Sons, Inc. v. Dept. of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].) The Board has the "full power, authority and jurisdiction to try and determine" all workers' compensation claims and "any right or liability arising out of or incidental thereto." (Lab. Code, §§ 5300(a), 5301.) In addition, "proceedings shall be instituted before the appeals board and not elsewhere ... [f]or the enforcement against the employer or the insurer of any liability for compensation in favor of the injured employee[.]" (Lab. Code, § 5300(b).)

All parties to workers' compensation proceedings retain their fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158, [65 Cal.Comp.Cases 805].) A deprivation of a meaningful opportunity to object or present evidence is a violation of due process of law. (See *Fortich v. Workers' Comp. Appeals Bd. (Fortich)* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537] see also *Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 175 [36 Cal.Comp.Cases 93, 102].)

As part of the system to ensure prompt payment of benefits, Section 5275(a) requires that disputes involving the right of contribution in accordance with Section 5500.5 be submitted to arbitration. Section 5275(b) permits the parties to arbitrate any issue arising under Division 1 or Division 4 of the Labor Code. Voluntary arbitration of issues requires "agreement of the parties." (Lab. Code §5275(b).)

Here, the parties agreed to arbitrate petitions for contribution/reimbursement. The issue to be arbitrated was characterized as "to resolve issues arising out of two petitions for contribution filed by the defendants in each case." (August 5, 2019, Transcript of Proceedings, p. 4:15-17.) In its Petition for Contribution/Reimbursement, SCIF requested reimbursement of \$56,737.41. Because SCIF had denied applicant's claim, the costs SCIF incurred were primarily medical-legal costs as well as the cost of the Compromise and Release. (October 4, 2017, Petition for Contribution/Reimbursement, pp.4-5.) The arbitrator correctly determined that SCIF could not recover these costs from a defendant in a different workers' compensation case involving an entirely separate injury.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the September 19, 2019 Findings and Order is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 12, 2021

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

**DIETZ GILMOR & CHAZEN
JONATHAN SANARRUCIA
ROBERT DRAKULICH
STATE COMPENSATION INSURANCE FUND**

MWH/oo

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

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ARBITRATOR'S REPORT ON RECONSIDERATION

INTRODUCTION

The applicant filed two separate continuing trauma cases. ADJ3444089 involves Tobin World and State Compensation Insurance Fund (SCIF) for the period August 2003 to August 2004. ADJ2257185 involves the Windward School, Inc. and Oak River Insurance Co. c/o Berkshire Hathaway Homestate Companies (BHHC). Both cases were initially denied, each defendant blaming the other and securing medical legal opinions to bolster their position. Both defendants hired their own lawyers. No benefits were provided to the applicant. The cases were consolidated by the WCAB and on August 8, 2017 the parties met at the WCAB and each defendant paid applicant approximately \$25,000 each to secure a release from applicant. SCIF and BHHC equally split paying applicant's attorney fee, and also equally split the MSA funding. Essentially what happened when the parties met face to face at the Board, both decided to pay 50/50 for a settlement that ended their liability. The WCJ approved both settlements. Both had proof that their evidence would eliminate any liability on their part, but both parties decided that they did not want to take that chance and settled with applicant without a presentation of evidence. Neither set of settlement papers mentioned any reservation of rights to seek contribution. This would seemingly be the end of this matter, however, one defendant filed a Petition for Contribution which was followed by a reply petition by the other, both asking that they be reimbursed for their expenses by the other. BHHC did not include the \$25,000 Compromise and Release money in their demand, SCIF did. The arbitrator found no grounds to award any money for either petition. BHHC accepted the decision, SCIF filed this Petition for Reconsideration asking the Board to approve their petition, but continue to deny BHHC's petition. The petition was not properly served as the arbitrator did not receive a copy nor is he noted on the proof of service.

DISCUSSION

Although both parties started their process by labeling their Petitions as a Petition for Contribution, the facts presented do not support such labeling. This is not continuing trauma with two employers having a portion of a one year injurious exposure. This is not one employer being elected against, and having to defend the entire case and afterward seeking reimbursement from other carriers not elected against. These are two continuing trauma cases against two different employers with different insurance carriers. Both defendant carriers provided their own defense. Both defendants secured med/legal opinions to bolster their case against applicant and each other. Both defendants hired different counsel, and both insurance companies had a different process in administering their claims. The result is that the relief for the carriers lies in equity through a Petition for Reimbursement, not statutory law (L.C 5500.5).

Both parties formally included the Compromise and Release payments in their contribution demands, however, both realize that inclusion has no merit. The agreements over permanent disability, temporary disability, future medicals are bargained for agreements with the applicant which the arbitrator will not disturb. All items included in the Compromise and Release by each party must be taken out of the demand. That leaves past medical charges and costs of administration. The latter is easier to deal with. As stated before, each carrier has its own way of administering claims. Here, both carriers did their own administration, in their own case. Neither

carrier did administrative duties that would benefit the other. Both used their own bill review process, their own photocopy services, their own interpreters, and their own med/legal and AME doctors. All of which were aimed at defending their interest in their own case, and avoiding any liability for applicant's claim, or deflecting liability to the other carrier. Neither party has provided any authority or any logic as to why the co-defendant should be obligated to pay any part of these costs.

Regarding past medical, please remember that there was no testimony in this case. There was no foundation or explanation of the charges included in the benefit print outs from the parties. Numbers in the briefs do not coincide with the print outs. For instance, SCIF makes a demand in their brief for \$56,737.41. When the benefit print out is reviewed, the total SCIF expenditures were \$48,786.91. BHHC has 31 pages of "benefit print outs, but pages 14 to 30 are all zeros. The rest of the charges are for administrative costs. All medical payments appear to be for medical/legal opinions. All the doctors paid are labeled as QME's or AME's. As stated before, all of their opinions were secured to support each defendant's position in their own case. There was no attempt to put up a coordinated defense to reduce costs because each defendant was blaming the other defendant. Except for possibly liens there was no apparent payment for treatment. The majority of treatment was provided by applicant's group coverage. There were no apparent liens filed by the group carrier.

With the above scenario, there is no compelling equitable relief available that would save defendants from a disposition that they entered into with their eyes wide open. Each Compromise and Release was approved and the arbitrator cannot change those agreements. More important, neither defendant has shown why they need equitable relief, or why there is statutory relief under L.C. 5500.5. Therefore, the arbitrator left the parties in the position they put themselves. Nothing contained in the SCIF petition changes the original Finding and Order.

RECOMMENDATION

The Petition should be respectfully denied.

December 10, 2019

**Robert E. Drakulich
Arbitrator**