

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

ALFRED VELASCO, *Applicant*

vs.

**THE BOEING COMPANY, Permissibly Self-Insured, Administered by SEDGWICK
CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Numbers: ADJ4467694 (LAO 0841438), ADJ3736071 (LAO 0849184)
Los Angeles District Office**

**OPINION AND ORDER
DENYING PETITION FOR
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 deny reconsideration.

The WCJ properly relied upon the opinions of the agreed medical evaluators (AMEs), who the parties presumably chose because of their expertise and neutrality. The WCJ was presented with no good reason to find the AMEs opinions unpersuasive, and we also find none. (See *Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 21, 2022

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

**ALFRED VELASCO
MOORE & ASSOCIATES
MANTLE, ZIMMER & EULO, LLP**

PAG/ara

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Applicant, Alfred Velasco, through his attorney of record, Law Offices of Moore and Associates, has filed a verified, timely Petition for Reconsideration contending that the evidence does not justify the Findings of Fact and that the Findings of Fact do not support the decision, in the Findings and Order served on October 26, 2021, in which it was determined that the Applicant had not sustained new and further permanent disability as a result of his work related injuries on May 15, 2003, ADJ3736071, and during the period from May 15, 2002 to May 15, 2003, ADJ4467694. Although it was found that the applicant sustained a compensable consequence dermatological injury subsequent to surgery which did necessitate new and further treatment, the industrially related dermatological injury was found to have resolved without additional permanent impairment.

II
FACTS

The Applicant, born [], is an 87 year old assembly mechanic, who sustained injuries arising out of and in the course of employment on May 15, 2003 to his low back and left foot, and sustained injuries during the period from May 15, 2002 to May 15, 2003, to his back, left foot, bilateral upper extremities and sustained dermatological injury, while employed at Long Beach, California by The Boeing Company. At the time of injury, the employer was permissibly self-insured for workers' compensation, with claims administered by Sedgwick Claims Management Services. Both cases were resolved by Stipulated Settlement Agreement with a Joint Award issuing on November 14, 2007. In the Joint Stipulated Settlement the parties stipulated to a permanent impairment rating of 70%. Thereafter, the Applicant filed a petition to reopen for new and further temporary and permanent disability and need for new and further treatment.

On January 24, 2011, an Order Approving Compromise and Release resolving issues related to Retro TTD was approved. The agreement settled retroactive temporary disability benefits for both injury claims by converting a sum paid as permanent disability between 5/7/2008 through 12/1/2010, to be credited as temporary total disability benefits for this period. (EAMS DOC ID 23870060, page 7).

The parties proceeded to trial on Applicant's Petition for New and Further Disability on February 24, 2015 and April 14, 2015. The issues confirmed by the parties at the time they were read into the record at trial on February 24, 2015, were 1) Permanent Disability, based on the increase asserted in the Petition for New and Further, 2) Apportionment, 3) New and further disability, 4) Need for medical treatment, 5) All issues related to liens were deferred, 6) Entitlement to attorney's fees. The matter was submitted and thereafter, submission was vacated for further development of the record as to Applicant's dermatological injury (EAMS DOC IDS 55911759, 56246087,

56559368). The parties agreed to utilize Dr. Bernard Raskin as Agreed Medical Evaluator (AME) in dermatology.

Subsequent to receipt of the report from Dr. Raskin, the case was resubmitted for decision. It was determined that based on the medical evidence presented the Applicant's current level of disability did not exceed the previously stipulated level of permanent impairment. It was found that the Applicant did sustain a compensable consequence dermatological injury that did necessitate additional treatment, but did not result in additional permanent impairment. As temporary disability, had been resolved by the parties and was not placed at issue at the time of trial no determination of additional temporary disability was made. It is from these findings that Applicant seeks reconsideration.

III **DISCUSSION**

Temporary Disability

The Parties entered into a settlement agreement to resolve the retroactive issues of temporary disability several years prior to the trial which began on February 24, 2015. At the time of the trial on February 24, 2015, the parties modified the stipulations and presented them to the judge to be read into the record. Once the reading of the stipulations and issues was completed, the parties were asked to confirm the accuracy of the stipulations and issues. Trial did not proceed until each had provided an audible affirmative response. Subsequent to the first day of trial on March 26, 2015, the Minutes of Hearing and Summary of Evidence from the February 24, 2015 hearing were served on all parties on the official address record. No objection or request for modification of the issues was received. The parties appeared for a second day of trial on April 14, 2015, and by then the parties would have received the Minutes of Hearing and Summary of Evidence of the February 24, 2015 proceeding, but no mention of a need to modify the issues to include temporary disability was indicated. The parties were clear in their stipulation that the issue of retro temporary disability had been resolved. No new issue of entitlement to additional temporary disability was raised. At the time of trial the parties did not include temporary disability as an issue for trial. No determination of temporary disability was made based on it not being included as an issue to be addressed. Should a provision of the agreement reached between the parties with regard to payment of the temporary disability not be properly fulfilled, Applicant may request to bring that issue to trial in subsequent proceedings, but that has not yet occurred.

The Report of AME, Dr. Bernard Raskin

Applicant filed a petition for new and further disability which led to hearings in February and April, 2015. In reviewing the evidence it was found that further development of the record was necessary as to the Applicant's dermatological injury, as the Applicant had been diagnosed with multiple skin conditions at different times by different doctors, including staphylococcus post-surgery, skin rash, contact dermatitis, sensitivity to phenylenediamine, infection stemming from skin flora leading to inflammation and dermatitis, rash due to secondary infection, and pimples similar to acne which are an associated side effect from the usage of AndroGel. It was determined by the trier of fact that it would be necessary for the Applicant to be seen by a dermatologist to

fully develop the record. Neither party objected to this determination, and the parties agreed to utilize Dr. Bernard Raskin as the Agreed Medical Evaluator in the specialty of dermatology, to assess the Applicant's dermatological symptoms and history and render an opinion regarding causation of any and all skin conditions and the resulting impairment and potential future treatment.

Applicant argued at trial that the report of Dr. Raskin should not be considered substantial medical evidence, because Dr. Raskin did not spend sufficient time with the Applicant during the evaluation. The Applicant testified that Dr. Raskin spent about 10 minutes directly with the Applicant and during that time the doctor had him undress and took photographs of the Applicant's skin. He testified that Dr. Raskin took the pictures himself, and took pictures of the front and back of his body and his bottom area because he was still having problems there. He testified that he believes the doctor miscounted in the counting of the number of pimples on his chest, because although the number was low at the time that he was seen, he believes there were more than two pimples on his chest at the time he was seen, which was the number stated by the doctor.

The report was reviewed and appeared to comply with Labor Code §4628, including a complete history, reviewing and summarizing medical records and composing and drafting the conclusions of the report. Dr. Raskin notes his compliance with §§139.2U) and 5307.6. Dr. Raskin appeared to have spent time interacting with the Applicant in person, to obtain photographs of his skin condition and, based on the Applicant's testimony and the information in the report, Dr. Raskin did ask Mr. Velasco questions and obtain responses. The need for an AME in dermatology was necessary specifically because the determinations of Dr. Alaiti and Dr. Aurora differed as to the type of condition, and as to causation. Most significantly, they seemed to be describing several separate conditions, a sensitivity condition which the Applicant appears to have had since the 1990's, the contact dermatitis, which developed after surgery in 2010, and which resolved, followed by the folliculitis, which is recurrent. This was confirmed with a detailed explanation by Dr. Raskin in his AME report of 12/27/2019, Exhibit WW, with the contact dermatitis confirmed as being industrially related, as a compensable consequence post-surgery, and the folliculitis being non-industrial in nature (EAMS DOC ID 36444782). Dr. Raskin confirmed and further explained his diagnosis and conclusions in his cross-examination, Exhibit XX, (EAMS DOC 1036444787). As Dr. Radkin indicated he spent an hour and a half with the patient face to face and Mr. Velasco indicated ten minutes, but the information appeared to show an interaction at least more substantial than ten minutes, there was insufficient evidence to conclude that Dr. Raskin had not spent the minimum amount of face time with the patient during the evaluation, and from the Applicant's testimony, the actions taken by Dr. Raskin during the face to face time, in photographing the Applicant's body to obtain views of the affected areas of the skin and asking the pertinent questions needed, appeared to take sufficient time to satisfy the time requirement. The report was found to be admissible and substantial medical evidence.

Finding of New and Further Disability and Need for Treatment

The parties stipulated that the applicant had sustained dermatological injury, which was listed in the findings of the decision served on October 26, 2021. The contact dermatitis was found to be a compensable consequence injury and the Applicant was found to be entitled to treatment for this injury.

In evaluating whether the Applicant has sustained additional permanent impairment due to his industrial injuries the report of Dr. Larry Danzig, dated May 22, 2012, was found to be dispositive. It notes the restrictions from 2007 of "No repetitive heavy lifting activities, repetitive bending or stooping, prolonged standing, or prolonged walking, and repetitive power gripping or grasping with the hands. No forceful activities or use of vibrating or pounding tools, and no repetitive manipulative activities. Limitation to semi-sedentary work for the lumbar spine. Allowance for an AFO brace. No use of arms at shoulder level or above and no repetitive pushing or pulling activities." Dr. Danzig indicated that it was medically probable that the Applicant's restrictions, which are the basis for impairment, remain unchanged since the Stipulation With Request For Award in 2007. The indicated future medical remains consistent. Although Applicant argues that Dr. Danzig mentions he did not receive a comprehensive evaluation for the Applicant for around the time of the Award, Dr. Danzig appears to have been provided with the medical reports from the time period, numerous reports from various doctors who saw the Applicant in 2006 and 2007, as noted in Dr. Danzig's report of April 26, 2010.

Dr. Stanley Majcher, determined that the Applicant has not sustained an industrially related internal injury in his report of October 19, 2016, and Dr. Bernard Raskin did not find the Applicant to have sustained permanent impairment from the contact dermatitis, determined to be industrially related. Although Applicant submitted a vocational report, it was cursory. It did not include review of most of the medical reports, or include a labor market survey, or fully address Mr. Velasco's full range of skills, to determine if there were suitable alternatives for potential employment. Based on the lack of detail, it was found not to be substantial evidence. The medical evidence reviewed, indicated that the Applicant's impairment, assessed in conjunction with the Stipulation With Request For Award in 2007, stipulated to 70% permanent impairment remained accurate, therefore no increase in the level of permanent impairment was found. A need for additional medical treatment, to treat the contact dermatitis was found.

Dr. Danzig was selected by the parties as an Agreed Medical Evaluator, to resolve issues involving the Applicants orthopedic injuries, and it does not appear to be disputed that he reviewed the relevant records regarding Applicant's treatment subsequent to the 2007 Stipulation With Request For An Award, including the back surgery, the shoulder surgery, and the carpal tunnel surgeries. Dr. [Raskin], likewise was chosen as an Agreed Medical Evaluator by the parties in order to provide clarification of the dermatological injuries. Dr. Danzig was provided the relevant records for review. Both doctors conducted physical evaluations of the injured worker and rendered professional opinions which were found to be accurate and utilized to determine the issues, as was the intended purpose. Neither doctor found that the Applicant had sustained new and further impairment subsequent to the 2007 Stipulation With Request for An Award.

IV
RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied for the reasons stated above.

Respectfully submitted,

LORI ALISON OESTERREICH
Workers' Compensation Administrative Law Judge

Date: December 13, 2021