

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

CARLOS RUIZ, *Applicant*

vs.

**BARON HR, insured by ZURICH, administered by GALLAGHER BASSETT;
KAMRAN STAFFING/HR COMP, UNINSURED;
AARON THOMAS, insured by TWIN CITIES;
SCI, insured by ZURICH, *Defendants***

**Adjudication Numbers: ADJ9310145; ADJ15379203
Anaheim District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant, acting in pro per,¹ seeks reconsideration of the Joint² Findings of Fact and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on May 24, 2022, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and in the course of employment (AOE/COE) during the period beginning October 4, 2011, to his back (lumbar spine) while performing tasks consistent with occupational group number 340 and that applicant sustained injury AOE/COE on October 4, 2011, to his left foot/ankle while performing tasks consistent with occupational group number 360.

Applicant's Petition lacks essential information, including the grounds upon which reconsideration is sought, a statement of facts upon which petitioner relies, or a discussion of the applicable law. (See Lab. Code, §§ 5900 (a), 5902; Cal. Code Regs., tit. 8, §§ 10945, 10972.) As such, applicant's Petition is subject to dismissal, and we are unable discern applicant's specific contentions.

We have not received an answer from any party.

¹ Applicant filed a Notice of Substitution of Attorney on June 21, 2022, but represented himself at the time that he filed the Petition for Reconsideration.

² Jointly filed in case numbers ADJ9310145 and ADJ15379203.

The WCJ issued a Joint Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record, for the reasons set forth in the WCJ's Report, which we are adopt and incorporate, and for the reasons stated below, we will grant the Petition and amend Finding of Fact No. 1 of the F&O to use occupational group number 360. Otherwise we affirm the decision of May 24, 2022.

BACKGROUND

We will briefly summarize the relevant facts.

On March 19, 2021, the WCJ issued an Amended Finding and Award, which found in relevant part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to his back (lumbar spine) while employed as various occupations during the period October 4, 2011 through October 4, 2013 in case number ADJ9310145. (Amended Findings and Award, issued March 22, 2021, p. 2.) The WCJ also found that applicant sustained injury AOE/COE on October 4, 2011, while employed as various occupations in case number ADJ15379203. (*Id.*) The WCJ ordered that the record be developed for the occupational group code. (Amended Findings and Award, issued March 22, 2021, p. 3.)

In case number ADJ15379203, parties stipulated that applicant's occupational variant for the injury that occurred on October 4, 2011 was 360. (Further MOH/SOE, March 8, 2022 trial, p. 3.) Thus, they proceeded to trial on the sole issue of the occupational variant for applicant's injury that occurred during the period October 4, 2011 through October 4, 2013 (case number ADJ9310145). The WCJ made a finding that applicant had an occupational group number 340 during the period of October 4, 2011 through October 4, 2013. (May 24, 2022 Joint F&O, p. 2.)

DISCUSSION

The F&O contains two different occupational group numbers for claims that cover the same date: occupational group number 340 and occupational group number 360. The occupation of the injured employee and corresponding group number at the time of injury is a variable in computing the rating or percentage of permanent disability awarded. (Lab. Code, §§ 4660, 4660.1; *National Kinney v. Workers' Comp. Appeals Bd. (Casillas)* (1980) 113 Cal.App.3d 203, 209 [45 Cal.Comp.Cases 1266]; see also *Holt v. Workers' Comp. Appeals Bd. (Holt)* (1986) 187

Cal.App.3d 1257, 1260 [51 Cal.Comp.Cases 576].) As held in *Dalen v. Workmen's Comp. Appeals Bd.* (1972) 26 Cal.App.3d 497, 503-504 [37 Cal.Comp.Cases 393] and *National Kinney v. Workers' Comp. Appeals Bd.* (1980) 113 Cal.App.3d 203, 213-214 [45 Cal.Comp.Cases 1266], an employee who performs duties of two occupations is entitled to a rating based on the occupation carrying the higher percentage of disability, where there is evidence that the employee did actually perform duties required of the more arduous occupation.

Here, applicant was employed as a laborer on October 4, 2011, and defendant stipulated to that applicant was employed on that date and that his occupational variant was 360. Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (Cal. Code Regs., tit. 8, § 10835; *County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) The stipulation that applicant's occupational variant is 360 has not been disputed. As applicant's specific injury occurred on October 4, 2011, and his cumulative trauma injury began on October 4, 2011, applicant is entitled to the higher group number. We note that the assignment of the higher occupational group does not change the recommended permanent disability rating.

Accordingly, we grant reconsideration solely for the purpose of amending the Joint F&O to use occupational group number 360 in Finding of Fact No. 1. Otherwise, we affirm the Joint F&O.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Joint Findings of Fact and Order issued on May 24, 2022 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration that the Joint Findings of Fact and Order issued on May 24, 2022 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

1. CARLOS RUIZ born [] while employed during the period 10-04-2011 through 10-04-2013 as various occupations, having had an occupational group number 360, at Anaheim, California, by BARON HR, insured by ZURICH, administered by GALLAGHER BASSETT; KAMRAN STAFFING/HR COMP, UNINSURED; AARON THOMAS, insured by TWIN CITIES; and SCI, insured by ZURICH, sustained injury arising out of and occurring in the course of employment to his back (lumbar spine).

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 15, 2022

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

**CARLOS RUIZ
LAW OFFICES OF JESSE A. MARINO
LAW OFFICES OF MELODY Z. COX
PRINDLE, GOETZ, BARNES & REINHOLTZ, LLP
FABIANO, CASTRO & CLEM, LLP
LAW OFFICE OF TRACEY LAZARUS**

JB/ara

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

CS

STATE OF CALIFORNIA
Workers' Compensation Appeals Board
Division of Workers' Compensation

CASE NUMBERS: ADJ9310145, ADJ15379203

CARLOS RUIZ vs. BARON HR, insured by ZURICH,
administered by GALLAGHER BASSETT;
KAMRAN STAFFING/HR COMP,
UNINSURED; AARON THOMAS, insured
by TWIN CITIES; and SCI, insured by
ZURICH

WORKERS' COMPENSATION JUDGE: BOLYNDA SCHULTZ
DATE: June 27, 2022

**JOINT REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

Dates of Injury:

October 4, 2011 – October 4, 2013 (ADJ9310145 Master file)
October 4, 2011 (ADJ15379203 Companion case)

Parts of Body Injured: Lumbar spine, left foot/ankle

Identity of Petitioner: Applicant, in propria persona

Timeliness: The petition was timely filed

Verification: The petition was verified

Response: As of today, there has been no answer filed

Date of Findings & Award: May 23, 2022

Petitioners Contentions: Petitioner has discovered new evidence material to him which he could not with reasonable diligence have discovered and produced at the hearing.

II FACTS

The applicant, CARLOS RUIZ, initially represented by the Law Offices of Anton Dragan, filed an Application for Adjudication (Application) on October 7, 2013, alleging that while employed by KAMRAN STAFFING, during the period October 4, 2011 – October 4, 2013, he suffered injury to the left side of his back, lower left leg, left ankle, left foot, and left toes. He subsequently filed a Dismissal of Attorney, and Law Offices of Lionel Giron substituted in on March 31, 2014. Another Dismissal of Attorney was filed, dated June 12, 2017, wherein Mr. Cruz dismissed Law Offices of Lionel Giron and began to represent himself in propria persona.

Mr. Cruz filed a Petition for Change of Venue on June 26, 2017, and venue was changed to Anaheim by order of the Santa Ana Presiding Judge on July 25, 2017.

The matter has been set for Status Conference ten (10) times, a Ratings MSC once, and has been on the Trial calendar ten (10) times. The companion case (ADJ15379203) for specific date of injury October 4, 2011 was created by necessity and stipulation of the parties at hearing on November 4, 2021, for injury alleged to his left foot/ankle. There have been two full Trials and decisions have been issued. **The initial Trial resulted in an Amended Joint Findings and Order:**

JOINT FINDINGS OF FACT

1. CARLOS RUIZ born [] while employed during the period 10-04-2011 through 10-04-2013 as [various occupations] at Anaheim, California, by BARON HR, insured by ZURICH, administered by GALLAGHER BASSETT; KAMRAN STAFFING/HR COMP, UNINSURED; AARON THOMAS, insured by TWIN CITIES; and SCI, insured by ZURICH, sustained injury arising out of and occurring in the course of employment to his back (lumbar spine).

2. CARLOS RUIZ born [] while employed during the period 10-04-2011 through 10-04-2013 as [various occupations] at Anaheim, California, by BARON HR, insured by ZURICH, administered by GALLAGHER BASSETT; KAMRAN STAFFING/HR COMP, UNINSURED; AARON THOMAS, insured by TWIN CITIES; and SCI, insured by ZURICH, did not sustain injury arising out of and occurring in the course of employment to his left knee.

3. CARLOS RUIZ born on [] while employed on 10-04-2011 as [various occupations] at Anaheim, California, by BARON HR, insured by ZURICH, administered by GALLAGHER BASSETT; KAMRAN STAFFING/HR COMP, UNINSURED; AARON THOMAS, insured by TWIN CITIES; and SCI, insured by ZURICH, sustained injury arising out of and occurring in the course of employment to his left foot/ankle.

4. There is no evidence of liability for medical treatment self-procured by applicant.

5. There is no statute of limitations defense.

6. The applicant's average weekly wage is \$392.17.

7. The record needs to be developed as to occupational group code.

JOINT ORDER

IT IS ORDERED that the record shall be developed for occupational group code, as outlined in the Opinion on Decision.

Neither the applicant nor any co-defendants filed a Petition for Reconsideration, and the matter was heard for a second Trial on the limited issue of Occupational Group Number, as outlined in the Order. The Court issued a Joint Findings of Fact with Opinion on Decision:

JOINT FINDINGS OF FACT

1. CARLOS RUIZ born on [] while employed during the period 10-04-2011 through 10-04-2013 as various occupations, having had an occupational group number 340, at Anaheim, California, by BARON HR, insured by ZURICH, administered by GALLAGHER BASSETT; KAMRAN STAFFING/HR COMP, UNINSURED; AARON THOMAS, insured by TWIN CITIES; and SCI, insured by ZURICH, sustained injury arising out of and occurring in the course of employment to his back (lumbar spine).

2. CARLOS RUIZ born on [] while employed on 10-04-2011 as laborer, occupational group number 360, at Anaheim, California, by SCI, insured by ZURICH, sustained injury arising out of and occurring in the course of employment to his left foot/ankle.

JOINT OPINION ON DECISION

ADJ9310145 Continuous Trauma (Master File)

CARLOS RUIZ born on [] while employed during the period 10-04-2011 through 10-04-2013 as various occupations at Anaheim, California, by BARON HR, insured by ZURICH, administered by GALLAGHER BASSETT; KAMRAN STAFFING/HR COMP, UNINSURED; AARON THOMAS, insured by TWIN CITIES; and SCI, insured by ZURICH, sustained injury arising out of and occurring in the course of employment to his back (lumbar spine).

The applicant is claiming an occupational group code of 460; the defendants jointly claim an occupational group code of 340. The court reviewed the California Labor Code, Part C - Occupational Group Characteristics. It describes occupational group code 340 as mostly cleaners, work involves cleaning equipment and/or buildings; operation of cleaning devices, some lifting, some climbing, lowest variants for head disabilities of 300 series; lower end of 300 series forearms; Highest demands are for spine and leg activities. Typical occupations include auto washer and polisher, janitor, and nurse aide. It describes occupational group code 460 as material handlers and machine loaders and unloaders, strenuous demands on spine and legs for lifting and carrying heavy objects; Lowest demand for specialized arm activities in the 400 series. Typical occupations are baggage handler, chain off bearer, labor.

The applicant described himself as a laborer who operated an electric pallet jack (See Joint Exhibit X, Applicant's Statement of Injury). He also stated that he would open and unload boxes. The timeline involved is approximately the end of 2011 or the beginning of 2012. (See Minutes of Hearing and Summary of Evidence [MOH/SOE], dated November 3, 2020, page 3 lines 23-25). The applicant went on to testify that in 2013 he was transferred to the cleaning department. In that department he was required to lift heavy machinery, clean it, and then reassemble it. The applicant testified that he would pull pallets of heavy plastic. He would carry and pressure wash items. He would carry 50-pound sacks of salt to fill 55-gallon drums. He would utilize a dolly to bring four drums to a pallet and then push the drums onto the pallet; he would also lift 50-pound containers onto a table, climb stairs, and pick up items from a conveyor belt and place them on pallets.

He would compress air out of boxes and place them on a pallet all day long. While he was in the cleaning department, he began limping, and that is when he went to an attorney. (See MOH/SOE, dated November 3, 2020, page 4 lines 16-22). The applicant testified in a 2014 deposition that his duties 2011 included driving a pallet jack, opening and distributing bags of potato chips, folding cardboard boxes, moving pallets, and bringing product near the conveyor belt. The testimony was confusing as to whether or not he lifted items greater than 20 pounds without the use of the pallet jack, and the time frames involved with said lifting, but he clarifies it a bit on page 30 when he says, after the specific trauma, "I was still lifting heavy objects." And then he was transferred to the cleaning department, wherein he would clean, sweep floors, polish floors, mop rooms, clean windows and doors, and clean machinery, and not perform much lifting. (See Joint Defendant's Exhibit E, pages 25-33.)

Defendant called Leticia Guzman as a witness. Ms. Guzman did not directly supervise the applicant, but she was his supervisor's manager and she observed the applicant perform his duties. She testified that she was familiar with his job duties in the sanitation and production departments. The applicant was a packer in the production area and he had different assignments. In sanitation, he would clean machines and parts, the parts being hoppers and augers. A hopper weighs 30 to 50 pounds, depending. The applicant would clean hoppers and augers once per week or every 15 days, but not every day. He would clean the exterior of the machines, the walls, floors, and fan. In the production and sanitation department he would use pallet jacks to remove products from the rooms when the machines were being cleaned. The boxes weighed approximately 200 pounds that were on the pallet jacks; however, the pallet jack does all the work, and the boxes were already loaded on the jacks by other employees. The applicant would also fold down and flatten empty boxes, and place plastic bags of trash for someone else to take. On cross examination by the applicant the witness indicated that his job in the cleaning department was similar to that of a janitor; however, she believes a janitor would clean bathrooms, and he did not have to clean bathrooms. (See MOH/SOE, dated March 8, 2022, pages 3-5.)

Based upon the testimony provided and the Court's review of the California Labor Code, Part C - Occupational Group Characteristics, occupational group number 340 seems most appropriate. The group number 460 appears to be more strenuous, as in the duties of a baggage handler, lifting heavy baggage throughout the day. Mr. Ruiz's positions appear closer to the description of 340, a cleaner with some lifting.

ADJ15379203 Specific Trauma (Companion Case)

CARLOS RUIZ born on [] while employed on 10-04-2011 as laborer, occupational group number 360, at Anaheim, California, by SCI, insured by ZURICH, sustained injury arising out of and occurring in the course of employment to his left foot/ankle. The parties stipulated to the occupational group number of 360.

It is from this Joint Findings of Fact with Opinion on Decision the applicant appeals.

III
ARGUMENT

The applicant filed a skeletal petition. He crossed off all items except number four (4), which indicates “Petitioner has discovered new evidence material to him which he could not with reasonable diligence have discovered and produced at the hearing” but **then he leaves the area below blank**. The applicant failed to “fairly state all of the material evidence relative to the point or points at issue” as required by 8 CCR §10945.

It is worth noting that the applicant hired new counsel a week after filing the Petition for Reconsideration. A Substitution of Attorney was filed June 23, 2022. The applicant is now being represented by Law Offices of Jesse Marino. There have been no filings by this law firm in relation to the Court’s decision.

IV
RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied, in its entirety, as applicant failed to provide any substantive information related to his allegations.

Respectfully submitted,

BOLYNDA SCHULTZ
WORKERS’ COMPENSATION JUDGE