

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

RAMON SANCHEZ, *Applicant*

vs.

**ANTHONY INTERNATIONAL INC. and ZENITH INSURANCE COMPANY;
TRAVELERS INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ1635654 (VNO 0499354), ADJ1194753 (VNO 0403100)
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant, Travelers Insurance Company (Travelers) seeks reconsideration of the Findings and Award (F&A) in case number ADJ1635654 issued by the workers' compensation administrative law judge (WCJ) on December 2, 2021, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to his neck, shoulders, wrists, and hands; that applicant did not sustain injury AOE/COE to his low back; that applicant was temporarily totally disabled for the period from October 13, 2004, through October 11, 2006 (subject to the Labor Code section 4656(c)(1) 104 week limitation); and that the injury caused 47% permanent disability.

Travelers contends that Dr. Sam Tabibian's reporting is not substantial medical evidence, that the reports from Dr. Lee Silver are substantial evidence that applicant did not sustain a cumulative injury, that Dr. David Fisher served as the qualified medical examiner (QME) in regard to the specific injury only so his reports are not evidence regarding the cumulative injury claim, that the trial record contains no evidence that applicant was temporarily totally disabled during the period from October 13, 2004, through November 22, 2006, and that "any reports issued by Dr. Munir Uwaydah must be thrown out" because he had been "indicted for committing fraud." (Petition, p. 7.)

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We received Answers from applicant and from defendant Zenith Insurance Company.

We have considered the allegations in the Petition and the Answers and the contents of the WCJ's Report. Based on our review of the record, for the reasons stated in the WCJ's Report, which we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed injury to his low back, upper extremities, wrists, and hands, while employed by defendant as a refrigerator door assembler on May 12, 1998 (ADJ1194753). The injury claim at issue herein is applicant's claim of injury to his low back, shoulders, upper extremities, wrists, and hands, while employed by defendant as a refrigerator door assembler during the period from January 22, 1997, through October 12, 2004 (ADJ1635654).

Applicant received treatment from orthopedic treating physician Bruce A. Brown, M.D., during the period from December 4, 2003, through December 23, 2004 (App. Exh. 3, Munir M. Uwaydah, M.D., November 22, 2006, pp. 4 – 6, review physicians reports.) Orthopedic QME Richard Feldman, M.D., initially examined applicant on May 10, 2004. (See Def, Zenith Exhs. A – C.) Orthopedic treating physician Munir M. Uwaydah, M.D., treated applicant from February 4, 2005, through November 22, 2006. (App. Exh. 3, pp. 6 - 10, review physicians reports.) Orthopedic QME Lee B. Silver, M.D., first evaluated applicant on September 10, 2008. (See Def. Travelers Exhs. A – D.) On July 27, 2011 orthopedic QME David E. Fisher, M.D., evaluated applicant. (See Def. Zenith Exhs. D – L.) Physical medicine and rehabilitation QME Behnam Sam Tabibian, M.D., evaluated applicant on February 11, 2020. (See App. Exhs. 1 - 2.)

The parties proceeded to trial on October 20, 2021. The issues submitted for decision in both injury claims included, parts of body injured; temporary disability benefits for the period from May 21, 2003, through November 22, 2006; permanent disability/apportionment; permanent and stationary date; and future medical care. In case number ADJ1635654 the issues submitted also included injury AOE/COE and the date of injury. (Minutes of Hearing and Summary of Evidence (MOH/SOE), October 20, 2021, pp. 3 - 5.)

DISCUSSION

As a preliminary matter Travelers' Petition is timely. Travelers filed the Petition on December 21, 2021. However, the Petition did not come to the attention of the Appeals Board until

April 11, 2022. Travelers' Petition was not timely acted upon by the Appeals Board, which has 60 days from the filing of a petition for reconsideration to act on that petition. (Lab. Code, § 5909.) Here, however, through no fault of Travelers, the timely-filed Petition did not come to the attention of the Appeals Board until after the expiration of the statutory time period. Consistent with fundamental principles of due process, and in keeping with common sensibilities, we are persuaded, under these circumstances, that the running of the 60-day statutory period for reviewing and acting upon a petition for reconsideration begins no earlier than the Appeals Board's actual notice of the Petition, which occurred on April 11, 2022. (See *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1107-1108 [57 Cal.Comp.Cases 493]; *State Farm Fire and Casualty v. Workers' Comp. Appeals Bd. (Felis)* (1981) 119 Cal.App.3d 193 [46 Cal.Comp.Cases 622, 624].)

Regarding the merits of the Petition, we first note that we agree with the WCJ's conclusion that:

[T]he preponderance of the evidence supports the findings of Drs. Fisher and Tabibian that Applicant's complaints to the neck, shoulders and upper extremities were related to the seven years of employment with the Defendant [Anthony International Inc.].
(Report, p. 4.)

As to the issue of temporary disability, the permanent and stationary report from Dr. Uwaydah summarized the reports of applicant's medical treatment between 2003 and 2006. The doctor's summary of the treatment reports (App. Exh. 3, pp. 4 – 10) indicates the applicant was temporarily disabled during the period for which the WCJ awarded temporary disability indemnity benefits. Travelers did not offer evidence at trial to rebut the WCJ's opinion regarding the period that applicant was temporarily totally disabled and we see no basis for disturbing the F&A.

Finally, having researched the issue extensively, we find no statutory or case law that supports Travelers' argument that Dr. Uwaydah's report should be excluded from evidence and/or that his report "can not be relied upon." (Petition, p. 7.)

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that Defendant Travelers Insurance Company's Petition for Reconsideration of the Findings and Award in case number ADJ1635654, issued by the WCJ on December 2, 2021, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 8, 2022

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

**RAMON SANCHEZ
GLAUBER, BERENSON, VEGO
LOWER & KESNER**

TLH/pc

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