

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

**LAZARO DE LA TORRE VALDES, *Applicant***

**vs.**

**A&B LOGISTICS, INC., A CALIFORNIA CORPORATION, AND ARMAN AKOPIAN  
INDIVIDUALLY AND AS A SUBSTANTIAL SHAREHOLDER, AND BEKZOD  
KHODJAKHONOV INDIVIDUALLY AND AS A SUBSTANTIAL SHAREHOLDER,  
*Defendants***

**Adjudication Number: ADJ9940342  
Oakland District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration<sup>1</sup> in this matter to provide an opportunity to further study the legal and factual issues raised by the Petitions for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Applicant and defendants A&B Logistics, Inc., and Arman Akopian and Bekzod Khodjakhonov, as individuals and substantial shareholders of A&B Logistics (collectively, “defendant”) seek reconsideration of the August 6, 2021 Findings and Award (F&A), wherein the workers’ compensation administrative law judge (WCJ) found in pertinent part that applicant, while employed as a truck driver on February 28, 2015, sustained industrial injury to the back, legs, hips, feet, bladder, bowels, psyche, sexual function, sleep, head and in the form of neurological and sensory deficits; that applicant’s earnings at the time of his injury were \$799.59 per week; and that applicant was 100% permanently and totally disabled.

Applicant contends there is good cause to be excused from his wage stipulation and that his average weekly earnings should be higher based on the evidence of his earnings in 2014.

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<sup>1</sup> Commissioner Lowe, who previously served on the panel which granted reconsideration to further study the factual and legal issues in this case, no longer serves on the Appeals Board. Following the grant of reconsideration, Commissioner Dodd became unavailable to participate. Other panelists have been substituted in their place.

Defendant contends that the reporting of the Agreed Medical Examiner (AME) Dr. Chittenden is not substantial medical evidence, and that the closure of discovery violated their due process rights.

The Uninsured Employers Benefits Trust Fund (UEBTF) has also filed a letter dated August 31, 2021, requesting clerical amendment of the Award to reflect both the corporation, and its substantial shareholders.

We have received an Answer from applicant with respect to defendant's petition, and an Answer from defendant with respect to applicant's petition. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending both applicant's and defendant's petitions be denied.

We have considered the allegations of the Petitions for Reconsideration, the Answers, 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 below, we will amend the Award as requested by UEBTF to correct the clerical error, but otherwise affirm the F&A.

## **FACTS**

Applicant alleged injury to the back, legs, hips, feet, bladder, and bowel while employed as a "long haul trucker" by A&B Logistics, on February 28, 2015. (Minutes of Hearing and Summary of Evidence (Minutes), dated July 28, 2021, at 2:27.)

On February 28, 2015, applicant was driving a tractor-trailer on an interstate in Missouri when the vehicle was involved in multi-vehicle collision as a result of black ice. (Ex. 14, subpoenaed records of Phelps County Regional Medical Center, various dates, p. 31.)

On April 3, 2015, applicant filed a claim for workers' compensation benefits. Applicant retained counsel, and on June 8, 2015, applicant served the application for adjudication, along with a Special Notice of Lawsuit on A&B Logistics and on the UEBTF. (Petition to Join Party Defendant, dated December 2, 2016, Exhibit 2, p. 2.)

On September 8, 2016, A&B Logistics, Inc., filed a Certificate of Dissolution with the Secretary of State. (Order, dated March 28, 2019.)

On December 18, 2016, the UEBTF was joined as a party defendant. (Order Joining Party Defendant Uninsured Employers Benefits Trust Fund, dated December 19, 2016.)

Between June 2, 2017 and June 18, 2017, a process server attempted multiple times to serve the special notice of lawsuit at the address listed as A&B Logistics' corporate agent for service of process. However, service was not effectuated. (Ex. 5, Records of Attempted Service, various dates.)

On October 4, 2017, the WCJ issued an Order authorizing applicant to effectuate service on A&B Logistics, Inc., via the Secretary of State, pursuant to Corporations Code section 2011(b). (Order, dated October 4, 2017.)

On August 11, 2020, the UEBTF petitioned for the joinder of Bekzod Khodjakhonov and Arman Akopian, as substantial shareholders of the defendant employer A&B Logistics, Inc., pursuant to Labor Code section 3717.1.<sup>2</sup> (Petition to Join Substantial Shareholders, dated August 11, 2020.) The petition identified both individuals as Officers and Directors of A&B Logistics, as well as substantial shareholders. (*Id.* at 2:8.) The WCJ granted the petition and joined both individuals on August 19, 2020. According to the Communications section in the Electronic Adjudication System (EAMS), Bekzod Khodjakhonov and Arman Akopian, as substantial shareholders of the defendant employer A&B Logistics, Inc., were each added to the Official Address Record (OAR) on that date.

On August 29, 2020, the UEBTF effectuated personal service of the Special Notice of Lawsuit, the Application for Adjudication of Claim, and the Order Joining Substantial Shareholders on defendant Arman Akopian. (Proof of Service of Summons, dated August 31, 2020.) On August 31, 2020, defendant Bekzod Khodjakhonov was also personally served with the same documents. (Proof of Service of Summons, dated August 31, 2020.)

On December 2, 2020, the parties proceeded to Mandatory Settlement Conference (MSC). Neither A&B Logistics, Inc., nor its joined substantial shareholders, Arman Akopian and Bekzod Khodjakhonov, appeared at the conference. (Minutes of Hearing, dated December 2, 2020.) It is not clear from the minutes why they did not appear, but the MSC was continued to March 17, 2021.

On March 17, 2021, defendants Bekzod Khodjakhonov and Arman Akopian appeared through counsel. Applicant sought the closure of discovery, and defendant objected. The WCJ deferred the issue of the closure of discovery, set the matter for trial, and further instructed the

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<sup>2</sup> All further statutory references are to the Labor Code unless otherwise stated.

parties to complete and file a pre-trial conference statement prior to an intervening status conference. (Minutes of Hearing, dated March 17, 2021.)

On March 22, 2021, attorney Alla Vorobets filed a Notice of Representation of defendants Arman Akopian and Bekzod Khodjakhonov. (Notice of Representation, dated March 17, 2021.)

On May 17, 2021, attorney Douglas Jaffe filed a Notice of Representation of Arman Akopian and Bekzod Khodjakhonov. (Notice of Representation, dated May 17, 2021.)

On May 19, 2021, the WCJ reviewed and documented the procedural history of the matter in the Pre-Trial Conference Statement. The WCJ's conference notes observe:

At hearing on 3-17-21, attorney Alla Vorobets appeared for the individual defendants. A trial date was selected due to the drawn out hearing process, however, filing of the PTCS was delayed to conference on 5-19-21. On 5-18-21, attorney Vorobets filed a notice of rep. Also on 5-18-21, attorney Douglas Jaffe filed a notice of rep for the individuals. On 5-19-21, during hearing, defense counsel conferred with OD Legal attorneys regarding settlement. Defense counsel objected to closure of discovery on due process grounds. At a minimum, defendants argue that they are entitled to cross-examine the AME. AA indicated that she had served the file on attorney Vorobets on 3-24-21 but as of the hearing, no effort was made to cross-ex the AME. Counsel was asked to call Dr. Chittenden's office and reported that Dr. Chittenden is retiring on 5-29-21 and is no longer available as an AME. As such, the trial should proceed. If the AME is not substantial medical evidence then the due process arguments disappear. In addition, there are other legal defenses such as independent contractor. (Pre-trial Conference Statement, dated May 24, 2021, p. 4.)

The WCJ ordered discovery closed over defendant's objections, and continued the matter to trial.

On June 14, 2021, defendant filed a Petition for Removal, averring the reporting of the AME was not substantial evidence, and that the closure of discovery abrogated its due process rights. (Petition for Removal, dated June 14, 2021, at 9:16.)

The parties proceeded to trial on July 28, 2021, at which time defendant admitted injury to the back, legs, hips, feet, bladder, and bowel. The parties framed issues of injured body parts, including psyche, sexual functioning, sleep, head, and in the form of neurological and sensory deficits, temporary and permanent disability, need for further medical treatment, attorney fees, credit for third-party recovery, and earnings. (Minutes of Hearing and Summary of Evidence (Minutes), dated July 28, 2021, at 2:46.) Defendant further alleged the necessity of development of the record. (*Id.* at 3:18.)

On August 6, 2021, the WCJ issued the F&A, determining in relevant part that applicant had sustained 100% permanent and total disability, and awarded indemnity based on the average weekly wages of \$799.59 as stipulated by the parties. (F&A, Findings of Fact Nos. 6 and 3.)

On August 10, 2021, we denied defendant's Petition for Removal.

On August 31, 2021, both applicant and defendant filed Petitions for Reconsideration. Applicant's Petition for Reconsideration (Applicant's Petition) challenges the WCJ's reliance on the stipulated average weekly wages. Applicant contends, "since the Applicant was earning significantly less for an entire year averaging the wages from two different employers, the Court should use its discretion to set aside the stipulation and recalculate benefits using 2014 earnings from A & B Logistics only (which approximates more accurately Applicant's true earnings at the time of injury)." (Applicant's Petition, at 2:25.) Applicant asserts his average weekly earnings should be calculate based on 13 weeks of employment with defendant A&B Logistics. (*Id.* at 2:21.)

Defendant's Petition asserts the reporting of AME Dr. Chittenden "can not be used because he has retired and is no longer available as an AME and will not give a deposition." (Defendant's Petition, at 4:5.) Defendant contends the AME report is not substantial medical evidence, as it lacks both a recent record review and the depth of analysis necessary to constitute substantial evidence. (*Id.* at 4:9.) Defendant also contends the balance of the medical reporting offered in evidence is irrelevant and not probative. Defendant's petition asserts its due process rights were violated by the closure of discovery because the reporting of AME Dr. Chittenden was not served until after the March 17, 2021 conference, and because defendant was effectively denied the right to cross-examine the AME. Defendant also contends that the delay in joining the individual shareholder defendants was prejudicial. (*Id.* at 7:24.) Defendant asserts, "[t]he crux of defendants argument before trial was that further discovery is allowed especially since Dr. Chittenden's report is inadmissible," and that the court should err on the side of additional discovery, "although it inconveniences the parties and results in delays." (*Id.* at 8:4.)

On August 31, 2021, the UEBTF filed a Petition for Clerical Amendment to Findings and Award, requesting that the Award be amended to reflect the legal name of the corporate defendant, as well as defendants Arman Akopian and Bekzod Khodjakhonov as individuals and substantial shareholders. (Petition for Clerical Amendment to Findings and Award, dated August 31, 2021.)

The WCJ's Report addresses Applicant's Petition by noting that the parties stipulated to the average weekly wage figures, and that the value of a stipulation includes its practical effect of

improving the functioning of a judiciary, and allowing the parties to devote their attention to matters in contention. (Report, at pp. 5-6.) The WCJ further observes that the tax documents offered into evidence regarding applicant's earnings from a prior employer were of limited probative value with respect to applicant's earnings capacity at the time of injury, and that applicant did not establish good cause to be excused from his wage stipulation. (*Id.* at p. 6.)

The WCJ next addresses Defendant's Petition, noting that the need for additional discovery is not substantiated in the record. The WCJ writes:

A&B Logistics never filed an answer to the application for adjudication of claim, never provided any indemnity or medical treatment to its employee, apparently evaded process, and claimed, in filing for dissolution, never to have acquired any assets (even a truck) or obligations (such as this claim). Following its dissolution (whether or not that was accomplished licitly), it never provided contact information for its principal(s), who had to be unearthed by the UEF. It was not a party to the agreement on Dr. Chittenden as AME because it elected not to participate. At trial, through newly engaged counsel, defendant contended that it was only after UEF began asserting collection rights – specifically, placing a lien on at least one individually-owned property – that the individuals who formerly operated the company began to take an interest in these proceedings. True, the presence of the wolf at the gate can serve to focus one's attention, but it is my assessment that that fact has little bearing on one's legal rights and obligations. I have concluded that the defendants, collectively, have waived what rights it had through six years of inattention and inactivity. (Report, at p. 7.)

The WCJ also observes that defendant took no action to challenge the reporting of AME Dr. Chittenden until the May 19, 2021 MSC, and that the medical record supported the finding of applicant's permanent total disability. (*Id.* at p. 9.) The WCJ's Report recommends we deny both applicant's and defendant's petitions.

## **DISCUSSION**

### **I.**

We first address applicant's contention that there is good cause to relieve him from the stipulation to earnings of \$799.59 per week. Applicant asserts that his tax documents for 2014, which reflect 13 weeks and 4 days of earnings from A&B Logistics, Inc., in the year prior to his date of injury of February 28, 2015, support average weekly wages of \$1,637.58. (Applicant's

Petition, at 2:20.) Applicant contends that this evidence of earnings justifies the exercise of the WCJ's discretionary authority to excuse applicant from his earnings stipulation. (*Id.* at 4:16.)

The WCJ's Report observes:

Concerning earnings and the indemnity rate, applicant's contentions are two: That he should not be held to his earlier stipulation, and that substantial evidence supports a higher rate. I believe that both arguments are unavailing. On the first, a party will be held to its stipulations absent good cause to vacate them. *County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114 [65 Cal.Comp.Cases 1]; *Robinson v. Workers' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784 [52 Cal.Comp.Cases 419]; *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856 [44 Cal.Comp.Cases 78]. Interestingly, applicant in his petition comes just short of admitting that the proposal to use the earnings figure employed in the decision was his own, stating that "although one party stipulated to use earnings of \$799.59 to calculate temporary and permanent disability benefits," the figure is inaccurate. As defendant points out, the value of a stipulation includes its practical effect of improving the functioning of a judiciary. It also allows other parties to devote their attention to matters in contention, and if ignored or disregarded can essentially sandbag such other parties who relied upon it.

Substantively, as stated in the decision,

[S]ection 4453 mandates that earnings at the time of injury be the controlling calculation for purposes of temporary and permanent disability benefits. Therefore, the total earned in the prior calendar year is seldom probative of the pivotal question of earning capacity as of the time of injury, even if it can at times allow a useful inference in the absence of anything more definitive. In this instance, I do not find the evidence applicant has offered to be sufficient to overcome the stipulation entered into at the MSC. (Footnote (quoting § 4453) omitted)

The tax documents are in evidence as Exhibits 6 and 7. As Mr. Valdez explains in his petition, the documents from 2014 capture not only his "nonemployee compensation" from A&B Logistics but income received as taxable wages from a prior employer. While such information may in some instances be probative of one's earning capacity at the time of injury, as for example where actual earnings on the later date represent an aberration, there is no evidence that such is the case here. (Report, at pp. 5-6.)

We concur with the WCJ's analysis with respect to applicant's wage stipulation, and we will not disturb the finding of earnings of \$799.59 per week.

## II.

We next address Defendant's Petition, which asserts that the evidence does not support a finding of permanent and total disability, and that the record requires development. (Defendant's Petition, at 8:10.) Defendant avers the reporting of AME Dr. Chittenden is only 10 pages long, reviews no medical records beyond 2015, and that records reviewed by the AME are "stale" or were prepared in connection with applicant's civil suit. (Defendant's Petition, at 4:9.) Defendant contends the AME's conclusion that applicant is 100% disabled does not adequately explain how he reached that conclusion, or appropriately explore under what circumstances applicant could return to work. (*Id.* at 5:14.)

The WCJ's Opinion on Decision observes:

The records reviewed by Dr. Chittenden come mostly from the initial treatment Mr. Valdes underwent following his accident, including his stay in the rehabilitation hospital in California and urological consultations thereafter, as well as the evaluations by Dr. Bruce McCormack and Carol Hyland (Exhs. 2 and 3, not admitted) that themselves recounted the relevant history. Dr. Chittenden's examination took place on November 18, 2019, four and one-half years post-injury. As stated, he concluded that applicant's condition had likely been maximally improved for at least two years at that point. He outlined several aspects of permanent impairment under the AMA Guides, all within his area of expertise. I see no faults in his analysis, which is consistent with applicant's trial testimony and that of his caretaker, Iuginia Krikorianz, which testimony I found to be credible. The AME did not feel the need to seek the assistance of any other experts, and for the bulk of the issues submitted for decision I do not feel such a need.

David Chittenden has been a respected forensic evaluator in workers' compensation cases in the Bay Area for decades. Moreover, the opinions of an AME are entitled to substantial weight absent a showing that they are based on an incorrect factual history or legal theory, or are otherwise unpersuasive in light of the entire record. (See, e.g., *Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775 [51 Cal.Comp.Cases 114]; *Siqueiros v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 150 (writ denied).) Seeing no flaws in Dr. Chittenden's assessment of this matter, including those alleged by defendant, I have accepted that assessment.

### *Extent of permanent disability*

The parties requested and received a consultative rating of the AME's report. While such ratings are not generally admissible in evidence [fn. see, Cal. Code Regs., Tit. 8, § 10166, at subd. (b)], in this instance it was admitted without



objection as Exhibit 4. However, the consultative rating is not necessarily in order to assess the extent of disability in this case, and a workers' compensation judge is seen as an expert in rating permanent disability, "capable of (making his or her) own appraisal of the extent of applicant's disability." *U.S. Auto Stores v. Workers' Comp. Appeals Bd. (Brenner)* (1971) 4 Cal.3d 469 [36 Cal.Comp.Cases 173], 177, citing *Liberty Mutual Ins. Co. v. Indust. Accid. Comm. (Serafin)* (1948) 33 Cal.2d 89 [13 Cal.Comp.Cases 267]. I have not found it necessary in this case to refer the permanent disability to the Disability Evaluation Unit for a formal rating, as the four impairment ratings (60, 60, 50 and 28) quantified by Dr. Chittenden (even without the one aspect of impairment for which he does not provide a number, though there is only one number (20) provided by the AMA Guides for that impairment) would rate greatly in excess of 100% permanent disability were it not for the statutory cap [fn. § 4664, at subd. (c)(2)] on such awards. (F&A, Opinion on Decision, pp. 6-7.)

The WCJ's Report notes that in addition to the analysis detailed above, "[i]t takes only a few minutes with the rating manual (Schedule for Rating Permanent Disabilities) to learn that the number derived from the AME's findings and reduced by statute would be 100%." (Report, at p. 10.)

Following our independent review of the record, we concur with the WCJ's analysis that the reporting of Dr. Chittenden is both admissible, and that it is substantial medical evidence. Consequently, we find unpersuasive defendant's contention that development of the record is required because the reporting of Dr. Chittenden is inadmissible. (Defendant's Petition, at 4:8.)

Defendant further contends that it was denied a reasonable opportunity to conduct discovery, and that we should exercise our discretionary authority to order development of the record. (Defendant's Petition, at 9:14.) Defendant asserts it was unable to meaningfully participate in these proceedings until March, 2021, when the substantial shareholders made their first appearance. (*Id.* at 8:19.) Defendant notes that because the reporting of AME Dr. Chittenden was not served until sometime after the March, 2021 MSC, the closure of discovery on May 19, 2021 abrogated defendant's rights to due process of law. (*Id.* at 6:1.)

It is a longstanding principle that all parties to workers' compensation proceedings retain the 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]; *Boehm & Associates v. Workers' Comp. Appeals Bd. (Brower)* (2003) 108 Cal.App.4th 137, 150 [68 Cal.Comp.Cases 540]; *Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd. (Pinkney)* (1994) 26 Cal.App.4th 789, 803 [59 Cal.Comp.Cases

461].) In *Chorn v. Workers' Comp. Appeals Bd.* (2016) 245 Cal.App.4th 1370, 1388 [81 Cal.Comp.Cases 332], the Court of Appeal observed:

“The due process safeguards required for protection of an individual’s statutory interests must be analyzed in the context of the principle that freedom from arbitrary adjudicative procedures is a substantive element of one’s liberty. [Citation.] This approach presumes that when an individual is subjected to deprivatory governmental action, he always has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity. Accordingly, it places front and center the issue of critical concern, i.e., what procedural protections are warranted in light of governmental and private interests.” [Citations] This approach also recognizes the flexible nature of the due process requirement, which calls only for such procedural requirements as the particular situation demands. (Ibid.) “[T]he extent to which due process relief will be available depends on a careful and clearly articulated balancing of the interests at stake in each context.” (*Chorn v. Workers' Comp. Appeals Bd.* (2016) 245 Cal. App. 4th 1370, 1388 [81 Cal. Comp. Cases 332], citing *People v. Ramirez* (1979) 25 Cal.3d 260, 268 [158 Cal. Rptr. 316, 599 P.2d 622].)

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. (*Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1453 [56 Cal.Comp.Cases 537] (*Fortich*).) However, due process “is flexible and [only] calls for such procedural protections as the particular situation demands.” (*Smith v. Organization of Foster Families for Equality and Reform* (1977) 431 U.S. 816, 848 [97 S.Ct. 2094, 53 L.Ed.2d 14].)

We are also mindful that the due process rights of any one party cannot be weighed in a vacuum. Rather we must balance the procedural and substantive due process rights of all the parties to this action, including the applicant, to substantial justice that is expeditious, inexpensive, and without incumbrance of any character. (Cal. Const., art. XIV, § 4; Lab. Code § 3201.)

Here, we are persuaded defendant has received notice that is reasonably calculated to apprise it of the pending action. (*Fortich, supra*, 233 Cal.App.3d 1449, 1452-1453.) Applicant served the application for adjudication, along with a Special Notice of Lawsuit on A&B Logistics on June 8, 2015, prior to its corporate dissolution on September 8, 2016. (Petition to Join Party Defendant, dated December 2, 2016, Exhibit 2, p. 2.) A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail. (Evid. Code § 641.)

Although a presumption of proper mail service may be rebutted by evidence that a document was not in fact mailed as declared by the proof of service (see *Bear Creek Master Assn. v. Edwards* (2005) 130 Cal.App.4th 1470, 1486 [31 Cal. Rptr. 3d 337]), a bare declaration of non-receipt is insufficient to overcome proof of service. (*Silver v. McNamee* (1999) 69 Cal.App.4th 269, 280 [81 Cal. Rptr. 2d 445]; *Huber Tool Works Inc. v. Marchant Calculators, Inc.* (1962) 204 Cal.App.2d 822, 828 [23 Cal. Rptr. 10].) Here, defendant has not raised the defense of non-receipt of the Application for Adjudication or Special Notice of Lawsuit.

Between June 2, 2017 and June 18, 2017, a process server attempted fourteen times to serve the Special Notice of Lawsuit on the agent for service of process specified in A&B Logistics' filings with the Secretary of State. However, service was not effectuated, and on October 4, 2017, the WCJ issued an Order authorizing service on A&B Logistics, Inc., via the California Secretary of State, pursuant to Corporations Code section 2011(b).<sup>3</sup> (Ex. 5, Records of Attempted Service, various dates; Order, dated October 4, 2017.) On August 19, 2020, the WCJ ordered the joinder of the substantial shareholders pursuant to Labor Code section 3717.1.<sup>4</sup> On August 29 and 31, 2020, the UEBTF effectuated personal service of the Special Notice of Lawsuit, the Application for Adjudication of Claim, and the Order Joining Substantial Shareholders on defendants Arman Akopian and Bekzod Khodjakhonov, respectively. (Proof of Service of Summons, dated August 31, 2020.)

Thus, A&B Logistics was served with notice of the pending claim in 2016, at which time Bekzod Khodjakhonov and Arman Akopian were corporate officers, and prior to A&B's dissolution in 2016. Following its dissolution, the corporation was served again in 2017 via the Secretary of State, pursuant to Corp. Code § 2011(b). In 2020, the substantial shareholders were joined, and on August 31, 2020, the substantial shareholders were personally served with the

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<sup>3</sup> Cal. Corp. Code § 2011(b) provides, “[s]ummons or other process against such a [dissolved] corporation may be served by delivering a copy thereof to an officer, director, or person having charge of its assets or, if no such person can be found, to any agent upon whom process might be served at the time of dissolution. If none of those persons can be found with due diligence and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that summons or other process be served upon the dissolved corporation by personally delivering a copy thereof, together with a copy of the order, to the Secretary of State or an assistant or deputy secretary of state. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.”

<sup>4</sup> Labor Code § 3717.1 provides, “[i]n any claim in which an alleged uninsured employer is a corporation, the director may cause substantial shareholders and parents, as defined by Section 3717, to be joined as parties. Substantial shareholders may be served as provided in this division for service on adverse parties, or if they cannot be found with reasonable diligence, by serving the corporation. The corporation, upon this service, shall notify the shareholder of the service, and mail the served document to him or her at the shareholder's last address known to the corporation.”

application for adjudication, and the special notice of the lawsuit. Despite the repeated notice that was accomplished on both A&B Logistics, as a corporate entity, and on its substantial shareholders, defendant made no efforts to conduct discovery and made no appearance in these proceedings until March, 2021, at which time it requested and received an additional continuance to the final pre-trial hearing on May 24, 2021. (Minutes of Hearing, dated March 17, 2021.) Even during this additional two-month period, defendant made no attempt to conduct medical-legal discovery. Based on this history, we conclude the defendant has been repeatedly notified of the pendency of these proceedings, and has been afforded ample time in which to prepare a defense. (*Rucker v. Workers' Comp. Appeals Bd.*, *supra*, 82 Cal.App.4th 151.)

Defendant substantial shareholders contend they were not joined until 2020, five years after the date of injury, and that any delay in their seeking discovery is minimal compared to the delay in their joinder. (Defendant's Petition, at 7:24.) However, insofar as defendant argues dilatory joinder as cause for additional discovery, we observe that defendants are hardly strangers to this case. The joinder of the individual substantial shareholders in this matter was accomplished pursuant to Labor Code section 3717, which provides that once an award or settlement has become final, it constitutes a "liquidated claim for damages" as against the uninsured employer. Section 3717 further provides that if the uninsured employer is a corporation, the substantial shareholders of that corporation are *jointly and severally liable* for the liquidated claim for damages. (Lab. Code § 3717(a).) Additionally, once the Administrative Director identifies an individual to be a substantial shareholder of the uninsured corporation, section 3720 permits the Administrative Director to file "a certificate of lien showing the date that the employer was determined to be illegally uninsured or the date that the director has determined that the employer was prima facie illegally uninsured," as against the jointly and severally liable substantial shareholders. (Lab. Code §3720(a).) Here, defendants Bekzod Khodjakhonov and Arman Akopian were joined not as individuals with individual liability, but rather based on their status as substantial shareholders of an uninsured California corporation. (Lab. Code §3717(a); see also *Cunnington v. Viacom Bus. Network* (ADJ4426454 (VNO 0389469), May 28, 2020) [2020 Cal. Wrk. Comp. P.D. LEXIS 151].)

In light of the repeated service of notice of the pending claim described above, we conclude that defendant's rights to due process and a fair hearing have not been abrogated. Defendant was notified in multiple instances by direct service, or by statutorily authorized indirect service

“reasonably calculated...to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (*Fortich, supra*, 233 Cal.App.3d 1449.) Consequently, we discern no violation of defendant’s due process rights arising out of the closure of discovery and adjudication in this matter. In addition, we conclude that the evidentiary record supports the WCJ’s determination that applicant is permanently and totally disabled.

Finally, the UEBTF filed an August 31, 2021 letter seeking clerical amendment of the Findings and Award to reflect the legal name of the corporate defendant, as well as defendants Arman Akopian and Bekzod Khodjakhonov as individuals and substantial shareholders. (Petition for Clerical Amendment to Findings and Award, dated August 31, 2021.) As is discussed, *infra*, substantial shareholders have joint and several liability with the corporation that has not secured workers’ compensation insurance. Accordingly, we will amend the award to include Arman Akopian and Bekzod Khodjakhonov as individuals and substantial shareholders of A&B Logistics, Inc.

In summary, we agree with the WCJ that applicant has not demonstrated good cause to be relieved of his trial stipulation regarding average weekly wages. We further agree with the WCJ that the reporting of AME Dr. Chittenden constitutes substantial medical evidence, and that the evidentiary record supports a determination that applicant is permanently and totally disabled. Additionally, and based on our review of the evidence, we conclude that the defendant received appropriate notice of these proceedings, and that the closure of discovery and adjudication of this case did not abrogate defendant’s due process rights. Finally, we agree with the UEBTF that the Award should be amended for clerical error. Accordingly, we affirm the F&A, except that we amend the Award to include all joined parties.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued by a WCJ on August 6, 2021, is **AFFIRMED** except that it is **AMENDED** as follows:

### **AWARD**

**AWARD IS MADE** in favor of **LAZARO DE LA TORRE VALDES AGAINST A&B LOGISTICS INC.**, a California corporation, and **ARMAN AKOPIAN** individually and as a substantial shareholder, and **BEKZOD KHODJAKHONOV** individually and as a substantial shareholder, of the following:

- (a) Temporary disability indemnity at the rate of \$533.35 per week for the period(s) of time specified in finding of fact number 2, with actual payment thereof deferred pending resolution of any lien, actual or inchoate, of the Employment Development Department (EDD), and less an attorney fee of 15% of the amount payable to applicant and 10% of the amount payable to the EDD, the amounts likewise deferred,
- (b) Permanent disability indemnity at the rate of \$533.35 per week, beginning November 19, 2017, and continuing for applicant's life, plus an attorney fee of 15% of the present value of said indemnity, with all payments deferred pending resolution of the lien of prior counsel and the filing of a supplemental petition consistent with this decision, upon its finality,

- (c) A statutory increase of 10% of all compensation, with the calculation thereof left to the parties and jurisdiction reserved in case of disagreement,
- (d) Further medical treatment consistent with finding of fact number 3.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**March 7, 2023**

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

**A&B LOGISTICS, INC.  
ARMAN AKOPIAN  
BEKZOD KHODJAKHONOV  
DELFINO GREEN & GREEN  
FLETCHER BROWN  
LAZARO DE LA TORRE VALDES  
LAW OFFICE OF DOUGLAS E. JAFFE  
OFFICE OF THE DIRECTOR-LEGAL UNIT (OAK)  
UEBTF (OAK)  
LAW OFFICE OF ALLA V. VOROBETS**

**SAR/abs**

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