WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

BILL GRAVES, *Applicant*

vs.

COORSTEK, INC.; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants*

Adjudication Number: ADJ9205300; ADJ8596368
Van Nuys District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on February 3, 2020, wherein the WCJ found in pertinent part that applicant's claims are barred by the doctrine of *res judicata* because applicant had a findings and award in a prior case for injuries arising out of and in the course of (AOE/COE) the same employment.

Applicant contends that the WCJ erred because applicant did not include injury to his respiratory system in his prior settlement. Moreover, there was no medical evidence that applicant had sustained a compensable respiratory injury when he settled his prior case.

We received an answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

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

Based on our review of the record, and as discussed herein, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision and to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

We will briefly review relevant facts from case number ADJ8596368, which is referenced in the F&O in the instant matter.

On October 12, 2012, in case number ADJ8596368, applicant filed a claim for workers' compensation benefits alleging cumulative injury to his circulatory system, digestive system, and psyche while employed by defendant as a supervisor from October 1, 2011 to October 1, 2012. Applicant subsequently amended his application in case number ADJ8596368 to include the additional body parts of (psyche, sleep, headaches, dizziness, neuro, neck, back, waist, hips, and chronic pain) and he amended the date of injury to September 27, 2011 to September 27, 2012.[1]

On January 14, 2014, applicant signed a C&R in case number ADJ8596368, settling the following body parts: 200 neck; 420 back; 440 hips; 842 nervous system - psychiatric/psych; 880 other body systems; 198 head; 700 multiple parts; 801 circulatory system; 810 digestive system; and sleep apnea. (C&R in case number ADJ8596368, dated January 14, 2014, ¶ 1, p. 3 and ¶ 9, comments, p. 9.) Defendant signed the C&R on January 24, 2014, and an order approving the C&R (OACR) issued the same day. (OACR in case number ADJ8596368, dated January 14, 2014.)

We will now turn to the case before us, case number ADJ9205300.

On November 29, 2013, applicant filed an application for adjudication claiming cumulative injury to various body parts, including his respiratory system, chest, and nervous system, while employed by defendant as a team leader, during the period from January 28, 2008 to September 27, 2012. Applicant amended his application to include additional body parts in September 2018.

On April 16, 2015, applicant was evaluated by panel qualified medical examiner (PQME) Robert Meth, M.D. Dr. Meth took applicant's history, reviewed extensive medical records, reviewed spirometry results and radiology reports, and performed a physical examination of applicant prior to drafting his initial medical-legal evaluation. (Exhibit Z, report of Robert Meth, M.D., dated April 16, 2015.) Applicant's settlement of claim ADJ8596368 was approved by the WCJ on January 24, 2014. It is applicant's contention that his pulmonary claim was not included

[1] On April 15, 2013, a Findings and Award (F&A) issued in case number ADJ8596368. The WCJ found, in pertinent part, that applicant sustained injury AOE/COE to his neck, back and hips. (F&A dated April 15, 2013 in case number ADJ8596368, p. 2.) The WCJ also found that applicant did not sustain injury AOE/COE the following body parts: his psyche, sleep (disorder), headaches, neuro, dizziness, waist and/or chronic pain. (*Id.*) We note that applicant's respiratory system was not adjudicated in case number ADJ8596368.

in the settlement of case number ADJ8596368 and, as such, Dr. Meth was asked to comment only on applicant's pulmonary claims for case number ADJ9205300.[2] (Exhibit Z, pp. 2, 24.)

Dr. Meth's review of medical records includes approximately forty providers or facilities. Dr. Meth summarized applicant's first report of occupational injury or illness regarding a potential respiratory condition as follows:

> Doctor's First Report of Occupational Injury or Illness - Bernard McDermott. D.O. - 10/23/13
>
> The patient notes date of injury of 01/01/08. He indicates there is inadequate ventilation and micron silicon carbide abrasive was leaking through the vacuum for years and has not been fixed to date. He complains he has been exposed and notes symptoms for 2,123 days. He notes cough described as sharp, minimal and mild. His symptoms are exacerbated by deep breathing. He notes chronic cough. He notes he worked in a hazardous environment with inhalation exposure. Review of systems reveals changes in weight, weakness, fatigue or appetite loss, skin problems, frequent or severe headaches, diminished hearing or loss of hearing, allergic rhinitis, sneezing or chronic post nasal drip, dyspnea, chest pain or pressure, palpitations/arrhythmia, hypertension, pedal or pretibial edema, chronic/recurrent cough, asthma or reactive airway problems, emphysema or chronic bronchitis/COPD, pneumonia in the past five years, trouble breathing, dyspepsia or GERD, neck injury or pain, back injury or pain, muscle diseases or aches/pains, fibromyalgia, syncope or near syncope/lightheadedness, muscle weakness or paralysis, paresthesias in extremities, daily pain, depression, nervousness, mood swings, insomnia, diabetes mellitus or metabolic disorder, alopecia, cold or heat intolerance, genital pain. masses or other disorder. Present medications include Albuterol Sulfate 2.5 mg/0.5 ml Neb solution, ProAir HFA 90 MCG INH 8.5 gm, Prednisone 20 mg, Hydrocodone-Acetaminophen 5/325 mg. On examination blood pressure 140/80 and weight 176 pounds. His lung sounds are abnormal. Auscultation reveals rales, slight ant. lung field. Diagnosis: Reactive airway disease. The patient will be referred to a pulmonary provider. Robitussin was prescribed. Continue with regular duties.
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> (Exhibit Z, p. 15, emphasis added.)

As to causation, Dr. Meth opined:

[2] In pertinent part, Dr. Meth's report states: "It was noted please examine and comment only on case number ADJ9205300. Companion case ADJ8596368 was settled by way of compromise and release for the sum of $80,000, approved by the WCAB on January 24, 2014. The Judge made a specific regarding (sic) allegations of injury to psych, sleep dysfunction, headaches, dizziness, neurological system, neck, back, waist, hips, fibromyalgia and chronic pain. Therefore, this pulmonary claim does not include those body parts." (Exhibit Z, at p. 2.)

Bill Graves worked for CoorsTek, Inc., from 2007 until 2012 as a shift supervisor.

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[Applicant] said he supervised a process called outside radius lap micro blasting. There was 20 micron silicon carbide powder which contained crystalline silica that was used in the process. There were nanoparticles free floating in the air in excessive amounts. He said he was not given any respiratory protection. He did this work for 10-to-12-hour days, six and sometimes seven days a week. He said there was another powder used that was abrasive which he was exposed to in the air, but he cannot recall the name of that powder. He said there was a poor ventilation system in the room where he worked, and he said the safety coordinator frowned on the use of masks. He did this work without using a mask for six years.

He began having coughing in mid-2012, and he said he would blow his nose and black residue would come out. He had a cough productive of dark green secretions, approximately a half to one cup a day, and he started noticing difficulty with deep breaths, chest discomfort and shortness of breath. He said the shortness of breath has gotten worse over time, and he is short of breath with walking a quarter to a half a block.

He has been evaluated at U.S. HealthWorks, where he said he was found to have restrictive lung disease. He said a CT scan of his lungs was negative. He has been seen by Dr. Drucker, Dr. Lynn and Dr. Wilkenson, pulmonologist at Kaiser in Ventura and Woodland Hills, and he has been told by Dr. Wilkenson that his shortness of breath and restrictive lung disease relate to his work exposures. Two weeks ago, he had another CT scan of the chest. He does not know the results of that study, I would like to review the medical records from Kaiser including records from Dr. Drucker, Dr. Lynn and Dr. Wilkenson, as well as the recent CT scan of the chest done two weeks ago, and issue a supplemental report when they become available.

(Exhibit Z, at pp. 24-25.)

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His pulmonary function test revealed evidence of a severe restrictive ventilatory defect with a borderline improvement in the forced vital capacity after the bronchodilator.

The cause of his restrictive lung disease is unclear at this time but will await my review of his medical records including the most recent CT scan of the chest done two weeks ago. If I am not able to obtain that CT scan of the chest, I will then order a CT scan of the chest at Mink Radiology.

(Exhibit Z, at pp. 25-26.)

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IMPAIRMENT
Bill Graves has reached maximal medical improvement at the time of this evaluation.

As far as his pulmonary impairment is concerned, on page 107 of the AMA Guides, 5th edition, 5.1 permanent impairment due to respiratory disorders, he falls between class 3 and class 4 with a forced vital capacity of 49% of predicted and an FEV1 of 52% of predicted and, therefore, should be considered as having a 50% impairment of the whole person, which places him in the highest part of class 3.

(Exhibit Z, at p. 26.)

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APPORTIONMENT
His respiratory impairment should be considered 75% industrially related due to particle and fume exposures while working for CoorsTek, Inc., and 25% should be considered nonindustrially related due to his prior cigarette smoking history, pending review of further medical records.

MEDICAL TREATMENT
The medical treatment for his pulmonary disease should be paid for on an industrial basis. All medications, office visits and any procedures used to treat or evaluate his condition should be paid for on an industrial basis.

(Exhibit Z, at p. 26.)

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I will be issuing a supplemental report after reviewing the requested medical records including a recent CT scan of his chest done two weeks ago at Kaiser Permanente.

(Exhibit Z, at p. 27.)

On January 18, 2019, defendant filed a declaration of readiness (DOR), as follows: "multiple offers conveyed, most recently at the 10/15/2018 hearing. WCAB assistance requested."

On February 1, 2019, applicant objected to defendant's DOR, stating that the "panel QME re-evaluation appointment is set for July 24, 2019."

On January 2, 2020, the matter proceeded to trial on the following issues: 1) injury AOE/COE or the nature and extent of the prior injury and 2) whether or not the PQME report is substantial evidence. (Minutes of Hearing and Summary of Evidence (MOH/SOE), January 2, 2020 trial, at p. 2.)

Relevant herein, the parties stipulated to the following facts: applicant claims to have sustained injury AOE/COE to his respiratory (system), chest, and nervous system and the Court "issued a Findings and Award dated 4/15/2016[3] (sic) as to case number ADJ8596368." (MOH/SOE, at 2:2-12.)

At the January 2, 2020 trial, applicant testified in pertinent part that he did not believe that breathing or respiratory problems were included in the 2014 settlement of case number ADJ8596368. (MOH/SOE, at 3:14-16.)

On January 30, 2020, the WCJ made the following findings:

1. Applicant did sustain injury out of and arising out of and in the course of his employment to his neck, back and hips, as found in his prior filing (ADJ8596368).
2. Applicant did not sustain injury out of and arising out of and in the course of his employment to his psyche, sleep (disorder), headaches, neuro, dizziness, waist and/or chronic pain as found in his prior filing (ADJ8596368).
3. This claim (period of employment) was resolved by way of a Compromise and Release fully signed by the parties on 1/24/14, and approved by the Court (the undersigned) on 1/24/14.
4. Applicant's claim herein is barred.
5. All other issues are moot.

(F&O, p. 2.)

DISCUSSION

The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd*. (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.) The Supreme Court of California has long held that an employee need only show that the "proof of industrial causation is reasonably probable, although not certain or 'convincing.'" (*McAllister v. Workmen's Comp.*

[3] Per the February 3, 2020 F&O, the parties stipulated that the WCJ "issued a Findings dated 4/15/16 as to case number ADJ8596368." Presumably 2016 is a typographical error and the parties intended to stipulate that the WCJ issued an F&A in case number ADJ8596368 on April 15, 2013.

Appeals Bd. (1968) 69 Cal.2d 408, 416-417, 419 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd*. (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].)

It is well established that "there can be more than one injury, either specific or cumulative or a combination of both, arising from the same event or from separate events." (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd*. (*Austin*) (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323].)

Labor Code section 3208.1[4] defines "injury" as follows:

> An injury may be either: (a) "specific," occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury shall be the date determined under Section 5412.
> (Lab. Code, § 3208.1.)

The number and nature of the injuries suffered are questions of fact for the WCJ or the WCAB. (*Austin, supra*, at 234; see also Lab. Code, § 3208.2.) No cumulative injury can occur without disability. (*Van Voorhis v. Workmen's Comp. Appeals Bd*. (1974) 37 Cal.App.3d 81, 86-87 [39 Cal.Comp.Cases 137]; *Aetna Cas. & Surety Co. v. Workmen's Comp. Appeals Bd. (Coltharp)* (1973) 35 Cal.App.3d 329, 342-343 [38 Cal.Comp.Cases 720]; *Ferguson v. City of Oxnard* (1970) 35 Cal.Comp.Cases 452 (Appeals Bd. en banc).)

As used in Section 5412, "disability" means either compensable temporary disability or permanent disability. Medical treatment alone is not "disability" for purposes of determining the date of a cumulative injury pursuant to section 5412, but it may be evidence of compensable permanent disability. (*State Compensation Insurance Fund v. Workers' Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998, 1005 [69 Cal.Comp.Cases 579, 584].) Likewise, modified work is not a sufficient basis for finding compensable temporary disability, but it may be indicative of a compensable permanent disability, especially if the worker is permanently precluded from returning to his usual and customary job duties. (*Id*.)

The "date of injury" in a cumulative injury case is the concurrence of first compensable injury and the date of the employee's knowledge of the injury's industrial relationship.

[4] All future statutory references are to the Labor Code, unless otherwise specified.

Determination of the "date of injury" is a two-part analysis: 1) when did the employee first suffer a compensable disability from a cumulative injury; and 2) when did the employee know, or in the exercise of reasonable diligence should have known, that the compensable disability was caused by his or her employment. (Lab. Code, § 5412; *Rodarte, supra*.)

Whether an employee knew or should have known that the disability is industrially related is generally a question of fact. (*City of Fresno v. Workers' Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53]; *Nielsen v. Workers' Comp. Appeals Bd*. (1985) 164 Cal.App.3d 918 [50 Cal.Comp.Cases 104]; *Chambers v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal.2d 556 [33 Cal.Comp.Cases 722]; *Alford v. Industrial Accident Com*. (1946) 28 Cal.2d 198 [11 Cal.Comp.Cases 127].) The employer has the burden of proving that the employee knew or should have known his disability was industrially caused. (*Johnson, supra*, at 471, citing *Chambers v. Workers' Comp. Appeals Bd*. (1968) 69 Cal. 2d 556, 559.) That burden is not sustained merely by a showing that the employee knew he had some symptoms. (*Johnson*, *supra*, at 471; *Chambers, supra*, at 559.) In general, an employee is not charged with knowledge that his or her disability is job-related without medical advice to that effect. (*Johnson*, *supra*, at 473; *Newton v. Workers' Comp. Appeals Bd*. (1993) 17 Cal.App.4th 147, 156, fn. 16 [58 Cal.Comp.Cases 395].)

Here, applicant reported various respiratory symptoms since at least 2010 and reported a potentially hazardous work environment at a medical-legal evaluation in October 2013. (Exhibit Z, at pp. 9-10, 13-16, 19-20.) As summarized by PQME Dr. Meth:

> [Applicant] indicates there is inadequate ventilation and micron silicon carbide abrasive was leaking through the vacuum for years and has not been fixed to date. He complains he has been exposed and notes symptoms for 2,123 days. He notes cough described as sharp, minimal and mild. His symptoms are exacerbated by deep breathing. He notes chronic cough. He notes he worked in a hazardous environment with inhalation exposure. ... Diagnosis: Reactive airway disease. The patient will be referred to a pulmonary provider. ... Continue with regular duties.
>
> (Exhibit Z, p. 15, summary of Bernard McDermott, D.O.'s first report of occupational injury or illness, dated October 23, 2013, emphasis added.)

Based on the record, it appears that applicant believed his respiratory symptoms were industrially-related in October 2013 (*Id*.) Because applicant is not a trained medical professional, his belief about industrial causation does not constitute "knowledge" of the injury's industrial

relationship. Of greater relevance, however, Dr. Meth's April 16, 2015 report does not support a finding of injury AOE/COE. No cumulative injury can occur without disability, "disability" generally requires either compensable temporary disability or permanent disability, and applicant was clear to continue with his regular duties. (Lab. Code, § 5412; *Van Voorhis, supra, Coltharp, supra, Ferguson, supra*.)

Turning to whether there is substantial medical evidence of industrial causation, a medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd*. (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Bd. en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd*. (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

While lay testimony, including applicant's testimony, can be used to establish that applicant's occupation involved repetitive traumatic activities, medical evidence is required to establish a date of injury pursuant to Section 5412 because the existence of disability or need for medical treatment is a medical question beyond the bounds of ordinary knowledge. (*Peter Kiewit Sons v. Ind. Acc. Comm. (McLaughlin)* (1965) 234 Cal.App.2d 831, 838-839 [30 Cal.Comp.Cases 188]; *City & County of San Francisco v. Industrial Acc. Com*. (*Murdock*) (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103]; *Bstandig v. Workers' Comp. Appeals Bd*. (1977) 68 Cal.App.3d 988 [42 Cal.Comp.Cases 114].) Thus, the existence of disability is a medical question, notwithstanding the WCJ's credibility determination regarding applicant's testimony. When deciding a medical issue, such as whether the applicant sustained a cumulative trauma injury, the WCJ must utilize expert medical opinion. (See *Insurance Company of North America v. Workers' Comp. Appeals Bd*. (*Kemp*) (1981) 122 Cal.App.3d 905 [46 Cal.Comp.Cases 913].) Generally, and especially in cases of cumulative injury, medical causation cannot be established without corroborating expert medical opinion. (*McLaughlin, supra*, at 838-839.)

Here, having reviewed the trial record, including Dr. Meth's April 16, 2015 report, the record does not contain substantial medical evidence upon which a finding on the issue of injury AOE/COE can be made. Dr. Meth took a detailed history, examined applicant, and reviewed numerous medical records, however Dr. Meth stated that he was waiting to review the results of a CT scan and the "cause of [applicant's] restrictive lung disease is unclear at this time." (Exhibit Z, at pp. 25-26.) As such, his opinions currently lack a solid underlying basis and are speculative. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Brooks)* (2013) 215 Cal.App.4th 785, 797 [78 Cal.Comp.Cases 379]; *Hegglin, supra; Escobedo, supra*.) As discussed above, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely their conclusions, and it must disclose a solid underlying basis for the opinion. (*Hegglin, supra*; *Granado v. Workmen's Comp. Appeals Bd*. (1970) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *Escobedo, supra*.) Thus, Dr. Meth's opinions do not constitute substantial medical evidence based on the record before us.

Res judicata[5] was not an issue at trial, however, we address it briefly because the WCJ raised it in the F&O. (Pre-trial conference statement, dated October 28, 2019, p. 3; MOH/SOE, January 2, 2020 trial, p. 2; F&O, p. 2.) The plain language of the 2014 C&R describes the body parts being released at that time as "200 neck; 420 back; 440 hips; 842 nervous system - psychiatric/psych; 880 other body systems; 198 head; 700 multiple parts; 801 circulatory system; 810 digestive system; and sleep apnea." There is no evidence that this language was intended to include respiratory system and defendant presented no medical evidence that describes injury to

[5] In *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, the California Supreme Court clarified the terms "res judicata," "collateral estoppel," "claim preclusion," and "issue preclusion," as follows:

> We have frequently used "res judicata" as an umbrella term encompassing both claim preclusion and issue preclusion, which we described as two separate "aspects" of an overarching doctrine. [Citations.] Claim preclusion, the 'primary aspect' of res judicata, acts to bar claims that were, or should have been, advanced in a previous suit involving the same parties. [Citations.] Issue preclusion, the 'secondary aspect' historically called collateral estoppel, describes the bar on relitigating issues that were argued and decided in the first suit. [Citations.]
>
> We have sometimes described 'res judicata' as synonymous with claim preclusion, while reserving the term 'collateral estoppel' for issue preclusion. [Citations.] On occasion, however, we have used the term 'res judicata' more broadly, even in a case involving only issue preclusion, or collateral estoppel. [Citations.] We are not the only court to sometimes use the term 'res judicata' with imprecision. (See, e.g., *Migra v. Warren City School Dist. Bd. of Ed*. (1984) 465 U.S. 75, 77, fn. 1 [citations].) To avoid future confusion, we will follow the example of other courts and use the terms 'claim preclusion' to describe the primary aspect of the res judicata doctrine and 'issue preclusion' to encompass the notion of collateral estoppel..." (*Ibid*.) (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 823-824.)

the respiratory system as part of the settlement. The references to various respiratory symptoms going back to at least 2010 are just that - documentation of applicant's statements of his symptoms, not the existence of a compensable injury. To the contrary, there is no evidence that a physician opined at the time of the 2014 agreement that applicant had sustained an injury to his respiratory system. The doctrine of res judicata has no application where, as here, two workers' compensation cases involve different injuries. (*Nash v. Workers' Comp. Appeals Bd*. (1994) 24 Cal.App.4th 1793, 1812 [59 Cal.Comp.Cases 324]; *General Dynamics Corp. v. Workers' Comp. Appeals Bd*. (*Anderson*) (1999) 71 Cal.App.4th 624, 629.)

The C&R in case number ADJ8596368 was drafted on the November 2008 version of DWC-CA Form 10214(c). The body parts being settled were: 200 neck; 420 back; 440 hips; 842 nervous system - psychiatric/psych; 880 other body systems; 198 head; 700 multiple parts; 801 circulatory system; 810 digestive system; and sleep apnea. (C&R, ¶ 1, p. 3 and ¶ 9, comments, p. 9.) The dates of injury are during the period from May 11, 2008 to November 14, 2013. (C&R, ¶ 1, p. 3.) Consistent with the C&R in case number ADJ8596368, applicant testified that his respiratory problems were not covered by the 2014 settlement. (MOH/SOE, at 3:14-16.)

Contract principles apply to settlements of workers' compensation disputes. The legal principles governing compromise and release agreements are the same as those governing other contracts. (*Burbank Studios v. Workers' Co. Appeals Bd*. (*Yount*) (1982) 134 Cal.App.3d 929, 935.) For a compromise and release agreement to be effective, the necessary elements of a contract must exist, which includes the mutual consent of the parties. (Civ. Code, §§ 1550, 1565, 1580; *Yount, supra*.) There can be no contract unless there is a meeting of the minds and the parties mutually agree upon the same thing. (Civ. Code, §§ 1550, 1565, 1580; *Sackett v. Starr* (1949) 95 Cal.App.2d 128; *Sieck v. Hall* (1934) 139 Cal.App.279, 291; *American Can Co. v. Agricultural Ins. Co*. (1909) 12 Cal.App. 133, 137.)

Since a compromise and release is a written contract, the parties' intention should be ascertained from the writing alone and, unless an absurdity is involved, the clear language of the contract governs its interpretation. (Civ. Code, §§ 1638, 1639; *TRB Investments, Inc. v. Fireman's Fund Ins. Co*. (2006) 40 Cal.4th 19, 27.) A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful. (Civ. Code, § 1636; *TRB Investments, supra,* at 27; *County of San*

Joaquin v. Workers' Compensation Appeals Bd. (Sepulveda) (2004) 117 Cal.App.4th 1180, 1184 [69 Cal.Comp.Cases 193].)

As discussed above, the record lacks substantial medical evidence that applicant has been diagnosed with a compensable respiratory injury. Assuming, *arguendo*, that applicant's respiratory conditions were disabling at the time of settlement in case number ADJ8596368, the record does not support a finding that applicant knew, or should have known, that his respiratory conditions were job-related when he entered into the C&R. As such, there was no respiratory injury for him to settle in 2014. Conversely, because applicant underwent a medical-legal evaluation for his respiratory condition prior to the settlement in case number ADJ8596368, defendant was on notice of a potential compensable injury to applicant's respiratory system. Based on the principles of contract law generally and the evidence in the record, injury to applicant's respiratory system was not part of the prior settlement in case number ADJ8596368.

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on a threshold issue. (Lab. Code, §§ 5701, 5906; *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924].) Sections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141 (Appeals Bd. en banc).) The Appeals Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd*. (2000) 79 Cal.App.4th 396, 404 [65 Cal.Comp.Cases 264].)

The WCJ has the authority to order additional medical evidence when required for substantial evidence. (Lab. Code, §§ 5701, 5906; *Old Republic Ins. Co. v. Workers' Comp. Appeals Bd*. (*Cortes*) (2020) 85 Cal.Comp.Cases 504, 508 (writ den.); *Tyler, supra*.) In *McDuffie*, we stated that "[w]here the medical record requires further development either after trial or submission of the case for decision," the medical record should first be supplemented by physicians who have already reported in the case. "Only if the supplemental opinions of the previously reporting physicians do not or cannot cure the need for development of the medical record, should other physicians be considered." (*McDuffie, supra*, at 139, 142.)

Accordingly, we rescind the February 3, 2020 Findings and Order, and return the matter to the trial level for further proceedings consistent with this opinion. Upon return, it would be appropriate for the parties to request that Dr. Meth submit a supplemental report with updated medical records.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 3, 2020 Findings and Order is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 19, 2022

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

BILL GRAVES
SHATFORD LAW
WOOLFORD AND ASSOCIATES

JB/abs

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