WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RICARDO CERVANTES, *Applicant*

vs.

REYCON CONSTRUCTION;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants*

Adjudication Number: ADJ12262190
Van Nuys District Office

OPINION AND DECISION
AFTER
RECONSIDERATION

We granted reconsideration[1] in this matter to further study the factual and legal issues presented. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration in response to the Findings of Fact and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on January 15, 2020. As relevant herein, the WCJ found that applicant did not sustain injury arising out of and in the course of employment (AOE/COE) to the left knee and left leg and ordered that applicant shall take nothing on his claim.

Applicant contends, as relevant herein, that the evidence does not justify the WCJ's Findings of Fact, and that the Findings of Fact do not support the Order.

Defendant filed an answer contending that the WCJ's F&O is correct. We received a Report and Recommendation from the WCJ recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, as our decision after reconsideration, we will rescind the Findings of Fact, and return this matter to the trial level for further proceedings consistent with this decision.

[1] Commissioner Lowe, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

FACTUAL BACKGROUND

Applicant claims he sustained a specific injury to his left knee and left leg while employed by the defendant as a brick layer on January 27, 2019[2]. Applicant's primary treating physician is Jose de la Llana, M.D.

A Request for Authorization form by Rachel Barros, PA-C dated April 12, 2019 states applicant's diagnosis is "knee strain, left, initial encounter" and requests authorization for physical therapy. (Applicant's Exhibit 6, Medical report of Dr. Barros, April 12, 2019, p. 1.)

A report by Raymond Yen, M.D. dated May 9, 2019 states "Return to modified work/activity today. […] No squatting. No kneeling…" (Applicant's Exhibit 8, Medical report of Dr. Yen, May 9, 2019, p. 1.)

A report by Gerardo Cudich, LAC dated May 29, 2019 states "Chief Complaint: knee pain with work duties". (Applicant's Exhibit 1, Medical report of Dr. Cudich, May 29, 2019, p. 1.)

Defendant sent applicant a letter dated May 30, 2019 stating in pertinent part:

> After careful consideration of all available information, we are denying your condition as not arising out of and in the course of employment. We are denying all liability for your claim of injury based on our employer level investigation and lack of factual or medical evidence to support an industrial injury. You did not report a claim to your employer timely, and there are inconsistencies with your statements.

(Defendant's Exhibit B, Denial Letter, May 30, 2019, p. 1.)

The parties proceeded to trial on October 15, 2019. At trial, no evidence was presented from a Qualified Medical Evaluator (QME) and it appears that the parties have not yet obtained a QME.

According to the October 15, 2019 Minutes of Hearing/Summary of Evidence (MOH/SOE), the issues for trial as relevant herein were: injury AOE/COE, Labor Code section 5402(b)[3], substantiality of medical evidence, and whether applicant reported the injury to the employer within 30 days. Applicant claims the WCJ in his F&O improperly relied on improperly admitted evidence[4].

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[2] A t trial, applicant moved to amend the date of injury from January 27, 2019 to January 23, 2019, according to proof.
[3] All statutory references not otherwise identified are to the Labor Code.
[4] The defense exhibits admitted into evidence to which applicant objected, as relevant herein, were: Witness statement by Cesilio Hernandez dated 04/17/19 (Defendant's Exhibit C), Witness statement by Diego Mercado dated 04/15/19 (Defendant's Exhibit D), Witness statement by Jesus Venegas date 04/17/19 (Defendant's Exhibit E).

The summary of applicant's testimony regarding his employment with the defendant included:

> [Applicant] stated that he worked for [the employer] on and off since 2005. The position was basically job to job… His job was as a brick layer mason. He would lay concrete blocks, carry blocks and rebar and other materials. When all blocks were in place, he would grout them.
>
> (October 15, 2019 MOH/SOE, p. 5.)

The summary of applicant's testimony regarding the injury included:

> On January 27, 2019, he was working at an electrical plant in Huntington Beach laying bocks when he was injured. He was working with a coworker placing blocks and went to get an additional block. The terrain was on an incline and there was a covered pipe which caused him to slip and fall. The block he was carrying weighed approximately 60 pounds. When asked what part of his body fell to the ground, he stated his left knee and his buttocks. He felt immediate pain to his left knee, and he is still in pain specifically to the kneecap area with pain radiating up and down.
>
> (October 15, 2019 MOH/SOE, pp. 5-6.)

The summary of applicant's testimony regarding the medical treatment applicant had received for the claimed injury included:

> Applicant saw Dr. Paul Guidry on 04/06/19. Dr. Guidry examined his knee and stated he needed to see a specialist. He went to this physician on his own. Subsequently, the employer sent him to Concentra, an industrial health clinic, on 04/12. They did therapy, which hurt a lot. Subsequently, they did an MRI of which he does not know the results. He is currently treating with Dr. de la Llana who does exercise and other modalities; however, these were refused by the insurance. He stated he was honest and truthful with all of the physicians. He denies that he was terminated from his employment.
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> (October 15, 2019 MOH/SOE, p. 6.)

The summary of applicant's testimony regarding reporting the injury included:

> Jesus Venegas was the supervisor at the Huntington Beach location. [Applicant] reported to Jesus. They would have safety meetings every Monday. When asked if he ever reported the injury to Jesus, he stated not at a meeting. He reported the injury to Jesus only after he couldn't walk anymore.
>
> (October 15, 2019 MOH/SOE, p. 7.)

Armando Magdaleno was called as a witness by the applicant. The summary of Armando Magdaleno's testimony included:

> The witness is familiar with the applicant. They met at [the employer]. He worked with him for a couple of weeks and then maybe a week or so after. He didn't know [applicant] prior to working for [the employer]. When asked if he had a friendship with [applicant] after they worked together, he said 'only work.' His duties were that as a mason. He would fill walls with cement. The witness and [applicant] did the same job, and they would from time to time work side by side. When asked if he knew that [applicant] injured himself, he stated he found out around the first week of February while they were eating lunch with Jesus Venegas and Diego Mercado. He stated that [applicant] told them he was in pain and wanted to just kind of wait and see how he was doing. He said he had fallen and he asked someone if they had a pill. When asked if any treatment was provided to [applicant], he stated they paid some attention to him. He stated Mr. Mercado was the foreman at another site and Jesus Venegas was the foreman at the site they were working at.
>
> (October 15, 2019 MOH/SOE, pp. 4-5.)

A second day of trial was held on December 12, 2019. Jesus Venegas was called as an employer witness by defendant. The summary of Jesus Venegas' testimony included:

> When asked if [applicant] reported an injury, he stated 'no.' When asked if he saw [applicant] slip, fall, or limp, he stated 'no.' He stated the first time he heard of any injury to [applicant] was at the end of February or beginning of March. He heard this from his superintendent, Paul Durant.
>
> (December 12, 2019 MOH/SOE, pp. 5-6.)
>
> When asked if, in April of 2019, he received a text from [applicant] stating he could not come back to work, he stated, 'no.' When asked if he stated he was injured, he stated, 'no.' When asked what his phone number was, he gave his phone number, and then was shown a text dated 03/24/19.
> The interpreter read in English the text sent by applicant to the witness as follows: "I'm not going to be able to work the whole next week. They massaged my knee, and I need to rest. Maybe by then, you will have work, and that would be good." The witness had responded, "Come over for your check."
>
> The witness stated that, yes, he did remember that exchange and went on to state that it does not say that applicant was hurt on the job. He stated that the applicant had told him prior to this that he was missing work because his wife has cancer an also that he needed to rest because of his knee.
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> (*Id*. at pp. 7-8.)

Applicant's Exhibit 13 ("Wage statement by Reyes Masonry Contractors, dated 7/3/19") states in pertinent part: "Period End Date[:] 03-20-19" and lists the corresponding "Check Number" and "Earnings Detail". (*Id*. at p. 5.)

On January 15, 2020 the WCJ issued his F&O and found applicant, while employed on January 27, 2017 for the defendant as a bricklayer, did not sustain injury AOE/COE to the left knee and left leg.

DISCUSSION

I.

In the Opinion on Decision and the Report, the WCJ explained in detail why he found applicant not to be credible. A WCJ's opinions regarding witness credibility are entitled to great weight, (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500, 505]), and we do not question the WCJ's opinion as to applicant's credibility. However, when deciding a medical issue, such as whether an applicant sustained an 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].) With respect to matters requiring medical knowledge, the WCJ cannot disregard a medical expert's conclusion when the conclusion is based on expertise in evaluating the significance of medical facts. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006)145 Cal.App.4th 922 [71 Cal.Comp.Cases 1687].)

Although the factual issue of the occurrence of the alleged incident is a determination for the WCJ, the issue of injury is a medical determination, which requires expert medical opinion. As the Court of Appeal explained in *Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838-839 [30 Cal.Comp.Cases 188]: "Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence. Expert testimony is necessary where the truth is occult and can be found only by resorting to the sciences."

Applicant 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.) It is sufficient to show that work was a contributing cause of the injury. (See *Clark, supra,* 61 Cal.4th at p. 298; *McAllister*

v. Workmen's Comp. Appeals Bd. (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) Applicant need only show that industrial causation was "not zero" to show sufficient contribution from work exposure for the claim to be compensable. (*Clark, supra*, 61 Cal.4th at p. 303.) The burden of proof "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 has also long been established that "all reasonable doubts as to whether an injury is compensable are to be resolved in favor of the employee." (*Guerra v. Workers' Comp. Appeals Bd.* (2016) 246 Cal.App.4th 1301, 1310 [81 Cal.Comp.Cases 324], citing *Clemmons v. Workmen's Comp. Appeals Bd.* (1968) 261 Cal.App.2d 1, 8; see also *Garza, supra*, 3 Cal.3d at p. 317; Lab. Code, § 3202.)

In its denial letter, defendant states one of its bases for denying liability for applicant's claim of injury is *lack of medical evidence to support an industrial injury*. (Defendant's Exhibit B, Denial Letter, May 30, 2019, p. 1.)

As with any decision by a WCJ, a decision whether applicant sustained an injury must be supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); *See Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) It has long been recognized that medical proof is required when issues of diagnosis, prognosis, and treatment are beyond the bounds of ordinary knowledge. (*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].)

We also note applicant testified he worked "on and off" for the employer for over a decade. Labor Code section 4060(c) states, "[i]f a medical evaluation is required to determine compensability at any time after the filing of the claim form, and the employee is represented by an attorney, a medical evaluation to determine compensability shall be obtained only by the procedure provided in Section 4062.2." Section 4060(c) clearly provides that "the section 4062.2 procedure for medical evaluations on compensability may be undertaken 'at any time' after a claim form has been filed." (*Mendoza v. Huntington Hospital* (2010) 75 Cal.Comp.Cases 634, 642 (Appeals Bd. en banc).)

In this case, the record does not reflect that the parties obtained a comprehensive medical-legal report on the issue of causation of injury. As discussed above, a finding that applicant did or did not sustain an injury must be based on substantial medical evidence. Given that there is a clear need for a medical evaluation to determine compensability, the parties should obtain an evaluation following the procedure set forth in Sections 4060 and 4062.2.

"[I]n order to ensure reliance on substantial evidence, and a complete adjudication of the issues consistent with due process," the WCJ and the Appeals Board both have a duty to further develop the record where there is an absence of, or insufficient evidence to determine the issues raised for trial. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal. App.4th 389, 393- 395 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see §§ 5701 and 5906 and *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Bd. en banc).) Indeed, the Appeals Board has a constitutional mandate to "ensure substantial justice in all cases," and is therefore "clearly permitted" to admit evidence even after the discovery cut-off under Labor Code section 5502, subdivision (d)(3). (*Kuykendall v. Workers' Comp. Appeals Bd*. (2000) 79 Cal.App.4th 396, 403-405 [65 Cal.Comp.Cases 264]; Cal. Const., art. XIV, § 4 ["The system of workers' compensation "shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this State"])

> Based on sections 5701 and 5906, it is well established that the WCJ or the Board may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence. (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal. 3d 312, 318 [90 Cal. Rptr. 355, 475 P.2d 451] [Board should have obtained medical evidence of causation]; *Lundberg v. Workmen's Comp. App. Bd.* (1968) 69 Cal. 2d 436, 440 [71 Cal. Rptr. 684, 445 P.2d 300] [Board should have obtained medical evidence of causation]; *W. M. Lyles Co. v. Workmen's Comp. App. Bd.* (1969) 3 Cal. App. 3d 132, 138 [82 Cal. Rptr. 891] [Board should have explored employee's willingness to work, opportunities for employment and skill level to determine earnings].) (*Kuykendall, supra,* 79 Cal.App.4th at p. 404.)

Again, the proper procedure would be to vacate the trial date for the parties to further develop the record by obtaining a comprehensive medical-legal report.

II.

We further note one of the issues presented at trial was whether applicant timely reported the claim. A party must prove each issue in its case for which it bears the burden by a preponderance of the evidence; once a party has proven an element, the burden of proof shifts to the other party to produce evidence to rebut it. (Lab. Code § 3202.5). Under Labor Code section 3600(a)(10), a claim will be barred unless the applicant can demonstrate by a preponderance of the evidence that the employer had notice of the injury prior to notice of termination to the applicant.

Labor Code section 3600(a)(10)(A) allows an applicant to prove notice prior to termination as defined by the provisions set forth in the Labor Code. Therefore, even if the applicant did not notify the employer under the procedure for notice set forth in section 5400, which requires that written notice of injury be given to the employer within thirty days of the injury, notice may be sufficient under section 5402(a) if the employer has knowledge of the injury.[5] Under section 5402(a), this knowledge is defined as: (1) knowledge obtained by the employer[6] from any source or (2) knowledge that was enough to "afford opportunity to the employer to make an investigation into the facts." (Lab. Code §5402(a).)[7]

Here, defendants claim that they had no notice of applicant's injury before applicant received notice of termination from defendant witness Venegas, because applicant did not report the injury as having occurred at work. Defendant did not raise post-termination as an affirmative defense for denying applicant's claim pursuant to section 3600(a), and whether applicant reported the injury to the employer within 30 days is irrelevant under 3600(a). Defendant argues applicant's claim should be barred under section 5400. An employer is required to provide a claim form to an employee within one day of notice or knowledge of an alleged work injury. (Lab. Code, § 5401(a).) An employer can receive 'notice or knowledge of an alleged work injury' via service by the injured worker or someone on his/her behalf. (Lab. Code, § 5400.) 'Service' includes, '[k]nowledge of an injury, obtained from any source, on the part of an employer … or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the

[5] The provisions contained within Labor Code section 5401 refer to the sufficient notice to the employer, after a claim for injury is made, to trigger the employer's responsibilities to the applicant, including provision of the claim form and notice with respect to compensability and denial of the claim.
[6] Employer includes a managing agent, superintendent, foreman or other person in authority.
[7] Since defendants did not raise the affirmative defense of Labor Code section 5403 and made no argument of prejudice due to inaccurate or defective notice, we will not address whether section 5403 applies in this case.

facts …' (Lab. Code, § 5402(a).) Thus, the duty of notification arises when the employer has '… actual or constructive knowledge of any work-related injury …' (*California Insurance Guarantee Association v. Workers' Comp. Appeals. Bd.* (*Carls*) (2008) 163 Cal.App.4th 853, 863–864, fn. 8 [73 Cal. Comp. Cases 771], quoting Martin, supra, 39 Cal. 3d at p. 64, emphasis added in *Carls*.) The Supreme Court summarized this duty as follows: 'When the employer receives either written notice or knowledge of an injury that has caused lost work time or required medical treatment, the employer is to provide the employee, within one working day, with a workers' compensation claim form and notice of potential eligibility for benefits. (§ 5401, subd. (a).)' (*Honeywell v. Workers' Comp. Appeals Bd.* (*Wagner*) (2005) 35 Cal.4th 24, 32 [70 Cal.Comp.Cases 97] (*Honeywell*), [emphasis added by the Board panel].)

Here, the testimony of defendant witness Venegas established that he first learned of the claimed injury in late February or early March 2019 from the superintendent Durant (December 12, 2019 MOH/SOE, pp. 5-6); this is evidence of actual or constructive notice which satisfies notice under section 5402. Venegas also admitted knowledge of applicant's knee complaint (though denies he knew whether it was an industrial injury) (*Id*. at pp. 7-8.) This was also prior to termination (*Id*.) Therefore, it can reasonably be concluded on the evidence presented by applicant that Venegas had knowledge of applicant's injury, which was sufficient knowledge on the part of the defendants to meet the requirement for actual notice or at least notice sufficient to cause the defendants to make an investigation.

III.

Next we turn to the relevant code sections governing admission of the exhibits. Code of Civil Procedure section 2025.620 states in pertinent part that:

> At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition … so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:
> (a) Any party may use a deposition … for any other purpose permitted by the Evidence Code.
> (b) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under Section 2025.230 of a party. It is not ground for objection to the use of a deposition

of a party under this subdivision by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.
(c) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(1) The deponent resides more than 150 miles from the place of the trial or other hearing.
(2) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is any of the following:

(A) Exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant.
(B) Disqualified from testifying.
(C) Dead or unable to attend or testify because of existing physical or mental illness or infirmity.
(D) Absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process.
(E) Absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

[…]
(g) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that action. A deposition previously taken may also be used as permitted by the Evidence Code.

Evidence Code section 1200 states that:

(a) 'Hearsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.
(b) Except as provided by law, hearsay evidence is inadmissible.
(c) This section shall be known and may be cited as the hearsay rule."

Evidence Code section 1220 states that:

Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity, regardless of whether the statement was made in his individual or representative capacity.

"Evidence Code section 1220 creates an exception to the hearsay rule for [an] admission of a party …. ¶… [Section] 1220 does not define when a declarant-party's extrajudicial hearsay statement becomes relevant to be admissible against such party under the personal admission exception to the hearsay rule …. [For] such a statement to be admissible against a party as an admission, the statement must assert facts which would have a tendency in reason either (1) to prove some portion of the proponent's [defense], or (2) to rebut some portion of the party declarant's [cause of action]. (Citations.)" (*Carson v. Facilities Development Co.*, (1984) 36 Cal.3d 830, 849.) Evidence Code section 1230 requires a showing that the declarant is unavailable and allows a declaration against interest to be admissible when the declarant is not a party but makes a statement against his or her own interest.

Labor Code section 5709 states that:

> No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division. No order, decision, award, or rule shall be invalidated because of the admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure.

Hence, evidence which ordinarily might be inadmissible as hearsay may be admitted in a workers' compensation proceeding. (See *Regents of University of Ca. v. Workers' Comp. Appeals Bd. (Lappi)* (226 Cal.App.4th 1530, 1537 [2014 Cal.App.LEXIS 530] ["the WCAB is free to adopt rules of practice and procedures which ignore the 'rules of evidence' set forth in the Evidence Code"]; *Martinez v. Associated Engineering & Construction Company* (1979) 44 Cal.Comp.Cases 1012, 1018 (Appeals Board en banc) (*Martinez*) ["evidence (particularly certain types of hearsay) is admissible in compensation proceedings which would not normally be admissible in civil proceedings over objection . . . [if] consistent with the requirements of due process"].)

Here, Exhibits C, D and E are hearsay: they are out of court statements offered to prove the matter asserted. Although hearsay evidence may be admitted in a workers' compensation proceeding, and although those statements that are Exhibits C, D and E here may fall under the Evidence code 1220 exception, admitting the exhibits without the declarants testifying at trial violates applicant's due process rights. Applicant should have been given the opportunity to cross-examine the declarants of the statements that are Exhibits C, D and E.

IV.

Although the applicant bears the burden here, under Labor Code section 3202 the workers' compensation laws should be liberally construed in favor of extending benefits, and "all reasonable doubts as to whether an injury arose out of employment are to be resolved in favor of the employee." (See *Garza*, *supra*, 3 Cal.3d at 312, [35 Cal.Comp.Cases at 500].) While we acknowledge the issues with applicant's credibility, they do not negate the facts established by defense testimony and medical records: applicant had a problem with his left knee that was known by his employer. The medical reports document persistent swelling and worsening symptoms, and the work restrictions were increased over time. We conclude that applicant met his burden of proving that he gave notice of the incident and his injuries before he received notice of termination.

V.

Upon return, we recommend that the parties obtain a qualified medical examiner, and proceed with further development of the medical record as appropriate.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 15, 2020 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 29, 2022

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

RICARDO CERVANTES
TERREL FIRM
WOOLFORD AND ASSOCIATES

HAV/abs

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