

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

**TRACY PLEASANT, *Applicant***

**vs.**

**MILLARD LINEAGE LOGISTICS;  
ACE AMERICAN INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ11048582, ADJ11048583, ADJ13630518  
Los Angeles District Office**

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

Applicant and defendant seek reconsideration of the April 5, 2022 Findings and Order wherein the workers' compensation administrative law judge (WCJ) found that, in ADJ1104582, applicant did not sustain injury arising out of and in the course of his employment to his back and feet on September 10, 2017, and, in ADJ11048583, applicant did not sustain an injury arising out of and in the course of his employment to his jaw, mouth teeth and shoulders on September 10, 2017.<sup>1</sup> The WCJ also found that the reporting of Dr. Schames was not substantial medical evidence. Although cases ADJ1104582 and ADJ1104583 were consolidated together with ADJ13630518, the Findings and Order does not address whether applicant sustained an industrial injury in ADJ13630518, a claim for a cumulative trauma injury through September 15, 2017 to applicant's back, shoulder and foot. The WCJ ordered that applicant take nothing by way of his claims in ADJ1104582 and ADJ11048583.

Applicant contends that the WCJ erred in finding that applicant did not sustain an injury to his shoulders and lumbar spine, arguing that there is sufficient evidence to find that work was a contributing cause of applicant's injury.

Defendant contends that the WCJ erred in failing to find that applicant did not sustain a cumulative trauma injury from September 8, 2017 through September 15, 2017 in ADJ13630518.

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<sup>1</sup> Commissioner Lowe, who participated in a prior decision in this case, is no longer available. Another panelist has been substituted in her place.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we grant reconsideration and return the matter to the trial level for further development of the record. We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant reconsideration, rescind the Order, and return the matter to the WCJ to conduct further proceedings.

As mentioned above, applicant filed three applications for adjudication of claim. All three cases were consolidated. According to the October 13, 2021 Minutes of Hearing and Summary Evidence, the issues of whether applicant sustained an injury arising out of and in the course of employment and liability for self-procured medical treatment were raised in cases ADJ11048582 and ADJ110484582. (October 13, 2021 Minutes of Hearing and Summary Evidence, pp. 2-3.) In addition to those issues, in ADJ1630518, two additional issues were listed, “the need for an additional panel QME in orthopedics for the CT claim” and whether “the reporting of Dr. Shames constitutes substantial medical evidence.” (Id. at p. 3.)

Although the WCJ did find that the reporting of Dr. Schames does not constitute substantial medical evidence, the WCJ did not determine the other three issues submitted to him in ADJ1630518.

Labor Code section 5313 requires the WCJ to "make and file findings upon all facts involved in the controversy and [make and file] an award, order or decision stating the determination as to the rights of the parties." Therefore, we must rescind the April 5, 2022 Findings and Order and return this matter to the WCJ for further development of the record, further proceedings, and to issue a decision on all issues submitted.

For the foregoing reasons,

**IT IS ORDERED** that the Petitions for Reconsideration of the April 5, 2022 Findings and Order is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Appeals Board that the April 5, 2022 Findings and Order is **RESCINDED** and the matter is returned to the trial level for further proceedings and a new decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

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

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



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

**June 13, 2022**

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

**LAW OFFICES OF HIRSCHL MULLEN  
SOLOV AND TEITELL  
TRACY PLEASANT**

**MWH/oo**

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