

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

**ARMANDO LOPEZ, *Applicant***

**vs.**

**BEST CONTRACTING SERVICES, INC., and ZURICH NORTH  
AMERICA, *Defendants***

**Adjudication Number: ADJ14570796**

**Los Angeles District Office**

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

Applicant seeks reconsideration of the Findings of Fact (Findings) issued by the Arbitrator on October 10, 2023, wherein the Arbitrator found in pertinent part that applicant did not sustain injury arising out of and in the course of employment (AOE/COE) and did not sustain an industrially related hernia.

Applicant contends that defendant had notice of applicant's injury and that applicant is entitled to a medical-legal evaluation to determine compensability of his hernia.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the Arbitrator recommending the Petition for Reconsideration (Petition) be denied. We received an Answer from defendant.

We have considered the allegations in the Petition and the Answer and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the Findings and return the matter to the Arbitrator for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

**BACKGROUND**

Applicant claimed injury in the form of a left inguinal hernia while employed by defendant on July 18, 2019. Defendant denied the injury claim. The parties proceeded to Arbitration Hearings several times in 2022, and again in 2023. At the May 9, 2023 hearing the parties were given fifteen

days to submit post-trial briefs and the matter was submitted for decision thereafter. The issues submitted for decision included compensability of applicant's injury claim and whether applicant should be evaluated by a qualified medical examiner (QME). (Minutes of Hearing (MOH), May 9, 2023, p. 8.)

## **DISCUSSION**

In this matter, it appears that there is no dispute as to whether applicant had a left inguinal hernia and underwent surgery for the hernia on August 12, 2019, nor is there a dispute that defendant was aware that applicant sustained a hernia. The actual dispute is whether the hernia constitutes a compensable injury, i.e., an injury AOE/COE.

Any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *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]; *Universal City Studios, Inc. v. Workers' Compensation Appeals Bd. (Lewis)* (1979) 99 Cal.App.3d 647 [44 Cal.Comp.Cases 1133].) When an issue is exclusively a matter of medical knowledge, expert evidence is essential to sustain a finding and a lay opinion in support of such a finding does not measure up to the standard of substantial evidence. (*City & County of San Francisco v. Industrial Acc. Com. (Murdock)* (1953) 117 Cal.App.2d 455, 459 [18 Cal.Comp.Cases 103].)

Having reviewed the entire record we see no medical evidence addressing the issue of whether applicant's employment was or was not a causative factor as to his hernia. Absent such evidence, there is no legal basis for determining the issue of injury AOE/COE. The Appeals Board, and the Arbitrator, have a duty to further develop the record where there is insufficient evidence on an issue submitted for decision. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Appeals Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) If the claim is denied, it is appropriate that the injured worker undergo a medical-legal evaluation, so that a medical-legal report addressing the issue of injury AOE/COE may be obtained. (*Del Rio v. Quality Hardware* (1993) 58 Cal.Comp.Cases 147, 152 - 153 (Appeals Board en banc).) Thus,

under the circumstances of this matter, it is appropriate that it be returned to the Arbitrator for further development of the record, including having applicant evaluated by a QME.

Accordingly, we grant reconsideration, rescind the Findings, and return the matter to the Arbitrator for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings of Fact issued by the Arbitrator on October 10, 2023, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the October 10, 2023 Findings of Fact is **RESCINDED** and the matter is **RETURNED** to the Arbitrator to conduct further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**December 21, 2023**

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

**ARMANDO LOPEZ  
LAW OFFICE OF FENSTEN AND GELBER  
LAW OFFICES OF JOSHUA B. VINOGRAD  
PETER C. ROBBINS, ARBITRATOR  
ADR PROGRAM**

**TLH/abs**

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