

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

**RAQUEL GARCIA, *Applicant***

**vs.**

**CON AGRA FOODS, INC.; OLD REPUBLIC INSURANCE COMPANY administered by  
SEDGWICK CMS; BASIC AMERICAN; CIGA for LUMBERMAN'S MUTUAL  
CASUALTY COMPANY in liquidation, *Defendants***

**Adjudication Numbers: ADJ2466188 (SDO 0346388), ADJ4344781 (SDO 0355440),  
ADJ4528511 (SDO 0343260)  
San Diego District Office**

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

We have considered the allegations of the Petition for Reconsideration 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 grant reconsideration for the sole purpose of affirming the January 2, 2023 Order Vacating Order of December 5, 2022 Changing Administrators from CIGA to Old Republic/Sedgwick (Order Vacating). In addition, we affirm the November 21, 2022 Findings and Award and Orders, for the reasons stated in the WCJ's report, which we adopt and incorporate, and for the reasons stated below.

The WCJ issued her decision on November 21, 2022 and then issued an Order Changing Administrators From CIGA to Old Republic/Sedgwick CMS (Order Changing Administrator) on December 5, 2022. Thereafter, on December 16, 2022, defendant Old Republic Insurance filed a timely Petition for Reconsideration of the November 21, 2022 decision. Pursuant to WCAB Rule 10961, "[a]fter 15 days have elapsed from the filing of a petition for reconsideration, a workers' compensation judge shall not issue any order in the case until the Appeals Board has denied or dismissed the petition for reconsideration or issued a decision after reconsideration." (Cal. Code Regs., tit. 8, § 10961.) Nevertheless, although the WCJ had lost the ability to issue the January 2, 2023 Order Vacating, making it void ab initio, we will affirm that Order now because the December 5, 2022 Order Changing Administrators was issued without a hearing or the observance

of due process. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473 (Appeals Board en banc).) Any party may file a Declaration of Readiness to Proceed (DOR) on the Petition for Change of Administration.

We now turn to the merits of the case. In addition to the reasons stated by the WCJ in the Report, we note that the issue of cumulative trauma to the bilateral knees did not arise until agreed medical examiner (AME) John Lane, M.D., opined about it in his March 2, 2008 report. (Exhibit 9, at p. 2.) Therefore, the requisite knowledge necessary for determination of the date of injury under Labor Code section 5412 did not exist until that time. While defendant cites to a 1999 report by William Bowman, M.D., as evidence of cumulative trauma, that report is not in evidence and is only briefly summarized by Dr. Lane in his July 19, 2007 report. (Exhibit 8 at p. 7.) Defendant appears to be arguing that applicant suffered a cumulative trauma to her knees during her employment with Basic American and a separate cumulative trauma to her hips during her employment with ConAgra. However, the medical evidence in the record, as summarized by the WCJ in the Report, supports a single cumulative trauma through 2005.

Separate disabilities arising out of a single injury are rated together, even if those disabilities do not become permanent and stationary at the same time. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93] [chef suffered specific back injury but, as a result of blood transfusions given during later back surgery, contracted hepatitis; employee's spinal disability and liver disability were rated together in one combined award]; *Morgan v. Workers' Comp. Appeals Bd.* (1978) 85 Cal.App.3d 710 [43 Cal.Comp.Cases 1116] (*Morgan*) [police officer suffered a cumulative injury causing hypertension, peptic ulcer, hepatitis, gastrointestinal bleeding, and hernia; employee's separate disabilities were rated together in one combined award]; *Mihesuah v. Workers' Comp. Appeals Bd.* (1976) 55 Cal.App.3d 720 [41 Cal.Comp.Cases 81] [employee's chest and left knee injuries rated together].) The general rule is that where an employee suffers contemporaneous injury to different body parts over an extended period of employment, the employee has suffered one cumulative injury. (*Gravlin v. City of Vista*, 2017 Cal. Wrk. Comp. P.D. LEXIS 413.)

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the November 21, 2022 Findings and Award and Orders is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the January 2, 2023 Order Vacating Order of December 5, 2022 Changing Administrators from CIGA to Old Republic/Sedgwick and the November 21, 2022 Findings and Award and Orders are **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

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

**PATRICIA A. GARCIA, DEPUTY COMMISSIONER**  
**CONCURRING NOT SIGNING**



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

**February 14, 2023**

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

**LAW OFFICES OF CARL KREIBICH  
LAUGHLIN FALBO LEVY & MORESI  
WAI CONNOR & HAMIDZADEH  
RAQUEL GARCIA**

**PAG/oo**

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

**REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION**

**I**

**INTRODUCTION**

- |                                |   |
|--------------------------------|---|
| 1. Applicant's Occupation:     | Tractor Driver  |
| Applicant's Age:               | 68  |
| Dates of Injury:               | CT: 2000-2005   |
| Parts of Body Alleged:         | Bilateral Hips (accepted) Bilateral Knees (in dispute)  |
| 2. Identity of Petitioner:     | CON AGRA FOODS, INC,;<br>OLD REPUBLIC INSURANCE<br>ADJUSTED BY SEDGWICK   |
| 3. Timeliness:                 | Petition is timely.   |
| 4. Verification:               | The Petition was Verified.  |
| 5. Date of Issuance of Order:  | November 21, 2022   |
| 6. Petitioner's Contention(s): |   |
| a.                             | In finding applicant's continuous trauma ending in 2005, the WCJ did not consider nor comment upon Labor Code §5412 and the Opinion is not supported by evidence. |
| b.                             | Medical evidence does not support the level of the permanent disability and   |
| c.                             | apportionment against ConAgra   |

**II**

**STATEMENT OF FACTS**

First, the petitioner is only contesting the findings with regard to the bilateral knees and their Petition for Reconsideration is solely directed at that portion of the Findings and Award and Award for the bilateral knees.

The applicant worked for Basic American and its successor ConAgra continuously from 1996 to 2005. The applicant worked from 1996 to 2000 with Basic American and then from 2000 to 2005 with ConAgra doing essentially the same work. The applicant sustained two admitted injuries to her knees at Basic American, the first of which was September 6, 1965 (ADJ4258511)

and the second of which was July 28, 1997 (ADJ4344 781). She was provided medical care and some compensation by Basic American for both injuries.

Then the applicant claimed injury to her bilateral hips during the period of employment ending in 2005. That claim was accepted by ConAgra and benefits were paid.

A dispute arose over the bilateral knees after the applicant was seen by Dr. John Lane who acted as an AME between the applicant and the Basic American Claim. Dr. Lane apportioned 30% to the two Basic American specific injuries to the bilateral knees and the balance to the CT with ConAgra ending in 2005 (Dr. John Lane 1/28/2021 Jt. Ex. 17 App. and CIGA). ConAgra disputed any portion of the liability for the bilateral knees and CIGA refused to accept sole responsibility for the disability and medical treatment for the bi-lateral knees. Furthermore, CON AGRA listed the date of injury as an issue to be found by the judge.

A trial was held in all three cases (ADJ2466188 Con Agra); ADJ4344781 and ADJ4528511 (Basic American) on October 3, 2022 and was submitted on October 17, 2022, giving the parties a chance to file briefs with the court.

Basic American/CIGA did not file a Petition for Reconsideration on Findings and Award on ADJ4344781 or ADJ4258511. ConAgra/Old Republic Insurance filed their timely, verified Petition for Reconsideration on December 16, 2022 disputing only the findings as to the bilateral knees. This Report and Recommendation is filed in response to the Petition for Reconsideration filed on December 16, 2022 and addresses the dispute over liability for the bilateral knees and the date of injury only.

### III

#### DISCUSSION

**CONTENTION A: IN FINDING APPLICANT'S CONTINUOUS TRAUMA ENDING IN 2005, THE WCJ DID NOT CONSIDER NOR COMMENT UPON LABOR CODE §5412 AND THE OPINION IS NOT SUPPORTED BY EVIDENCE.**

Labor Code §5412 was considered. It is a Statute of Limitations section. Clearly the applicant had two specific knee injuries with Basic American. She knew her knees were injured, she received treatment and continued to work with pain throughout the balance of her work with Con Agra. It was not until Dr. Lane's report was received which apportioned part of the knees to

her employment with Con Agra that any issue arose as to the knees. Con Agra already accepted a CT claim through the last date worked for the applicant's bilateral hips.

Defendant's argument that Labor Code §54 12 dictates that there could be no injury related to the Con Agra employment is erroneous. The issue of injury, disability and need for medical treatment is a medical issue. The fact that applicant had two specific injuries resulting in disability and need for medical treatment does not foreclose the possibility that the applicant sustained a new cumulative trauma injury to her knees due to the employment at Con Agra. In fact, Dr. John Lane opined that the applicant had, in fact increased the injury and disability to her bilateral knees through her continuing employment with Basis American through 2000 and Con Agra through 2005. Therefore, Labor Code §5500 controls. Since the employment continued through 2005, the liability for the bilateral knees is shared by Con Agra.

**CONTENTION 8: MEDICAL EVIDENCE DOES NOT SUPPORT THE LEVEL OF THE PERMANENT DISABILITY AND APPORTIONMENT AGAINST CONAGRA**

The applicant worked a total of 40 years doing the same type of work activities starting in 1966 for **BASIC AMERICAN** and then from the year 2000 for **CON AGRA** (which bought out **BASIC AMERICAN**) to approximately 2005. She missed the 2006 season because of the pain in her legs and she could not take steps anymore. (MOH/SOE October 3, 2022 9:8-11 ). In 2006 she had her hips replaced by Dr. Muldoon. Her knees were bad the hips were worse. Surgery has been suggested for her right knee. (MOH/SOE 9: 13-20).

Her knees were in bad shape due to injuries and **BASIC AMERICAN** but they got worse while working at **CON AGRA**. She stopped working at **CON AGRA** in 2005 because her doctor told her that he would not discharge her back to work if she still could not walk. Ms. **Garcia** stopped working in 2005 because of the pain in her knees. She limped because of her hips and thinks that the movement at work made her knees get worse, although she did limp prior to starting work at **CON AGRA**. (MOH/SOE 10/3/2022 9:22-24; 10: 10-21 ).

Dr. Hall opined in his deposition of June 23, 2008 pp 8-9 (App. & Old Republic Jt. Ex. 9) that the work during the employment at **CON AGRA** aggravated the industrial injuries to the knees at **BASIC AMERICAN**. Dr. Bowman in his report of 12/29/2005 report that her knees had not improved and had gotten worse (Jt. App. and CIGA Ex. 19). The AME in the **BASIC AMERICAN CASES**, John Lane MD also opined that the work with **CON AGRA** aggravated

the applicant's bilateral knee injuries. (Jt. Ex. CIGA and App. Ex. 14 Deposition John Lane 11/8/2021 pgs. 12, 20-21). These opinions regarding causation remain unchanged in Dr. Hall's reports and depositions (Jt. Old Republic and App. Ex. 1, 2, 3, 4, 5, 6, and 7.). Similarly Dr. Lane's opinions remained unchanged (Jt. CIGA and App. Ex. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18). Therefore the finding that the applicant injured her bilateral knees as a result of the employment with CON AGRA is supported by substantial medical evidence.

Similarly, the findings with respect to temporary disability, permanent disability and need for medical treatment were supported by substantial medical evidence and the fully credible testimony of the applicant. To wit: With regard to the finding on temporary disability, the applicant had had two hip surgeries starting in 2005 (see records of Dr. Muldoon Jt. CIGA and App. ex. 20) and was not released back to work after 2005. She was not declared P&S until she was seen by Dr. Hall on November 5, 2007. Further the applicant collected EDD benefits from 3/16/2006 to 11/3/2006. It is reasonable, in absence of other evidence (of which none as presented) that the applicant was totally temporary disabled in the seasonal periods of 5/15/2006 to 10/15/2006 and 5/15/2007-10/15/2007 and continuing for 104 weeks from the date of first payment, limited to the seasonal periods of May through October only, at \$406.31 per week less periods that EDD paid, at less 15% attorneys' fees.

With regard to the finding on permanent disability, this was based on the reports of Dr. John Lane dated 1/28/2017 (JT CIGA AND APPLICANT Ex. 17). Based on that report it was found that applicant sustained permanent disability (impairment) as follows:

Left Hip: ( 100) 17.03-10. 03-20-(2) 23-35 1 G-26-35 35%

Right Hip: ( 100) 17.03. 10/03-20 [2] 23-35 1G-26-35 35%

Left Knee (70) 17.05.03.00-20[2] 23-35 1G-26-33 33%

Right Knee (70) 17. 05/03. 00-8[2] 9-35 1 G-1 1- 15 15

The combined value of these 35c35c33c 15 equated to 75%. Seventy percent of 75% equates to 53% entitling the applicant to 295.25 weeks at \$220.00 per week with a 15% increase under Labor Code 4658 starting 60 days after the last payment of temporary disability (new weekly indemnity payment= \$253.00) less EDD payments and less attorneys' fees and less advances if any. The finding on apportionment was based on the report of Dr. John Lane dated 1/28/2021 (Jt. CIGA and App. Ex. 17) which allocated 70% of the disability to the bilateral knees to the date of injury ending in 2005.

This contention should also be denied.

**IV**

**RECOMMENDATION**

Based on the foregoing, it is recommended that the Petition for Reconsideration be denied.

**LINDA F. ATCHERLEY**  
**Workers' Compensation Judge**