

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

RICHARD ADAMS, *Applicant*

vs.

MR. PLASTICS, INC.; EMPLOYERS ASSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ12427109
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings, Award and Order of January 13, 2023, wherein it was found that, while employed on May 13, 2019 as a machine operator, applicant sustained industrial injury to his right hand causing temporary disability "from May 14, 2019 and continuing indefinitely thereafter and subject [to] the 104 week limitation of Labor Code section 4656(c)(2)...."

Defendant contends that the WCJ erred in finding industrial injury and temporary disability. We have not received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated by the WCJ in the Report, which we adopt, incorporate and quote below, we will deny the defendant's Petition.

INTRODUCTION

By a timely and verified Petition for Reconsideration (Petition) filed on February 6, 2023, defendant seeks reconsideration of my January 13, 2023 Findings and Award and Order, wherein I found, among other things, that applicant, while employed on May 13, 2019 as a machine operator, sustained injury arising out of and in the course of employment to his right hand, causing temporary disability from May 14, 2019 and continuing indefinitely thereafter, and the need for further medical care.

Defendant contends: (1) applicant has not met his burden of proving injury AOE/COE; (2) contemporaneous medical records do not support a finding of an injury at work on May 13, 2019; and (3) there is no basis for the award of temporary disability. Applicant did not file an Answer to the Petition. I have

reviewed defendant's Petition and the entire record in this matter. Based upon my review, I recommend that reconsideration be denied.

FACTUAL BACKGROUND

The factual background of this case, as set forth at pages 1-3 of the Opinion, is as follows:

1. Testimony of Applicant

Applicant was the sole witness at trial. On direct examination, applicant testified that he worked programming machines and running parts into machine for Mr. Plastics, starting in 2015 or so. He injured his thumb on 5/13/19 while working with a long board of plastic (2-3 ft long) which required 3 vices to secure them. One of the vices became stuck when taking the part out. The vices had to be very close to each other, which required him to put a short handle of about 4 inches on the vices. The plastic became stuck, which caused him to have to hit the vice from below with his fist. He did that 3 times, and the third time he had to use more force, causing pain in base of his right thumb, on the top of his closed fist.

His scaphoid bone was diagnosed as fractured. He got treatment at Kaiser the day after.

On 5/12/19, he had an injury at home, where he was moving an extension ladder. While closing it down, the ladder closed on his right hand, catching his hand between two rungs. He continued working at home, as he was trimming ivy on a 12-foot fence with a hedge trimmer.

He was provided a temporary splint for his right thumb, and then he was given a permanent cast after a week. He showed up at work several days after but realized after a few hours that he couldn't continue to work.

Regarding a layoff, he received notice of this at the end of the month from a supervisor, about 2 weeks after the injury. He spoke with his supervisor, Tom about the layoff. He thinks he must have told someone at work of the injury.

He applied for SDI and UI (after the layoff notification).

On cross-examination, applicant stated that he received unemployment insurance beginning in January of 2019.

He first reported to his doctor at Kaiser of a crushing type injury to his hand, but he can't recall this for certain. Regarding exh. 108 (Bates # 2048), there is a message of 5/14/19 from applicant about the injury. This is not his recollection now. He doesn't recall being asked to be sent to an orthopedic surgeon. From exh. 108 at p. 2049 on 5/14/19, he asked his doctor if he should see an orthoped. He doesn't now recall that. He recalls initially being told there was not fracture.

He attempted to return to work on about Friday, 5/17/22, and he did not remember if he then had the removable splint. After his attempt to RTW, he then went to Kaiser orthopedics to get a splint. He does not recall telling his Kaiser MD of the crush injury with the ladder at home.

He was shown from exh. 108, p. 2070-2071, he had no pain while working at home. He was asked to look at these pages, but didn't read them before answering. He does not recall telling the Kaiser MD on 5/17/19 that he told the doctor of the injury at home on 5/12 /19. He doesn't recall the x-rays showing degenerative changes in his right thumb then or from a prior x-ray of 2014.

Regarding prior right thumb treatment, he does not remember. Page 496-499 of exh. 108, this shows prior right thumb pain in 2014. After reviewing these records, he does "not really" recall this.

He got a hard cast, but isn't sure of the exact date. He can't recall when he called in sick due to the injury.

His last treatment for the right hand and wrist was likely in January of 2020 at Kaiser. He does not recall if the Kaiser physician noted a fracture. He is still a Kaiser member.

He first spoke to his boss, Mr. Adelson, but does not recall if this is when he first told his supervisor of the injury. He does not remember his deposition in this case (exh. 104 - 4/3/20).

He was asked about an incident when he was assaulted by a neighbor in October 2020, which has caused problems with his memory (mostly short-term), and a loss of sense of smell and issues with balance. His hand was not involved.

He does not recall reporting his injury prior to speaking to Mr. Adelson at the time of his layoff. He may have had a phone call with Mr. Adelson (president of Mr. Plastics) about the injury before the layoff, but he is not certain.

Defendant made reference to pages 77-81 regarding the prior reporting of the injury. (Minutes of Hearing and Summary of Evidence, October 13, 2022 at pp. 4-6.)

DISCUSSION

My review of defendant's Petition does not cause me to change my opinion. At the outset, I observe that I was troubled by the lack of references in the medical records of the injury at work, and that the only references in the medical records in May of 2019 are to the non-industrial injury to his right hand and home while working with a ladder. There are no references to the specific event at work of

May 13, 2019 until after he filed the claim form on June 4, 2019. There is a reference on May 29, 2019, however, which documents his right scaphoid wrist fracture, which the QME, Dr. Roland, confirms is consistent with applicant's version of his work injury of May 13, 2019. Dr. Roland noted at pages 12-14 of his August 19, 2020 deposition (Exh. 103) that the scaphoid fracture is consistent with the mechanism of injury at work. Just as importantly, Dr. Roland did not opine that the scaphoid fracture was caused by the non-industrial ladder injury on May 12, 2019, and he specified that the injuries were to different areas of the right hand. Without the QME opinion and the May 29, 2019 medical record of a right wrist fracture, I may have issued a different decision. I cannot, however, ignore the opinion of the QME and the diagnosis of the fracture in the medical records, prior to applicant's termination.

Regarding applicant's memory and credibility, he testified consistent with the medical records regarding his fracture and the mechanism of injury. He also testified that he has suffered from memory issues since the injury due to an unrelated event in October of 2020.

Lastly, with respect to defendant's contention that there is no basis for temporary disability, I disagree. Dr. Roland provided applicant's with a restriction of no right hand use, and there is no evidence that the employer could have accommodated this restriction.

RECOMMENDATION

Based upon the foregoing, it is respectfully recommended that reconsideration be denied.

For the foregoing reasons,

IT IS ORDERED that that Defendant's Petition for Reconsideration of the Findings, Award and Order of January 13, 2023 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 4, 2023

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

**RICHARD ADAMS
ALEX BONILLA
LAUGHLIN, FALBO, LEVY & MORESI
EDD**

DW/oo

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