

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

BRIDGET CAMPOS, *Applicant*

vs.

**NORM'S RESTAURANT; ARGONAUT INSURANCE, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ11247295
Santa Ana District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION**

Applicant has petitioned for reconsideration of the Findings, Award, and Orders (FA&O) issued and served by the workers' compensation administrative law judge (WCJ) in this matter on October 17, 2023, and corrected by a nunc pro tunc order on October 23, 2023, wherein the WCJ found that 1) applicant, while employed on February 20, 2018, as a server, occupational Group No. 322, at Claremont, California, by Norm's Restaurant, sustained injury arising out of and in the course of employment to the left knee, right knee, nose, face, left thigh, right thigh, head in the form of headaches and head itself, neurological system and neurocognitive systems, head trauma and brain; 2) at the time of injury, the employer's workers' compensation carrier was Argonaut Insurance, administered by Sedgwick Claims Management Services; 3) further development of the record is required regarding whether applicant has suffered injury to her eye or eyes; 4) applicant's average weekly wages were \$536.00 per week; 5) applicant is entitled to temporary disability from February 21, 2018 to June 10, 2022, less amounts previously paid as well as credits for EDD payments by defendant in the amount of \$8,371.40 against its liability during that period only; 6) applicant's permanent and stationary date is June 10, 2022, and that the record must be more fully developed by the primary treating physicians and medical-legal evaluators before a decision can issue on temporary disability status following June 10, 2022, if any; 7) final development of the record is required before deciding permanent disability; 8) defendant has carried its burden of

proving apportionment based on substantial medical evidence of 5% on apportionment as it relates only as to applicant's headaches; and 9) applicant requires further medical treatment.

The WCJ awarded the following: 1) temporary disability from February 21, 2018, to June 10, 2022, at the rate of \$357.33 less amounts previously paid as well as credits for EDD payments by defendant in the amount of \$8,371.40 against its liability during that period only up to no more than 104 weeks; and 2) further medical treatment.

The WCJ ordered: 1) a second panel evaluation be obtained in the specialty of ophthalmology in order to fully develop the record regarding whether applicant suffered independent injury to her eye or eyes which are not neurological based symptoms; and 2) further treatment and evaluation reports be obtained on the issue of whether applicant has suffered temporary disability after June 10, 2022.

Applicant contends that the WCJ erred in finding defendant did not pay 104 weeks but only 94 weeks of temporary disability; that defendant overpaid EDD in the amount of \$3,573.00 when settling its lien; and that defendant should be penalized the maximum penalty allowable pursuant to Labor Code section 5814.

Defendant filed an Answer in response to the Petition requesting that the Findings, Orders and Awards stand as previously determined.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending denial of the Petition.

We have reviewed the allegations in the Petition for Reconsideration, the Answer, and the contents of the Report.

Based upon our preliminary review of the record, we will grant applicant's Petition for Reconsideration. Our order granting applicant's Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

I.

We highlight the following legal principles that may be relevant to our review of this matter:

“Aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury.” (Lab. Code, § 4656(c)(2).)

“‘Permanent and stationary status’ is the point when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.” (Cal. Code Regs., tit. 8, § 9785 (a))(8).)

A physician addressing the employee’s level of permanent disability must address apportionment of permanent disability. (Lab. Code § 4663(c)). However, apportionment is a factual matter to be determined by the trier of fact and must be based on substantial evidence. (See *Escobedo v. Marshalls, CNA Ins. Co.* (2005) 70 Cal.Comp.Cases 604, 607; see also *Gay v. Workers’ Comp. Appeals Bd.* (1979) 96 Cal.App.3d 555, 564 [44 Cal.Comp.Cases 817] [“Apportionment is a factual matter for the appeals board to determine based upon all the evidence.”])

II.

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) “The term ‘substantial evidence’ means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers’ Comp. Appeals Bd (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis

for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924] ["The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims."]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

The Appeals Board also 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 Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Labor Code section 5310 states in relevant part that: "The appeals board may appoint one or more workers' compensation administrative law judges in any proceeding, as it may deem necessary or advisable, and may refer, remove to itself, or transfer to a workers' compensation administrative law judge the proceedings on any claim. . . ." (See also Lab. Code, §§ 123.7, 5309.)

Here, it is unclear from our preliminary review whether the existing record is sufficient to support the decision, order, and legal conclusions of the WCJ; and/or whether further development of the record may be necessary.

III.

Finally, we observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal.2d 360, 364) “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold” issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650]) [“interim orders, which do not decide a threshold issue, such as

intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].)

Labor Code section 5901 states in relevant part that:

No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers’ compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ...

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

Accordingly, we grant applicant’s Petition for Reconsideration and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Finding, Award, and Order is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 2, 2024

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

**BRIDGET CAMPOS
QUINTAIROS, PRIETO, WOOD & BOYER**

JMR/abs

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