

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

LAURA PATRICIA CARMONA, *Applicant*

vs.

**SOOFER CO INC.;
COMPWEST INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ14768185
Los Angeles District Office**

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

Defendants Soofer Co, Inc. dba Sadaf Foods and CompWest Insurance Company seek reconsideration of the March 18, 2024 Findings and Award, wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained injury arising out of and in the scope of employment to the cervical spine, bilateral hands and wrists, lumbar spine, and bilateral knees. The WCJ also found that applicant's counsel is entitled to 15% of the retroactive temporary disability owed to applicant.

Defendant contends that the medical reports of Alexander Latteri, M.D., are not substantial evidence; that it was not provided with due process because the WCJ did not rule on the issue of whether the deposition of Dr. Latteri was necessary to determine whether applicant's injury arose out of and was in the scope of employment; the WCJ did not consider the trial testimony of Frank Pineda, assistant production manager, and Mona Soofer, human resources; and the WCJ erred in finding that the post-termination defense does not apply. Defendant further contends that the WCJ erred in finding that applicant's attorney is entitled to 15% of the retroactive temporary disability as that was not an issue at trial.

We received an answer from applicant Laura Patricia Carmona. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted on the issue of attorney's fees as that should have been deferred, but affirm the rest.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based on the Report, which we adopt and incorporate¹, and for the reasons discussed below, we grant reconsideration and amend the March 18, 2024 Findings and Award to clarify the date of injury and to defer the issue of attorney's fees.

Labor Code, section 5412², states that the "date of injury in cases of occupational disease or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment." (Lab. Code, § 5412.)

Section 5500.5 provides that liability for occupational disease or cumulative injury claims shall be limited to those employers who employed the employee during a period of one year immediately before either the date of injury, as determined by section 5412, or the last date on which the employee was employed. (§ 5500.5(a).)

The WCJ explained in her Opinion on Decision as follows:

Defendant claims a post-termination defense to this claim.

Labor Code § 3600(a)(10) maintains that an injury is not compensable if a claim is filed after [] notice of termination or layoff and the claim is for an injury occurring prior to the time of the notice of termination or layoff. There are exceptions to this general rule. Labor Code § 3600(a)(10)(D) provides that a cumulative trauma injury with a date of injury subsequent to a date of termination or layoff is a valid exception to the post-termination defense.

The date of a cumulative trauma injury is the date that the applicant had both disability and knowledge of the industrial nature of the injury. Here, there is no evidence that applicant knew of the industrial nature of her injury until [] it was confirmed by QME Latteri after the claim was filed. (See generally, *Seco Industries v. WCAB (Brown)* (2001) 66 CCC 1232 (writ denied.))

As applicant did not have both disability and knowledge of the industrial injury until after the claim was filed, the post termination defense does not apply to this case. (Opinion on Decision, p. 4.)

¹ On the second paragraph on p. 3 of the Report, the WCJ erroneously refers to applicant as the party objecting to Dr. Latteri's February 28, 2022 report and filing a Petition to Strike. It is defendant who objected to Dr. Latteri's February 28, 2022 report and filed a Petition to Strike.

² Any further statutory references are to the Labor Code unless otherwise indicated.

Applicant filed her claim for workers' compensation on June 11, 2021. (Applicant Exhibit 1, Workers' Compensation Claim Form (DWC1).) Dr. Latteri issued reports on February 28, 2022, June 28, 2023, and December 4, 2023. (Applicant's Exhibits 2-4, Dr. Latteri's reports dated February 28, 2022, June 28, 2023, and December 4, 2023.) As such, per the WCJ and section 5412, the date of applicant's injury is February 28, 2022, and the date of occupational liability per section 5500.5(a) is from June 1, 2018 through June 1, 2021. (Findings and Award dated March 18, 2024, Finding no. 1.)

Accordingly, we grant reconsideration and amend the March 18, 2024 Findings and Award in order to clarify the date of injury and the date of occupational liability, and to defer the issue of attorney's fees per the WCJ's recommendations.

For the foregoing reasons,

IT IS ORDERED that defendants Soofer Co, Inc. dba Sadaf Foods and CompWest Insurance Company's Petition for Reconsideration of the March 18, 2024 Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 18, 2024 Findings and Award is **AFFIRMED EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

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5. The presumption in Labor Code, section 5402, does not apply because defendant issued a Notice Regarding Delay of Workers' Compensation Benefit on September 14, 2021, which is within 90 days after the date that applicant filed her workers' compensation claim form on June 11, 2021 plus five days for mailing.

6. The post-termination defense does not apply to this case as applicant did not have both disability and knowledge of her industrial injury per Labor Code, section 5412, until the February 28, 2022 report of Alexander Latteri, M.D., which is after the date that applicant filed her workers' compensation claim on June 11, 2021.

7. The issue of attorney's fees is deferred.

AWARD

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2. The issue of attorney's fees is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 7, 2024

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

**LAURA PATRICIA CARMONA
WACHTEL LAW LOS ANGELES
MALMQUIST, FIELDS & CAMASTRA**

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*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

DEFENDANT, by and through their attorneys of record, has filed a timely, verified Petition for Reconsideration challenging the March 18, 2024 Findings and Order of the undersigned WCJ.

II.

FACTS

1. Laura Patricia Carmona, born October 19, 1967 while employed during the period of June 1, 2018 through June 1, 2021, as a lead/packer, at Los Angeles, California by Soofer Company Inc., doing business as Sadaf Foods, claims to have sustained injury arising out of and in the course of employment to the cervical and lumbar spine, bilateral hands, bilateral wrists, and bilateral knees.
2. On January 11, 2024, the matter proceeded to trial and was submitted on the issues of: 1) AOE/COE; 2) Attorney's fees; 3) the applicability of the presumption under Labor Code § 5402; 4) the validity of the a post-termination defense; 5) Whether or not the record was complete on the issue of AOE/COE without a further deposition of Dr. Latteri, the QME; and 6) If the QME reports were based on an adequate medical and work history.
3. On March 18, 2024, this judge issued a Findings and Award in which AOE/COE was found for the cervical and lumbar spine, bilateral hands and wrists, and bilateral knees; that the post-termination defense did not apply on this case; and that applicant's counsel was entitled to 15% of any retro TD owed to the applicant.
4. On April 8, 2024, defendants filed a Petition for Reconsideration on the following grounds: 1) Defendant's Petition to Strike the February 28, 2022 report of Dr. Latteri; 2) That Dr. Latteri only relied on applicant's description of her job duties to assess her injury; 3) That in issuing a decision on AOE/COE without specifically stating that the medical record was complete to do so, this judge did not provide defendants with due process; 4) That this

Judge also erred in determining that the LC 3600 defenses did not apply to this case; and
5) That this judge erred in awarding attorney's fees.

III.

DISCUSSION

This Judge relied on the medical reporting of QME Latteri and Applicant's credible testimony in deciding the issue of AOE/COE. The medical-legal reporting (Exhibits 2, 3, and 4) were deemed substantial as to the issue of AOE/COE.

As to Applicant's Counsel's contention that they objected to QME Latteri's 2/28/2022 report and issued a Petition to Strike, the fact is that QME Latteri issued 2 subsequent reports dated June 28, 2023 and December 4, 2023. Applicant's Counsel waived this issue in their failure to move on their Petition to Strike and then agreeing to two supplemental reports.

This judge relied on applicant's credible testimony regarding her job duties in deciding the issue of the substantiality of QME Latteri's reports and his findings on AOE/COE. Additionally, defense was given the opportunity to provide QME Latteri with a job description before he issued his final report in December of 2023. QME Latteri opined that the job description he was provided did not give information that would lead him to change his opinions.

Although defense did put on two rebuttal witnesses at trial, both lacked actual knowledge of the applicant's job as they never observed her doing it.

As to the post-termination defense, this judge found that it did not apply to this case. Defense did not meet its burden of proof regarding the applicant having both disability and knowledge of the industrial nature of her injuries prior to being terminated.

In regards to the finding of Attorney's Fees, this judge believes that defense attorney's points have merit. The issue of Attorney's Fees should have been deferred.

IV.

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied in part and granted as concerns the issue of Attorney's Fees which should have been deferred.

SAMANTHA N. DAVID
Workers' Compensation Judge

Date: 04/22/2024