

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

**LIONEL BRACKINS III, *Applicant***

**vs.**

**TRADESMAN INTERNATIONAL INC.; AMERICAN HOME ASSURANCE;  
Administered by SEDGWICK CLAIMS MANAGEMENT, INC., *Defendants***

**Adjudication Numbers: ADJ11380104, ADJ11997925, ADJ11997956  
Oakland District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.<sup>1</sup>

In the Joint Findings and Orders of March 4, 2021, the Workers' Compensation Administrative Law Judge ("WCJ") issued findings in three case numbers.

In ADJ11380104, the WCJ found that on June 27, 2018, applicant, while employed as a laborer, occupational group number 370, by Tradesmen, International, insured for workers' compensation by American Home Assurance, its claims administered by Sedgwick Claims Management Services, sustained injury arising out of and in the course of employment ("industrial injury") in the form of intercostal muscle strain, and to his left shoulder and back, causing no compensable temporary or permanent disability and no need for medical treatment to cure or relieve from the effects of the injury.

In ADJ11997925, the WCJ found that the injury claimed by applicant took place on June 29, 2018, that the injury allegedly involved the back and lower extremities, and that the injury is not compensable.

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<sup>1</sup> Commissioner Marguerite Sweeney signed the Opinion and Order Granting Petition for Reconsideration dated May 11, 2021. As Commissioner Sweeney is no longer a member of the Appeals Board, a new panel member has been substituted in her place.

In ADJ11997956, the WCJ found that the injury claimed by applicant took place during the period of employment ending June 29, 2018, that the injury allegedly involved the back and lower extremities, and that the injury is not compensable.

Applicant, who is self-represented, filed a timely Petition for Reconsideration of the Joint Findings and Orders of March 4, 2021. Although applicant's contentions are somewhat difficult to grasp, it appears he contends that the medical opinion of Dr. Wellborn is not substantial evidence because the doctor did not review all relevant records, that the reports of Dr. Yoshida and Dr. Brooks justify a finding that applicant sustained industrial injuries in all three cases, that applicant has suffered a psychiatric injury and disability that precludes heavy lifting, and that the WCJ erred in denying all compensation.

Defendant filed an answer.

The WCJ submitted a Report and Recommendation ("Report").

We have considered the allegations of applicant's Petition for Reconsideration and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate to the extent set forth in the attachment to this opinion, we will affirm the WCJ's finding in ADJ11380104 that on June 27, 2018, applicant sustained industrial injury by way of intercostal muscle strain, and to his left shoulder and back; the WCJ's finding in ADJ11997925 that the injury claimed by applicant, allegedly involving his back and lower extremities on June 29, 2018, is not compensable; and the WCJ's finding in ADJ11997956 that the injury claimed by applicant during the period of employment ending June 29, 2018, allegedly involving his back and lower extremities, is not compensable.

In ADJ11380104, however, we are persuaded that further development of the medical record is required for inquiry into whether the June 27, 2018 industrial injury to applicant's left shoulder and back resulted in any temporary disability and/or permanent disability and/or the need for further medical treatment. As our Decision After Reconsideration, we will affirm most of the Joint Findings and Orders of March 4, 2021, but we will rescind the WCJ's findings in ADJ11380104 denying temporary disability and permanent disability and the need for further medical treatment. Further, we will replace those findings with ones that defer the issues of temporary disability, permanent disability and medical treatment pending further proceedings and new determination by the WCJ, with jurisdiction reserved at the trial level.

In his Report, the WCJ states, in relevant part, that he “did not find that substantial medical evidence supported either temporary or permanent disability, nor that any of these injuries had caused further need for medical treatment.” However, the WCJ also states that Dr. Wellborn, the QME, was “conspicuously dismissive of [applicant] and his claimed injuries, [that the doctor] ignore[d] the fact that pain in the left shoulder and back was reported beginning on the date of the original injury,” and that though “the presenting symptoms most prominently mentioned in the medical report generated at the clinic on the date of that injury [were] reported to be in the chest area, applicant and his coworker both reported that he had back pain and shoulder pain, and these very shortly began appearing in the medical reporting.” For these reasons, the WCJ “found that those regions were injured, as well as the intercostal area described by Dr. Wellborn.”

Thus, the WCJ found that applicant sustained industrial injury to his left shoulder and back on June 27, 2018, even though Dr. Wellborn concluded industrial injury was not sustained to those parts of the body. Since the WCJ concluded that Dr. Wellborn ignored evidence - deemed to be substantial by the WCJ - that applicant sustained industrial injury to his left shoulder and back, we cannot accept as substantial evidence the balance of Dr. Wellborn’s opinion that the left shoulder and back injuries resulted in no compensable temporary disability, permanent disability, or need for further medical treatment. Under these circumstances, where the WCJ found injury contrary to the opinion on the QME upon whom he otherwise relied, we conclude there is an irreconcilable conflict in the record that demands further inquiry concerning whether applicant may be entitled to compensation as a result of the left shoulder and back injuries, which the QME ignored. (*Telles Transport, Inc. v. Workers’ Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159, 1164 (66 Cal.Comp.Cases 1290) [Board may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further evidence].)

Since the applicant is unrepresented,<sup>2</sup> and since we believe further resort to Dr. Wellborn to address the outstanding issues likely will be unfruitful, the WCJ may consider appointing a “regular physician” to provide an opinion on whether the June 27, 2018 industrial injury to applicant’s left shoulder and back, and intercostal muscle strain (strain of the muscles located between the ribs) resulted in temporary disability or permanent disability or the need for further

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<sup>2</sup> Applicant may wish to consult with the Division of Workers’ Compensation’s Information and Assistance Unit, whose web link is <https://www.dir.ca.gov/dwc/landA.html>.

medical treatment. (See *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 [Appeals Board en banc].)

Although we affirm the WCJ's denial of the injuries and compensation claimed by applicant in ADJ11997925 and ADJ11997956, we express no final opinion on whether applicant may be entitled to benefits for the industrial injury he sustained in ADJ111380104. When the WCJ issues a new decision on that issue in ADJ111380104, any aggrieved party may seek reconsideration as provided in Labor Code sections 5900 *et seq.*

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Joint Findings and Orders of March 4, 2021 are **AFFIRMED**, except paragraphs (a), (b), and (c) of the Orders are **RESCINDED AND DEFERRED**, and Findings 5 and 6 are **RESCINDED AND REPLACED** by the following new Findings 5 and 6:

#### **FINDINGS OF FACT**

5. In ADJ111380104, the issue of whether the injury caused temporary or permanent disability is deferred pending further proceedings and new determination by the WCJ, with jurisdiction reserved at the trial level.

6. In ADJ111380104, the issue of whether the injury caused the need for medical treatment is deferred pending further proceedings and new determination by the WCJ, with jurisdiction reserved at the trial level.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that this matter is **RETURNED** to the trial level for further proceedings and new decision by the WCJ on the issues that remain unresolved in ADJ111380104, consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

**I CONCUR,**

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



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

**July 23, 2024**

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

**LIONEL BRACKINS III  
COLEMAN, CHAVEZ, & ASSOCIATES**

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

**JTL/ara**

## **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

By timely, verified petition filed on March 19, 2021, applicant seeks reconsideration of the decision filed herein on March 4, 2021, in this case, which arises out of three claims of injury, one admitted and two denied, to various body parts of a laborer. Defendant has admitted only the injury on June 27, 2018 (ADJ11380104) and only insofar as it involved an intercostal muscle strain. Denied claims arose two days later (ADJ11997925) and cumulatively through June 29, 2018 (ADJ11997956). Applicant contends in substance that I erred in not finding that the injuries all took place as alleged and resulted in compensable disability and a need for medical treatment. Defendant has filed a verified answer, urging that the decision be upheld. [...].

### **FACTS**

The background is summarized in the opinion on decision:

On the day of the admitted injury, June 27, 2018, applicant was engaged in receiving and moving a shipment of carpets, with a coworker who allegedly found the work too strenuous and left Mr. Brackins to labor on alone. The rolled-up carpets were heavy, and the workers called for assistance, but not before applicant felt pain in the left shoulder and back. His coworker, Gustavo Aceves, saw him wince and grab his back, and Mr. Brackins said he had hurt his back. (Exh. 22) Sent to an industrial clinic, applicant described pain in the left shoulder. He was placed on light duty and reported to work for such. On June 29, 2018, he was bending to place hay around the perimeter of the same construction site and felt a sudden worsening of his back pain, with pain in other regions as well. He again reported the injury to his employer.

On the basis of a July 5, 2018, treatment report, defendant, on July 11, 2018, denied all liability for the June 27, 2018, injury, and the parties proceeded to the qualified medical evaluation process. Dr. John Wellborn was selected as the qualified medical evaluator (QME), and saw Mr. Brackins on October 18, 2018, without the benefit of any medical reports. The QME agreed that applicant had injured his left shoulder but felt that it was doubtful that he hurt his back; Dr. Wellborn's description of the mechanism of the back injury appears to be of only the June 29 event, rather than that of two days prior. Furnished with medical records, the QME wrote a supplemental report dated December 3, 2018, concluding that Mr. Brackins had suffered an intercostal strain but no injury to the shoulder or back, per se. In two further supplemental reports (dated April 1 and November 7, 2019), we find Dr. Wellborn reiterating those conclusions. (Exhs. A-D) In deposition testimony on August 8, 2018, he added nothing of moment to his reporting. (Exh. E)

Presumably in reliance on Dr. Wellborn's first two reports, defendant, on December 28, 2018, admitted injury to the intercostal region alone.

By the time of trial, on March 3, 2021, applicant was without the assistance of counsel, and had not submitted any proposed exhibits in advance of that proceeding. However, his prior attorney had submitted several treatment reports, and these were admitted in evidence, as were defendant's exhibits. Applicant testified that he suffers from pain in his back and left shoulder, and has numbness down his left leg. For these problems, he has received treatment from Dr. Kiyokazu Yoshida through a clinic (NMCI) where he was referred by his attorney (Exhs. 1-17) and, more recently, by his primary-care physician, Dr. Nathan Brooks (no reports available).

Following trial, I reviewed the available medical reports and concluded that applicant's injury on June 27, 2018, involved not only the intercostal area but also the back and left shoulder. [...] While no reports by Dr. Brooks were available at the time of trial, applicant has appended to his petition for reconsideration one such report, dated March 9, 2021, six days after trial. That report does support some need for further medical attention, [but] it does not, as defendant points out, attribute such need to a work-related injury. Moreover, Dr. Yoshida's final report, dated June 19, 2020, concludes that applicant's "complaints is whole body pain and this is why not work related," and "This patient does not have a Workers Comp case" (sic). (Exh. O<sup>1</sup>)

The result [reached by the WCJ] was a finding of injury to the intercostal region, the back and the left shoulder, but no award of indemnity or further medical care.

## DISCUSSION

Although he also raises some claims that (as defendant points out) appear to have no basis in the record, such as fraud and "violation withholding information," applicant's substantive contention is that his injuries were more serious and enduring than I concluded. The rationale for the decision in this regard, in light of the available evidentiary record, is expressed in the opinion as follows:

Dr. Yoshida's reporting is somewhat repetitive and reveals little in the way of insight or changes brought about through his intervention. For his part, the QME is conspicuously dismissive of Mr. Brackins and his claimed injuries, and ignores the fact that pain in the left shoulder and back was reported beginning on the date of the original injury. While the presenting symptoms most prominently mentioned in the medical report generated at the clinic on the date of that injury [were] reported to be in the chest area, applicant and his coworker both reported that he had back pain and shoulder pain, and these very shortly began appearing in the medical reporting. I have therefore found that those regions were injured, as well as the intercostal area described by Dr. Wellborn.

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<sup>1</sup> Defendant's answer misidentifies this as Exh. Q.

While liability for the initial injury of June 27, 2018, is admitted, and while I have concluded, as stated, that it was somewhat more extensive than has been reported by the QME, [...] the subsequent reported event of June 29, 2018 [and] the claimed cumulative trauma through that date are [not] compensable.

[...]

Dated: April 12, 2021

Respectfully submitted,

Christopher Miller  
Workers' Compensation Judge