

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

MARAL BOURSALIAN, *Applicant*

vs.

**STANFORD UNIVERSITY and AMERICAN ZURICH INSURANCE
COMPANY, administered by ZURICH NORTH AMERICA, *Defendants***

**Adjudication Numbers: ADJ14002457; ADJ13997458
San Jose District Office**

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

Applicant, acting in pro per,¹ seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on August 26, 2024, wherein the WCJ found in pertinent part that applicant did not meet her burden of proving injury arising out of and in the course of employment (AOE/COE) to her psyche.

Applicant essentially contends that she is entitled to a Qualified Medical Evaluator (QME) to evaluate her claim of injury to her psyche and the WCJ erred in making a finding on compensability in the absence of a QME's opinion.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto.

Based on our review of the record, and for the reasons discussed below, we will grant the Petition, rescind the WCJ's August 26, 2024, Findings and Order, and return the matter to the WCJ for further proceedings consistent with this decision.

¹ Applicant filed a Notice of Dismissal of Attorney on March 13, 2024.

BACKGROUND

We will briefly review the relevant facts.

In case number ADJ13997458, applicant claimed injury to her back while employed as an administrative associate, during the period from March 3, 2016 to November 1, 2019. The parties settled case number ADJ13997458 by way of Compromise and Release (C&R) and an Order Approving Compromise and Release (OACR) issued on February 1, 2024.

In the matter before us, case number ADJ14002457, applicant claimed injury to her psyche while employed by defendant as an administrative associate, during the period from March 3, 2016 to October 30, 2019. Defendant denied the claim.

On or about December 3, 2021, applicant requested a QME panel in the specialty of psychiatry and a panel issued on the same date. After their respective strikes, Allan Sidle, M.D., remained. (Exhibit 2, Minutes of Hearing and Summary of Evidence (MOH/SOE), May 1, 2024 trial.)

On or about December 12, 2023, applicant filed a request for a new panel on the basis that Dr. Sidle was unavailable, i.e., he had retired as a QME.

On May 1, 2024 and July 18, 2024, the matter proceeded to trial on the following issues. Applicant appeared in pro per.

1. Injury arising out of and in the course of employment to the psyche.
2. Need for further medical care to the psyche.
3. Liability for self-procured medical treatment is raised and deferred.
4. Whether applicant's claim is barred by the statute of limitations and post-termination defense. Defendant asserts there was a lack of due diligence on applicant's part. Applicant contends the matter is not ready for trial as applicant has not been found to be permanent and stationary and is awaiting evaluation by the qualified medical examiner, which has not been authorized.

(MOH/SOE, May 1, 2024 trial, pp. 2-3.)

In pertinent part, the WCJ found that applicant's medical evidence, Exhibits 4 through 6, did not constitute substantial medical evidence and did not support the allegations of applicant's psychiatric injury on an industrial basis. (August 26, 2024 Findings and Order, Finding 5.) The WCJ also found that applicant did not sustain injury arising out of or in the course of employment to her psyche. (August 26, 2024 Findings and Order, Finding 6.)

DISCUSSION

I.

Former Labor Code section² 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on October 3, 2024, and 60 days from the date of transmission is December 2, 2024. This decision is issued by or on December 2, 2024, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on October 3, 2024, and the case was transmitted to the Appeals Board on October 3, 2024. Service

² All statutory references are to the Labor Code unless otherwise stated.

of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on December 2, 2024.

II.

The determination of compensability, the existence or extent of permanent impairment, and limitations, if any, resulting from an injury all require a medical evaluation. When deciding a medical issue, including whether applicant sustained a compensable psychiatric injury, the WCJ must utilize expert medical opinion. (See *Insurance Company of North America v. Workers' Comp. Appeals Bd. (Kemp)* (1981) 122 Cal.App.3d 905, 911-912 [46 Cal.Comp.Cases 913].) Here, applicant requested a QME panel in the specialty of psychiatry, the parties exercised their respective strikes, and Dr. Sidle remained. Thereafter, applicant filed a request for a new panel on the basis that Dr. Sidle had retired as a QME. At the time of trial, applicant alleged that she was still awaiting evaluation by a QME, which had not been authorized. (MOH/SOE, May 1, 2024 trial, p. 3.) As an unrepresented employee, applicant would require an evaluation by a QME to determine compensability, if any, and the existence or extent of permanent impairment. (Lab. Code, §§ 4060-4062.3.) Notably, section 4061(i) specifically requires an evaluation by a QME where permanent impairment is in dispute.

We note that section 3208.3 states that in order to establish industrial causation of a psychiatric injury, an injured worker must show by a preponderance of the evidence that actual events of employment predominantly caused the psychological injury.³ (Lab. Code, § 3208.3(b)(1).) After considering all the medical evidence, and the other documentary and testimonial evidence of record, the WCJ must determine (1) whether the alleged psychiatric injury involves actual events of employment, a factual/legal determination for the WCJ; and if so, (2) whether such actual events were the predominant cause of the psychiatric injury, a determination which requires competent medical evidence. (*Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 247 (Appeals Bd. en banc); *San Francisco Unified School Dist. v. Workers' Comp. Appeals Bd. (Cardozo)* (2013) 190 Cal.App.4th 1 [75 Cal.Comp.Cases 1251] (writ den.).)

³ “[T]he phrase ‘predominant as to all causes’ is intended to require that the work-related cause has greater than a 50 percent share of the entire set of causal factors.” (*Department of Corrections v. Workers' Comp. Appeals Bd. (Garcia)* (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356].)

The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases” and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The “Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee.” (*San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 937-938 [64 Cal.Comp.Cases 986].)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on a threshold issue. (Lab. Code, §§ 5701, 5906; *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924].) Sections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141 (Appeals Bd. en banc).)

The WCJ’s decision “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc).) An adequate and complete record is necessary to understand the basis for the WCJ’s decision and the WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621.) 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.” (*Hamilton, supra*, at 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

Accordingly, we grant applicant’s Petition, rescind the WCJ’s August 26, 2024, Findings and Order, and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return to the trial level, we recommend that the WCJ consider what further development of the record is appropriate with respect to applicant’s claim of injury to her psyche.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued by the WCJ on August 26, 2024 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 2, 2024

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

**MARAL BOURSALIAN
BOB NEHORAY
RTGR LAW**

JB/pm

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