

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

**RICK JONES, *Applicant***

**vs.**

**CITY OF TORRANCE, permissibly self-insured and self-administered, *Defendant***

**Adjudication Numbers: ADJ325769 (MF), ADJ812096  
Long Beach 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>

On January 27, 2021, the Workers' Compensation Administrative Law Judge ("WCJ") issued decisions in two case numbers. In ADJ325769, the WCJ found that on or about May 18, 1999, applicant, while employed as a groundskeeper, sustained industrial injury to both wrists and to his psyche, causing no permanent disability. In ADJ812096, the WCJ found that on or about January 11, 2001, applicant, while employed as a groundskeeper, sustained industrial injury to his left elbow, left shoulder and psyche, causing no permanent disability.

Applicant filed a timely petition for reconsideration of the WCJ's decisions. Applicant contends that "due to pleading technicalities," the WCJ erred in denying permanent disability benefits for applicant's two industrial injuries.

Defendant filed an answer, which has been considered.

The WCJ submitted a Report and Recommendation ("Report"). We adopt and incorporate the "Basic Facts" (Section II) of the WCJ's Report to the extent set forth in the attachment to this opinion. We do not adopt or incorporate the remainder of the WCJ's Report.

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<sup>1</sup> Commissioner Marguerite Sweeney signed the Opinion and Order Granting Petition for Reconsideration dated April 6, 2021. As Commissioner Sweeney is no longer a member of the Appeals Board, a new panel member has been substituted in her place.

Based on our review of the record and applicable law, we conclude that the WCJ erred in relying upon her July 16, 2013 denial of applicant's claim of cumulative trauma through November 18, 2001 (ADJ8143323) to reject amendment of the specific injuries of May 18, 1999 (ADJ325769) and January 11, 2001 (ADJ812096) to cumulative trauma claims. Therefore, we will rescind the WCJ's decisions and return the latter two cases to the trial level for further proceedings and new decisions by the WCJ.

As noted in the WCJ's Report, the parties stipulated that applicant sustained industrial injury to his psyche and both wrists on May 18, 1999 (ADJ325769) and to his left elbow, left shoulder and psyche on January 11, 2001 (ADJ812096). The parties also stipulated that each of the two psychiatric injuries resulted in permanent disability of five and one-half percent, and that the two orthopedic injuries resulted in permanent disability, but the nature and extent of disability was not agreed upon. (See Minutes of Hearing, 6/5/14, pp. 4-7.)

Notwithstanding that applicant has sustained two industrial injuries, which admittedly resulted in some degree of permanent disability, the WCJ disallowed permanent disability benefits altogether - for two reasons. First, Dr. Brouman, the Agreed Medical Evaluator ("AME") in orthopedics concluded that, as opposed to two specific injuries, applicant sustained cumulative trauma to his bilateral wrists "through May 18, 1999" and to his left elbow and left shoulder "through January 11, 2001." (WCAB Exhibit II, Brouman report dated August 13, 2019, pp. 68-69.)<sup>2</sup> Secondly, the WCJ found in her now-final Findings and Order of July 16, 2013 in ADJ8143323 that applicant sustained injury to both upper extremities during the period August 28, 1986 through November 18, 2001, and that this claim (ADJ8143323) was barred by the Statute of Limitations. The WCJ reasoned that since Dr. Brouman found two cumulative trauma injuries corresponding to the stipulated injuries, but the cumulative trauma to both upper extremities through November 18, 2001 is barred by the Statute of Limitations, no permanent disability can be awarded in ADJ325769 or in ADJ812096 – the specific injuries that Dr. Brouman converted to cumulative trauma injuries. As explained by the WCJ in her Report: "Here, Dr. Brouman found only a CT which is already barred by the Statute of Limitations. Because the whole case is dependent on an orthopedic CT, additional permanent disability is barred because there is no basis to find the CT [that] is already barred by the Statute of Limitations."

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<sup>2</sup> That is, Dr. Brouman's identification of the two cumulative trauma dates of injury correspond to the two stipulated specific injuries of May 18, 1999 (ADJ325769) and January 11, 2001 (ADJ812096).

We disagree that “the whole case is dependent on an orthopedic CT.” We disagree because the claim of cumulative trauma that is barred by the Statute of Limitations is applicant’s claim of injury to his upper extremities during the period August 28, 1986 through November 18, 2001 (ADJ8143323); this claim does not involve all the same body parts or dates of injury as the body parts and dates of injury in ADJ325769 and ADJ812096 (even as found by Dr. Brouman). Because the three claims are not identical, the now-final barring of compensation in ADJ8143323 does not bar compensation in ADJ325769 or in ADJ812096. Further, because the latter cases involve different body parts and different dates of injury, the WCJ’s July 16, 2013 decision in ADJ8143323 barring that claim does not preclude the Board from disapproving the stipulation that the injuries in ADJ325769 and ADJ812096 were specific or from amending the stipulation to find that the two injuries were cumulative traumas. (See *Baez v. Excelsior Farming, LLC*. (2021) 2021 Cal. Wrk. Comp. P.D. LEXIS 250, citing Lab. Code, § 5702 and *Turner Gas Co. v. Workers’ Comp. Appeals Bd. (Kinney)* (1975) 47 Cal.App.3d 286 [40 Cal.Comp.Cases 253].)

We are also persuaded that it would be manifestly unjust to apply the WCJ’s July 16, 2013 decision in ADJ8143323 to bar applicant’s claims of compensation in ADJ325769 and ADJ812096 given the chronology presented in this matter. In the latter two cases, the WCJ issued Findings and Awards long ago, on July 16, 2013, finding that applicant sustained industrial injury to both wrists (ADJ325769) and to his left elbow and shoulder (ADJ812096), and that each injury resulted in permanent disability “in an amount to be determined *with jurisdiction reserved*.” (Italics added.) Within a year, the parties stipulated at hearing on June 5, 2014 that applicant also sustained industrial injury to his psyche in both cases, with a psychiatric permanent disability rating of five and one-half percent in each case. Given this history, we are persuaded that it would be unjust and unreasonable to disallow permanent disability benefits in ADJ325769 and ADJ812096, with AME Brouman announcing many years after the fact that applicant actually suffered cumulative traumas with ending dates the same as the two specific injuries. (See *Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 (65 Cal.Comp.Cases 264) [The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.”]; *Beveridge v. Industrial Accident Comm.* (1959) 175 Cal.App.2d 592, 598 (24 Cal.Comp.Cases 274) [Claims for compensation are “entitled to adjudication upon substance rather than upon formality of statement.”].)

In summary, we conclude that the WCJ must disregard those parts of the stipulations in ADJ325769 and ADJ812096 that characterize applicant's two industrial injuries as specific, and that the WCJ must amend the stipulations to conform to Dr. Brouman's medical opinion that applicant suffered two cumulative traumas, one ending May 18, 1999 (ADJ325769) and one ending January 11, 2001 (ADJ812096). In addition, and absent good faith efforts by the parties to reach settlement, the WCJ must award permanent disability for the orthopedic and psychiatric injuries to the extent justified by medical evidence. We express no final opinion on the nature or extent of permanent disability in the two cases. When the WCJ issues new decisions in ADJ325769 and ADJ812096, 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 Findings and Awards of January 27, 2021 in ADJ325769 and ADJ812096 are both **RESCINDED**, and the two cases are **RETURNED** to the trial level for further proceedings and new decisions by the WCJ, consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**February 2, 2024**

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

**RICK JONES  
LISTER, MARTIN & THOMPSON, LLP  
OZUROVICH, SCHWARTZ & BROWN**

**JTL/ara**

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

**REPORT & RECOMMENDATION ON  
PETITION FOR RECONSIDERATION**

**II.  
BASIC FACTS**

Three Applications were filed in this case.

In ADJ325769, at trial on 10-11-2012, Applicant and Defendant stipulated that Applicant sustained an injury on 5-18-1999 to both wrists.

In ADJ812096, at trial on 10-11-2012, Applicant and Defendant stipulated that Applicant had sustained an injury on 1-11-2001 to his left shoulder and left elbow.

In ADJ8143323, at trial on 10-11-2012, Applicant claimed to have sustained a cumulative trauma during the period 8-28-1986 through 11-18-2001. Applicant claimed injury to his spine, both upper extremities, psych and internal organs. Injury was denied and the Statute of Limitations was raised.

On 3-11-2013, the matter was submitted for decision.

On 7-16-2013, an Opinion on Decision, and Findings of Fact and Order was issued. With respect to ADJ8143323, (the CT case), it was found that the claimed CT applied only to the upper extremities. As to the Statute of Limitations on the CT, I found that the Statute of Limitations applied and the CT claim was barred. No Petition for Reconsideration was filed. As to the 5-18-1999 injury (ADJ325769), because it was impossible to rate PD for the 5-18-1999 injury, I deferred the issue of permanent disability. As to the 11-11-2001 injury, (ADJ812096) I found that it was impossible to rate and so PD and apportionment was deferred.

On 6-5-2014, another trial was held. Again the parties stipulated to an injury on 5-18-1999 and 1-11-2001. In both cases, the parties again stipulated to the specific injuries and added psyche as an admitted body part in both cases.

6-9-2014, formal rating instructions were prepared and the rater issued formal ratings. On 6-13-2014, Applicant filed a DOR objecting to the ratings and requesting a cross -examination of the rater. On 6-28-2014, submission was vacated and the matter was set for a cross-examination of the rate on 9-11-2014, later continued to November 2014. On 1-29-2015, the parties were advised to contact another rater and discuss the rating because the rater who had prepared the formal rating was no longer working for the WCAB.

By 3-28-2015, the case went off calendar because Applicant was undergoing additional treatment.

On 10-29-2020, ADJ325769 and ADJ812096 came up again for trial.

At the 10-29-2020 trial, the parties again stipulated to injuries on 5-18-1999 and 1-11-2001. The primary issue was permanent disability.

After trial, based on the 8-13-2019 and 5-21-2019 AME reports of Dr. Brouman, who only found a CT, it was found that there was no permanent disability for the 5-18-1999 and 1-11-2011 injuries.