

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

RUBEN MAESTAS, *Applicant*

vs.

**BRITZ FERTILIZER;
STATE COMPENSATION INSURANCE FUND;
LIBERTY MUTUAL INSURANCE; ZENITH, *Defendants***

Adjudication Numbers: ADJ8202033; ADJ7375789

Fresno District Office

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted Liberty Mutual's Petition for Reconsideration of the Joint Findings of Fact, Order, and Opinion on Decision (F&O) issued on January 21, 2021, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that Liberty Mutual was served with an Amended Order Joining Party Defendant on November 14, 2013, a Declaration of Readiness to Proceed on April 14, 2017, a Minutes of Hearing and Notice of Intent to Issue an Order to Reimburse State Fund on July 12, 2017, and ultimately an Order to Pay Contribution to State Fund on August 16, 2017. The WCJ found that Liberty Mutual failed to file a petition for reconsideration from the August 16, 2017 order of contribution, and thus, no basis existed to invoke continuing jurisdiction to alter or amend the order of contribution.

Liberty Mutual contends that the WCJ erred because she relied, in part, upon exhibits that State Fund did not properly serve 20 days prior to trial. Liberty Mutual further contends that good cause was presented to set aside the August 16, 2017 Order to Pay Contribution to State Fund.

We have received an answer from SCIF. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration we will rescind the January 21, 2021 F&O and return this matter to the trial level for further proceedings consistent with this opinion.

FACTS

Per the WCJ's Report:

On July 29, 2010, the injured worker by and through his attorney filed an Application for Adjudication of Claim alleging an 11/4/09 specific injury against his employer, Britz Fertilizer, insured by State Compensation Insurance Fund (hereinafter SCIF). (Exh. 136, Application for Adjudication of Claim, 7/22/10.)

On February 16, 2012, the injured worker by and through his attorney filed an Application for Adjudication of Claim alleging a cumulative trauma injury from 11/4/08 through 11/4/09, against his employer, Britz Fertilizer, insured by SCIF. (Exh. 135, Application for Adjudication of Claim, 1/20/12.) The Application was subsequently amended to correct the date of injury to 9/1/10 through 9/1/11. (Judicial Notice taken of Amended Application for Adjudication, EAMS ID 39989842, 6/25/12.)

According to the WCIRB, Britz Fertilizer was insured by Liberty Ins. Corp. for the period 1/1/11 to 1/1/12. (Exh. 100, Petition for Joinder, 9/17/13, pg. 3.)

On November 14, 2013, SCIF served an Amended Order Joining Party Defendant on Liberty Mutual at the address shown on the Official Address Record. (Exh. 101, Order Joining Liberty Mutual, 11/7/13.)

On or around October 15, 2014, Liberty Mutual Rocklin requested a change of address with the EAMS administrator. The change was effective on or about December 14, 2014. Prior to October 15, 2014, Liberty Mutual Rocklin's address was P.O. Box 989000, West Sacramento, CA 95798. After this date, the address changed to P.O. Box 779008, Rocklin, CA 95677. (Exh. 7, 8, 9, Declaration of Stephanie Nunez, Letter to WCJ Sandoval, E-mail from Michael Myers, 8/13/20, 8/28/20 & 12/4/14.)

On May 19, 2016, SCIF served the Compromise and Release Agreement and Order Approving Compromise and Release for ADJ8202033 and ADJ7375789 on Liberty Mutual. (Exh. 142, Minutes of Hearing, Compromise and Release Agreements, Orders Approving C&R with POS, 5/16/16.)

On February 17, 2017, SCIF filed a Petition for Contribution and Equitable Reimbursement but it was served on Liberty Mutual at their prior address in West Sacramento rather than their then current address in Rocklin. (Exh. 103, Petition for Contribution & Equitable Reimbursement with POS, 2/16/17)

On April 14, 2017, SCIF served a Declaration of Readiness to Proceed on the issue of Arbitration on Liberty Mutual noting that there had been no response to their letter regarding choosing an arbitrator and resolving the contribution and equitable reimbursement issues, with a hearing date of 7/11/2017. The DOR was served on Liberty Mutual at their then correct address. (Exh. 107, SCIF's DOR regarding enforcing Court's Arbitration Order with POS, 4/14/17.)

On July 11, 2017, Judge Heslin noted no appearance by or on behalf of Liberty Mutual and issued Notice that unless Liberty Mutual responds to this notice and agrees to arbitration within 20 days of the date of service of this notice, an order will issue ordering Liberty Mutual to Reimburse SCIF \$57,430.27 for costs / benefits paid in this matter. The Minutes of Hearing with the attached Notice was properly served upon Liberty Mutual at their then correct address on July 12, 2017. (Exh. 108, DWC Minutes of Hearing & NOI that court will order Liberty to reimburse SCIF with POS, 7/11/17.)

On August 16, 2017, WCJ Heslin issued an Order to Pay Contribution noting Liberty Mutual's failure to respond to the Notice of Intent. The Order was served by the Court on parties including Liberty Mutual at their correct address on August 21, 2017. (Exh. 109, Order to Pay Contribution, 8/16/17.)

On September 21, 2017, SCIF sent a letter to Liberty Mutual requesting payment pursuant to the attached Order to Pay Contribution. (Exh. 110, SCIF letter to Liberty Mutual, 9/21/17.)

On October 17, 2017, SCIF filed and served a Declaration of Readiness to Proceed on the issue of SCIF petition for penalties noting that despite their attempt to obtain contribution, SCIF had receive neither payment nor a response from Liberty Mutual. The

Board's assistance was sought to enforce the Court's Award of Contribution and rule on SCIF's Petition for Penalties, Interest and Reasonable Costs and Attorney Fees. A Hearing date was set for 11/7/2017. The DOR was properly served on Liberty Mutual. (Exh. 112, SCIF's DOR, 10/17/17.)

On November 1, 2017, SCIF attorney e-mailed the Liberty Mutual adjuster a copy of the Petition for Contribution with exhibits, and the Petitions and Orders Joining Liberty Mutual. (Exh. 128, SCIF's email to Liberty Mutual with attachments, 11/1/17.)

On November 7, 2017, Liberty Mutual failed to appear at MSC and the issue of SCIF's Petition for Reimbursement of Interest, Penalties, Costs and Reasonable Attorney Fees due to Liberty Mutual's failure to pay pursuant to the 8/16/17 Contribution Order was set for trial with Liberty Mutual ordered to appear at the 2/28/18 trial date. (Exh. 146, Pre-Trial Conference Statement with MOH and POS, 11/7/17.)

On November 13, 2018, PWCJ Menefee issued a Certified Copy of the Order to Pay Contribution dated August 16, 2017, issued by Thomas J. Heslin Workers' Compensation Administrative Law Judge. (Exh. 134, Certified Copy of Order to Pay SCIF, 11/13/18.) On February 4, 2019, the Superior Court of the State of California for the County of Fresno entered a Clerk's Judgment Pursuant to Labor Code Section 5806 against Liberty Mutual in favor of SCIF. (Exh. 154, Notice of Entry of Judgement, 2/4/19.) Liberty Mutual petitioned for a Stay of Judgement and asserted in Superior Court that the WCAB had jurisdiction to determine whether or not it retained jurisdiction over the Order to Pay Contribution. (Exh. 149, Superior Court hearing transcript, 6/20/19)

(WCJ's Report, pp. 2-4.)

This matter proceeded to trial on the following issue: “(1) Does the WCAB have jurisdiction to vacate, alter, or amend a Certified Final Order to pay State Compensation Insurance Fund that has been entered as a Judgment in Superior Court and stayed until further hearing.” (Minutes of Hearing and Summary of Evidence, November 4, 2019, p. 3, lines 17-19.)

DISCUSSION

The Appeals Board 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].) Substantial justice is “[j]ustice fairly administered according to the rules of substantive law, regardless of any procedural errors not affecting the litigant’s substantive rights; a fair trial on the merits.” (Black’s Law Dictionary (7th ed. 1999).)

To the extent that SCIF may have failed to serve exhibits timely in accordance with the WCJ’s pre-trial order, we would note that such a failure ordinarily will not result in exclusion of exhibits but may give good cause to order a continuance to avoid unfair surprise. We would further note that parties in workers compensation are now required to meet and confer prior to a mandatory settlement conference, which requires that the parties disclose witnesses and exhibits expected to be produced at trial. (Cal. Code Regs., tit. 8, § 10759.) If a party does not have a copy of a proposed trial exhibit, the party should request a copy well in advance of either the mandatory settlement conference, or the trial. The requirement in the updated regulation to meet and confer is designed specifically to avoid any surprises at either the mandatory settlement conference or the trial. However, the issue of exhibits is moot in this case, as we are rescinding the WCJ’s F&O.

We would also note that upon return, when the parties meet and confer, **they should confirm that duplicate exhibits will not be filed with the court.** Duplicative exhibits waste judicial resources and cause unnecessary delay in resolving cases. The parties have significant work to do in cleaning up the record in this matter so that duplicative exhibits are not in the board’s file.

The question presented for trial was simply whether the Appeals Board has jurisdiction over its awards when the award has been entered as a judgement in Superior Court. We do.

“[C]laims seeking compensation for services rendered to an employee in connection with his or her workers' compensation claim fall under the exclusive jurisdiction of the WCAB. [Citations.]” (*Id.* at p. 815; see also *Greener v. Workers' Comp. Appeals Bd.* (1993) 6 Cal.4th 1028, 1038–1039 [25 Cal. Rptr. 2d 539, 863 P.2d 784] [“ ‘Proceedings which in any manner concern the recovery of compensation, or any right or liability “arising out of or incidental thereto” are to be instituted solely before the Appeals Board,’ ” including an attorney's “right to fees.”].)

Under the Workers' Compensation Act, orders of the WCAB are subject to review only by the methods set forth in the statute. (§§

5810, 5950, 5955; *Greener v. Workers' Comp. Appeals Bd.*, *supra*, 6 Cal.4th at p. 1041; *Loustalot v. Superior Court* (1947) 30 Cal.2d 905, 908 [186 P.2d 673].) Section 5950 provides that “[a]ny person affected by an order, decision, or award of the appeals board may ... apply to the Supreme Court or to the court of appeal ... for a writ of review, for the purpose of inquiring into and determining the lawfulness of the original order, decision, or award . . .” (§ 5950.) Section 5955 further states that “[n]o court of this state, except the Supreme Court and the courts of appeal to the extent herein specified, has jurisdiction to review, reverse, correct, or annul any order, rule, decision, or award of the appeals board . . .” (§ 5955.)

This statutory scheme provides a party affected by an order of the WCAB the right to seek judicial review of that order in the Court of Appeal or the Supreme Court. (*Greener v. Workers' Comp. Appeals Bd.*, *supra*, 6 Cal.4th at p. 1040; see also *Loustalot v. Superior Court*, *supra*, 30 Cal.2d at p. 912 [“The only relief afforded the aggrieved party is a writ by [the Supreme] court or a District Court of Appeal.”].) “At least as to those rulings, the jurisdiction of the appellate courts is exclusive . . .” (*Greener v. Workers' Comp. Appeals Bd.*, *supra*, at p. 1040; see *Loustalot v. Superior Court*, *supra*, at p. 913 [“legality of any order of the [Industrial Accident Commission, the WCAB's predecessor] can be questioned only by the appellate courts”].) In contrast, “superior courts have no jurisdiction to review or otherwise interfere with the operation of any order” issued by the WCAB. (*Loustalot v. Superior Court*, *supra*, at p. 910.) An order of the WCAB “even though erroneous, may not be reviewed or annulled by the superior court and must stand as a proper and legal order until reversed by [the Supreme Court] or a District Court of Appeal.” (*Id.* at p. 912; see also *Pizarro v. Superior Court* (1967) 254 Cal.App.2d 416, 418, fn. 3 [61 Cal. Rptr. 923] [“An order of the Industrial Accident Commission may not be reviewed by a superior court even though it is erroneous.”].)

Superior courts may, however, exercise a limited jurisdiction to enforce WCAB orders and awards in accordance with a narrowly drawn mandate. Section 5806 provides that “[a]ny party affected thereby may file a certified copy of the findings and order, decision, or award of the appeals board with the clerk of the superior court of any county,” and that “[j]udgment shall be entered immediately by the clerk in conformity therewith.” (§ 5806.) Although section 5806 authorizes the entry of a civil judgment in conformity with a WCAB award, the superior court “has no jurisdiction to stay or modify any proceedings under the award.” (*Greitz v. Sivachenko* (1957) 152 Cal.App.2d 849, 850–851 [313 P.2d 922]; see also *Vickich v. Superior Court* (1930) 105 Cal.App. 587, 592 [288 P.

127] [“Subject only to review by the Supreme Court or a District Court of Appeal, the judicial authority in relation to such awards appears to have been retained entirely within the Industrial Accident Commission.”].) Except for the limited enforcement authority granted by the Labor Code, the Legislature has precluded the superior courts from exercising jurisdiction over workers' compensation matters. (*Loustalot v. Superior Court, supra*, 30 Cal.2d at p. 912; *Pizarro v. Superior Court, supra*, 254 Cal.App.2d at p. 418; *Greitz v. Sivachenko, supra*, at pp. 850–851.)

(*Koszdin v. State Comp. Ins. Fund*, (2010), 186 Cal. App. 4th 480, 492-493)

Thus, if a party wishes to set aside or otherwise modify an order of the WCAB that has been entered as a judgement in the Superior Court, the only venue to modify such an order is through the WCAB.

The problem with the F&O in this matter is that the WCJ went beyond the question of jurisdiction and, in effect, decided whether good cause existed to set aside or modify the order of contribution. That issue was not raised at trial and we make no decision on the merits at this time. Upon return, the parties may submit the issue of Liberty Mutual's request to set aside the order of contribution and the WCJ may issue findings of fact accordingly.

Accordingly, as our Decision After Reconsideration we will rescind the January 21, 2021 F&O and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings of Fact, Order, and Opinion on Decision issued on June 26, 2020, is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 3, 2024

**RUBEN MAESTAS
COLE FISHER
CHERNOW & LIEB
STATE COMPENSATION INSURANCE FUND, LEGAL
SANTANA, VIERRA, STEVENSON, HARRIS & HERMANSON**

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

EDL/mc

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