

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

THERIS COATS, *Applicant*

vs.

**PUBLIC STORAGE; and AIG GLOBAL CLAIMS,
Adjusted by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ11949488
Oakland District Office**

OPINION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the April 13, 2021 Findings and Award (F&A) issued by a workers' compensation administrative law judge (WCJ) wherein the WCJ found in pertinent part that applicant sustained injury arising out of and/or in the course of employment (AOE/COE) to the left shoulder, lumbar spine, and left knee and that occupational group 341 most accurately reflects the requirements of applicant's position. (F&A, p. 1.) Applicant contends that occupational group 460 is more accurate based upon the heavy lifting requirements of his job. (Petition for Reconsideration (Petition), dated May 10, 2021, p. 8.)

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition and the Answer. We have also reviewed the contents of the Report and the record in this matter. For the reasons discussed below, we will rescind and substitute the F&A.

FACTS

Applicant claimed injury to the back, left shoulder, and left knee while employed on January 18, 2019 by defendant as a relief property manager.

The parties proceeded to discovery and retained a panel Qualified Medical Evaluator (QME). In his initial report, the QME found permanent disability. (WCAB Exhibit 104, Report of

Joseph Matan, M.D., dated November 22, 2019, pp. 12-13.) The matter proceeded to trial and among the issues litigated at trial was Applicant's occupational code.

Defendant argued that occupational group 213 for "property managers" best reflected applicant's job duties whereas applicant believed occupational group 560 for "furniture movers and garbage collectors" was more accurate because of alleged heavy lifting requirements. (Defendant's Trial Brief, dated January 4, 2021, at pp. 1-3; Applicant's Trial Brief, dated January 6, 2021, p. 3.)

The WCJ ultimately placed applicant in occupational group 341 as the WCJ believed the "custodial requirements" of applicant's job were best assessed under this group. (F&A, p. 10.) The WCJ did not find applicant's argument for use of occupational group 560 persuasive as "applicant testified that the maximum weight lifted was fifty pounds" and applicant "sought assistance" for any lifting over this amount. (F&A, p. 9.) The WCJ also did not find heavy lifting to be an "integral" part of applicant's duties based upon the evidence submitted. (*Ibid.*) With respect to defendant's arguments, the WCJ did not believe occupational group 213 took into consideration the lifting requirements of up to 35 pounds evidenced by defendant's own exhibits. (*Ibid.*) Ultimately, the WCJ found occupational group 341 to be the best reflection of applicant's lifting and custodial requirements. (F&A, p. 10.)

DISCUSSION

An employee's occupation is one of the component parts for rating permanent disability. The reason for this is that it serves to "aid in determining the relative effects of disability to various parts of the body taking into account the physical requirements of various occupations." (*Holt v. Workers' Comp. Appeals Bd.* (1986) 187 Cal.App.3d 1257, 1261 [51 Cal.Comp.Cases 576].) For injuries occurring on or after January 1, 2013, rating is completed through use of the 2005 Permanent Disability Rating Schedule (PDRS) which contains 45 occupational group numbers (Lab. Code, § 4660.1; 2005 PDRS, pp. 1-8.) Which occupational group number is to be applied in each case is a question of fact to be determined by the trier of fact. (*Dalen v. Workmen's Comp. Appeals Bd.* (1972) 26 Cal.App.3d 497, 503 [37 Cal.Comp.Cases 393].) It is also well established that an "employee is entitled to be rated for the occupation which carries the highest factor in the computation of disability." (*Id.* at pp. 505-506.) However, there must be evidence that the employee in fact performed the duties required of the more arduous occupation. (*Holt, supra* at

1257.) An employee may also be entitled to a higher occupational group number if the activity (or activities) which generates the higher occupational group is an integral part of the occupation. (*National Kinney v. Workers' Comp. Appeals Bd.* (Casillas) (1980) 113 Cal.App.3d 203, 215-216 [45 Cal.Comp.Cases 1266].)

Applicant now argues that occupational group 460¹ is the most accurate reflection of his duties and alleges that the WCJ misstated his testimony at trial. (Petition, p. 6.) Applicant argues that his lifting of “bed frames, dressers, mattresses, couches, televisions and chairs” was not “limited to 50 pounds.” (Petition, p. 6.) As such, the WCJ’s finding of occupational group 341 is not an accurate reflection of applicant’s job duties given applicant’s heavy lifting requirements. Based upon the current record, however, there is insufficient evidence to determine whether applicant’s occupational group number should be 341 or 460.

As explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [33 Cal.Comp.Cases 350-351], a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (§§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Aside from providing assurance that due process is being provided, this "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Further, all parties to a workers’ compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [97 Cal Rptr. 2d 852, 65 Cal.Comp.Cases 805].) A fair hearing is “... one of ‘the rudiments of fair play’ assured to every litigant ...” (*Id.* at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, “the commission ... must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law.” (*Id.* at p. 577.) A fair hearing includes,

¹ As noted above, applicant initially argued that occupational group 560 was the most accurate reflection of his duties. (Applicant Trial Brief, *supra*, at p. 3.)

but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157- 158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Accordingly, since there is currently insufficient evidence admitted into the record regarding applicant's occupational group number, and to ensure applicant is provided due process, we will return this matter to the trial level for further proceedings. Upon return to the trial level, we recommend that the parties further develop the record on this issue. An updated job analysis may be obtained and any other necessary discovery to address this dispute again.

Furthermore, as noted above, the employee's occupation is one of the necessary components to rate permanent disability. Since determination of the occupational group number requires further development of the record, applicant's level of permanent disability for all body parts must be deferred. Accordingly, we will rescind and substitute the F&A.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued by the WCJ on April 13, 2021 is **RESCINDED** and the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Theris Coats, born [] while employed on January 18, 2019 as a relief property manager in San Pablo, California by Public Storage whose workers' compensation adjusting agency was Sedgwick CMS, sustained injury arising out of and occurring in the course of employment to his left shoulder, lumbar spine, and left knee.
2. Applicant did not sustain injury AOE/COE to the right shoulder, right knee, or bilateral feet, per the opinions of the panel QME, Joseph Matan.
3. Applicant's earnings at the time of injury were \$272.35 per week producing a temporary disability rate of \$181.57 per week.
4. Applicant will require further medical treatment to cure or relieve from the effects of this injury.
5. The issue of applicant's occupational group number is deferred.

6. The issues of attorney fees and permanent disability for all body parts are deferred pending determination of the occupational group number.

AWARD

AWARD IS MADE in favor of THERIS COATS against PUBLIC STORAGE of:

Future medical treatment reasonably required to cure or relieve from the effects of the injury herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 21, 2024

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

**THERIS COATS
BOXER & GERSON
LAUGHLIN, FALBO, LEVY & MORESI**

RL/cs

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

CS