WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

TOM GADDY, *Applicant*

vs.

PATTON STATE HOSPITAL. legally uninsured,
Adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ1663481 (SBR 0312434); ADJ12367250
San Bernardino District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted applicant's Petition for Reconsideration of the Joint Findings and Order (F&O) issued on June 12, 2020, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues.[1] This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that applicant did not sustain injury occurred arising out of and occurring in the course of employment (AOE/COE) to his back, lumbar spine, and lower extremities as a result of a specific injury on May 6, 2002. The WCJ further found that applicant's subsequent claim of cumulative trauma injury to the same body parts was barred by the statute of limitations. The WCJ found no basis to toll the statute of limitations for the cumulative trauma claim.

Applicant contends, in pertinent part, that the WCJ erred because the evidence supported finding a specific injury. Applicant further contends that the WCJ erred in barring the cumulative injury claim based upon the statute of limitations because the evidence did not establish charging applicant with knowledge of the cumulative injury claim. Finally, applicant argues that any statute of limitations was tolled as defendant failed to provide proper notice of applicant's right to file a claim.

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[1] Commissioners Sweeney and Dodd were on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board and Commissioner Dodd is currently unavailable to participate in this decision. New panel members have been appointed in their place.

We have received an answer from defendant. 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 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 June 12, 2020 F&O and substitute a new finding that applicant's amended application alleging cumulative injury is not barred by the statute of limitations as it relates back to the original injury alleged.

FACTS

Applicant initially claimed to have sustained a specific industrial injury on May 6, 2002, to his back, lumbar region, and lower extremities. (Minutes of Hearing and Summary of Evidence, February 20, 2020, p. 2, lines 12-14.) The specific injury claim was filed on October 23, 2002, and denied by defendant.

The parties proceeded to an agreed medical evaluator (AME), who took the following history of injury:

> The patient, a 50-year-old, right-handed black male, states that on May 6, 2002, while working for Department of Mental Health/Patton State Hospital as a Registered Nurse, he was turning to respond to an emergency alarm and his lower back clicked and locked. To avoid falling Mr. Gaddy held onto a picture frame on the wall and injured his right thumb as well. This happened at approximately 1:00 p.m. and his shift ended at 2:00 p.m. Immediately after work, he went to his private physician at Kaiser, Tony Lee, M.D. Medication was prescribed.

(Joint Exhibit Z-3, Report of AME Richard Woods, M.D., January 4, 2006, p. 2.)

Dr. Woods took a history of applicant working as a psych unit nurse since 1984. (*Id*. at pp. 18-19.) He noted that applicant had a long history of problems in the knee and back. (*Ibid*.) Dr. Woods took a history of applicant undergoing lumbar fusion surgery with resulting radiculitis of the lower extremities. (*Id*. at p. 16.) Dr. Woods stated that applicant's reported mechanism of specific injury "does not appear to be a significant mechanism of injury to significantly aggravate the underlying degenerative changes." (*Id*. at p. 18.) Dr. Woods did not address cumulative injury specifically, but instead stated: "I note that there has been no cumulative trauma filed and, therefore, it is unclear whether that should be considered as well." (*Id*. at p. 19.)

Dr. Woods opined on apportionment of applicant's permanent disability as follows:

> I believe I can state within reasonable medical certainty even absent his employment and injurious exposure as well as possibly a specific injury on or about May 2002, the patient would present by this date with 75% of his overall disability due to his underlying degenerative disc disease.
>
> The remaining 25% is reasonably due to industrial injury and exposure. If the Trier of Fact does not find injury on or about May 5, 2002 or May 6, 2002, then it is possible he may have had a cumulative trauma, though it is unclear whether that has been considered and filed. Therefore, I do reserve the right to amend my opinions should further evidence come to light.

(*Id*. at p. 20.)

The parties initially deposed Dr. Woods on April 2, 2007. (Joint Exhibit Z-6, Deposition of AME Richard Woods, M.D., April 2, 2007.) Dr. Woods clarified his opinion that he would find that applicant sustained a cumulative injury if the trier of fact found that applicant did not sustain a specific injury on May 6, 2002. (*Id*. at p. 10, lines 5-19.)

Dr. Woods reevaluated applicant in 2015. (Joint Exhibit Z-2, Report of AME Richard Woods, M.D., May 20, 2015, p. 2.) He noted applicant's history of applicant undergoing additional lumbar surgery and subsequent development of radiculopathy. (*Id*. at pp. 12-13.) Dr. Woods did not change his opinions on causation or apportionment. (*Id*. at pp. 14-15.)

The parties deposed Dr. Woods again on November 17, 2015, but Dr. Woods did not change his opinions. (See generally, Joint Exhibit Z-5, Deposition of AME Richard Woods, M.D., April 2, 2007)

On April 11, 2016, applicant filed an amended application, which amended the mechanism of injury from specific to cumulative trauma. The matter was submitted for decision in 2019 on the issue of injury to the amended cumulative injury, however, the WCJ vacated that submission. In the opinion on decision, the WCJ instructed the parties to clean up the pleadings. (Opinion on Decision, June 24, 2019.) Thereafter, applicant amended the cumulative injury back to a specific injury and filed a separate application alleging injury via cumulative trauma.

Dr. Woods reviewed updated records following applicant's inclusion of a cumulative injury claim and modified his opinion on causation, initially opining as follows:

> Now in view of the formal filing of the cumulative trauma, I can state within reasonable medical probability that 25% of his overall disability is due to underlying degenerative disc disease and non-industrial factors, with 25% being

> apportioned to his specific industrial injury, and 50% to a cumulative trauma while working at Patton State Hospital for 20 years.

(Joint Exhibit Z-1, Report of AME Richard Woods, M.D., January 24, 2017, p. 2.)

However, in further deposition, Dr. Woods clarified that applicant's specific injury was not a separate injury, but simply part of the overall cumulative injury, which extended to applicant's last date of employment in September 2004. (Joint Exhibit Z-4, Deposition of AME Richard Woods, M.D., January 4, 2006, p. 17, line 4, through p. 18, line 17.) Applicant did not sustain two broken periods of cumulative trauma. (*Ibid*.)

DISCUSSION

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

The parties presumably choose an AME because of the AME's expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd*. (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) The Appeals Board will follow the opinions of the AME unless good cause exists to find the opinion unpersuasive. (*Ibid*.) Based upon our review of the record, the AME's opinion is persuasive. A single period of cumulative injury exists through applicant's last date of employment. The alleged specific injury in 2002 was but one microtrauma that was subsumed within the single period of cumulative injury. The sole question to answer is whether applicant timely filed or amended his application to plead cumulative injury.

The facts of this case are like the published Court of Appeal decision in *Bassett-Mcgregor v. Workers' Comp. Appeals Bd*., 205 Cal. App. 3d 1102. In *Bassett-Mcgregor*, applicant felt extremely hot at work and suffered a heart attack. She lost consciousness and awoke one week later in intensive care. Applicant filed her claim as a specific injury. Beyond one year from the date of injury, applicant attempted to amend her specific injury claim to cumulative based upon

her QME's reporting. The Appeals Board found the amended application time barred; the Court of Appeals reversed and found that the amended application related back to the original filing.

As explained by the Court of Appeals:

> . . .The purpose of any limitations statute is to require diligent prosecution of known claims thereby providing necessary finality and predictability in legal affairs, and ensuring that claims will be resolved while the evidence bearing on the issues is reasonably available and fresh. (Citations.)

(*Id*. at 1116 (internal citations and quotations omitted).)

> As a general principle of pleading, an amended complaint or other pleading serving a similar purpose supersedes the original. (Citation.) Although the amended pleading supersedes the original as a subsisting pleading, it does not wholly nullify the fact of filing the original (Citation.) The time of filing the original is still the date of commencement of the action for purposes of the statute of limitations (except where a wholly different case is pleaded by the amendment).

(*Ibid*.)

The Court of Appeals noted that their holding was limited:

> Applicant's amended application seeking benefits on the theory of a cumulative injury to her heart does not allege a new and different cause of action. (Citations.) Our holding that an amendment substituting a claim for cumulative rather than specific injury does not constitute a new and different cause of action is limited to circumstances such as these in which the disability is the same and the injury arose from the same set of facts, and is consistent with the guiding principle that claims should be adjudicated on substance rather than formality of statement.

(*Ibid*.)

This case presents substantially similar facts. Applicant pled a specific injury. The AME later opined, at first ambiguously, that applicant's claim may be more cumulative in nature. Applicant later amended the specific claim to be cumulative, after which the AME gave a clear opinion on causation via cumulative injury. Under the facts presented here, applicant's amended application was appropriate. The amendment from specific to cumulative alleges the same disability arising from the same set of facts. The AME opined that the specific event was in fact a part of the overall cumulative injury. Accordingly, we find that applicant's amended application filed on April 11, 2016, was both appropriate and timely as it related back to the initial filing.

Additionally, it is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers' Comp. Appeals Bd.*, (1992) 4 Cal. App. 4th 1196, 1205 [57 Cal.Comp.Cases 149]; see also *Shamblin v. Brattain* (1988) 44 Cal. 3d 474, 478 [243 Cal. Rptr. 902], "when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.") This is particularly true in workers' compensation cases, where there is a constitutional mandate "to accomplish substantial justice in all cases." (Cal. Const., art. XIV, § 4.)

Therefore, in workers' compensation proceedings, it is settled law that:

(1) *pleadings may be informal* (*Zurich Ins. Co., supra,* 9 Cal. 3d at p. 852; *Bland, supra,* 3 Cal. 3d at pp. 328–334; *Martino, supra,* 103 Cal. App. 4th at p. 491; *Rivera v. Workers' Comp. Appeals Bd.* (1987) 190 Cal. App. 3d 1452, 1456 [52 Cal. Comp. Cases 141]; *Liberty Mutual Ins. Co v. Workers' Comp. Appeals Bd.* (*Aprahamian*) (1980) 109 Cal. App. 3d 148, 152–153 [45 Cal. Comp. Cases 866]; *Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal. App. 3d 590, 594–595 [40 Cal. Comp. Cases 784]; *Beaida v. Workmen's Comp. Appeals Bd.* (1968) 263 Cal. App. 2d 204, 207– 210 [33 Cal. Comp. Cases 345]);

(2) *claims should be adjudicated based on substance rather than form* (*Bland, supra,* 3 Cal. 3d at pp. 328–334; *Martino, supra,* 103 Cal. App. 4th at p. 491; *Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal. App. 3d 1102, 1116 [53 Cal. Comp. Cases 502]; *Rivera, supra,* 190 Cal. App. 3d at p. 1456; *Beveridge v. Industrial Acc. Com.* (1959) 175 Cal. App. 2d 592, 598 [24 Cal. Comp. Cases 274]);

(3) *pleading should liberally construed so as not to defeat or undermine an injured employee's right to make a claim* (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal. App. 4th at pp. 925–926 [72 Cal. Comp. Cases 778]); *Martino, supra,* 103 Cal. App. 4th at p., 490; *Rubio, supra,* 165 Cal. App. 3d at pp. 199–201; *Aprahamian, supra,* 109 Cal. App. 3d at pp.152–153; *Blanchard, supra,* 53 Cal. App. 3d at pp. 594–595; *Beaida, supra,* 263 Cal. App. 2d at pp. 208–209); and

(4) *technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction* (*Bland, supra,* 3 Cal. 3d at pp. 331–332 & see fn. 13; *Rivera, supra,* 190 Cal. App. 3d at p. 1456; *Aprahamian, supra,* 109 Cal. App. 3d at pp. 152–153; *Blanchard, supra,* 53 Cal. App. 3d at pp. 594–595; *Beaida, supra,* 263 Cal. App. 2d at pp. 208–210).

Reflecting these principles, current WCAB Rule 10617 (former Rule 10397) provides:

> (a) An Application for Adjudication of Claim, a petition for reconsideration, a petition to reopen or any other petition or other document that is subject to a statute of limitations or a jurisdictional time limitation shall not be rejected for filing solely on the basis that:
>
> > (1) The document is not filed in the proper office of the Workers' Compensation Appeals Board;
> >
> > (2) The document has been submitted without the proper form, or it has been submitted with a form that is either incomplete or contains inaccurate information; or
> >
> > (3) The document has not been submitted with the required document cover sheet and/or document separator sheet(s), or it has been submitted with a document cover sheet and/or document separator sheet(s) not containing all of the required information.

(Cal. Code Regs., tit. 8, former § 10397, now § 10617 (eff. Jan. 1, 2020).)

The rule thus provides for considerable latitude in accepting nonstandard pleadings, so long as the pleadings contain "a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file." (Cal. Code Regs., tit. 8, former § 10397, now §10617(b).) Similarly, WCAB Rule 10517 specifies that pleadings are deemed amended to conform to the stipulations agreed to by the parties on the record or may be amended by the Appeals Board to conform to proof. (Cal. Code Regs., tit. 8, former § 10492, now §10517.) These rules represent the application of California's public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings.

These principles of liberal pleading are further reflected in section 5506, which authorizes the Appeals Board to relieve a defendant from default or dismissal due to mistake, inadvertence, surprise, or excusable neglect in accordance with Code of Civil Procedure section 473. The Court of Appeal has made it clear that the protections afforded under Code of Civil Procedure section 473(b) are applicable in workers' compensation proceedings. (*Fox, supra,* 4 Cal. App. 4th 1196.)

With these principles in mind, we are persuaded that the interests of substantial justice are better served by adjudication on the merits, rather than dismissal by administrative fiat for technical noncompliance in pleadings. Additionally, defendant offers no persuasive argument for prejudice, and we discern none in the record.

Having found that applicant's amended application timely relates back to his original filing, we need not decide whether the statute of limitations was tolled as that issue is moot.

Accordingly, as our Decision After Reconsideration we rescind the June 12, 2020 F&O and substitute a Findings of Fact to find that applicant sustained injury AOE/COE in the form of cumulative trauma and that applicant is permitted to amend his specific injury claim to cumulative trauma. This amendment is not barred by the statute of limitations. Administratively, we will issue an order dismissing the subsequent application filed in ADJ12367250 as duplicative.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Order issued on June 12, 2020, is **RESCINDED** with the following Findings of Fact and Order substituted therefor:

FINDINGS OF FACT

1. In ADJ1663481, Tom (aka Tommie) Gaddy , who was 48 years old on the date of injury, while employed during the cumulative period ending on or around September 1, 2004, as a registered nurse in Patton, California , by Patton State Hospital, sustained injury arising out of and in the course of employment to his back, lumbar region, and lower extremities.

2. The application for adjudication is deemed amended to conform with the facts of this case.

3. Finding of Fact 1 represents the approximate last date of employment as provided in the present record and may be amended according to the fact. The exact date of applicant's last day of employment is deferred to the parties to adjust with jurisdiction reserved in the event of a dispute.

4. Applicant's amendment of his specific injury application to a cumulative injury application was timely filed as it arose from the same set of facts as the specific injury filing and thus, it related back to the original filing.

5. Applicant's subsequent application for adjudication filed in ADJ12367250 is duplicative and should be dismissed without prejudice.

6. Having found applicant's amended application timely, the issue of tolling due to defendant's failure to provide a *Reynolds* notice is moot.

7. All other issues are deferred to the parties to adjust with jurisdiction reserved in the event of a dispute.

ORDER

IT IS ORDERED that ADJ12367250 is **DISMISSED WITHOUT PREJUDICE** as it is a duplicative filing.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 6, 2024

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

TOM GADDY
KAMPF, SCHIAVONE & ASSOCIATES
STATE COMPENSATION INSURANCE FUND

EDL/oo

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