WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

BILLY JOHN JONES, JR., ***Applicant***

vs.

DRC INTERIORS, allegedly uninsured; SUITSUPPLY, CHUBB; BUILDING CORPORATION (STEP CONSTRUCTION SERVICES), VALLEY FORGE INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ10959526
Marina del Rey District Office

OPINION AND DECISION AFTER RECONSIDERATION

We granted reconsideration[1] in order to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant, in pro per, seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on August 30, 2021. The WCJ found, in relevant part, that applicant did not sustain injury arising out of and occurring during the course of employment (AOE/COE) to his foot and toes. The WCJ ordered that applicant take nothing.

Applicant contends that the WCJ erred in finding that he did not sustain injury AOE/COE to his foot and toes.

We have not received an Answer from any of the defendants.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), which recommended that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration (Petition) and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will rescind the F&O, and return this matter to the WCJ for further proceedings consistent with this opinion.

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[1] Commissioner Lowe, who was on the panel that issued the order granting reconsideration, no longer serves on the Appeals Board. Another panelist has been appointed in their place.

FACTS

The WCJ provided the following discussion in the Report:

Billy Jones, born [], while allegedly employed on May 27, 2017 as a construction worker/ superintendent at Newport Beach, California, by DRC Interiors, Suitsupply or Hunter Building Corporation (Step Construction Services) claims to have sustained injury arising out of and in the course of employment to the foot and toes. (Minutes of Hearing and Summary of Evidence, January 15, 2020, Page 2, lines 4-6.)

The only issue pertinent to this Petition for Reconsideration is injury arising out of and during the course of employment as the issue of employment was not raised within the Petition for Reconsideration. (Minutes of Hearing and Summary of Evidence, January 15, 2020, Page 2, lines 12-14.)

Applicant testified he began working at Suitsupply in Fashion Island on May 19, 2017, so he could let people in and out of the premises. The mall guards would open up and allow him to go in and out of the Suitsupply location. He would lock up by just turning the knob on the door when he would leave. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 3, lines 15-17.)

The [b]uilding permit for Suitsupply was granted on May 18, 2017, and he began work on May 19. The first things they did were to take the slats and heavy glass off the displays and the walls and stack them on the floor. He arrived on May 19 at approximately 8:30 p.m.; however, the workers arrived to work between 9:00 p.m. and 5:00 a.m. the next morning. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 3, lines 18-22.) (Page 10, lines 3-4)

He began dismantling slats on May 20. This job was called demolition. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 3, line 23 – Page 4, line 1.)

He was meeting the vendors [at] between 3:00 and 3:30 before they started the demolition on May 19. That vendor did not do the job as he was charging too much to perform the demolition. Mr. Rice told the applicant that it was too expensive for the vendor to perform the work, so Mr. Rice was going to do the job. This meant applicant would be doing the demolition. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 4, lines 4-7.)

While working at Suitsupply, he sustained an injury on May 27, 2017. Applicant's routine when he arrives at home is to take a shower. He would routinely check his feet when he would take his shoes and socks off due to his having diabetes. On May 27, 2017, when he took his socks off, he noticed that they were bloody. He then looked at his shoe and saw that a screw had worked its way through, and the screw pricked his foot and his toes. He took it out and examined the screw. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 5, lines 1-7.)

He sought medical attention by Dr. O'Reilly's office for his big toe. He did not state anything as it was only a prick. He went to Dr. O'Reilly on June 2, for the prick. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 5, lines 8-9.)

He had a medical condition- diabetes, prior to the date of injury. On June 2, he did tell Dr. O'Reilly just after examination that he had pricked his foot and asked if there was any recourse. This was the right foot between the second and fourth toe on the foot itself. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 5, lines 10-12.)

On June 2 and June 9[,] his foot between the fourth and fifth toes, his foot looked normal. It was not until the 14th that he noticed his foot looking differently. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 5, lines 15-17.)

After looking at the photos (Exhibit "Y"), the applicant testified that a friend came onto the job on the 24th of May, and his grandson came to work on the 25th. Applicant took photos every night of the demolition. He does not recall if the photo that was shown was taken on day 1 or day 2. However, he does remember the job started on May 19. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 7, lines 10-13.)

The Judge was referred to Exhibit "W", page 23, which is an April 27, 2017 report from Dr. O'Reilly with assessment of: "full thickness ulcer on the right great toe closed and diabetic foot exam." (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 7, line 25.)

The Judge was referred to Exhibit "W", page 24, which was a June 2, 2017 follow-up exam for the right big toe. Applicant testified the doctor looked at his foot and all of his toes. The applicant pointed out that he had stepped on a screw and asked if anything needed to be done on the foot.

He asked this just prior to leaving the exam. He had a prick between the fourth and fifth toe area. He can't say with accuracy exactly where the prick was, only that it was on his foot in that area. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 8, lines 3-8.)

He remembers reporting the prick to his foot to Dr. O'Reilly on June 2, 2017. The doctor examined all of his toes on June 2, 2017. Applicant told the doctor he had stepped on the screw approximately five days prior to the evaluation. The doctor told him his foot was going to be alright during the June 9th evaluation. (Minutes of Hearing and Summary of Evidence, April 7, 2021, Page 4, lines 5-7.)

Although the June 2, 2017 and June 9, 2017 reports do not mention the screw incident, [a]pplicant remembers telling the doctor. After the [*sic*] June 9th, he did

not mention the screw incident to the doctor. Although the reports indicate no evidence of injury, the [A]pplicant recalls telling the doctor. (Minutes of Hearing and Summary of Evidence, April 7, 2021, Page 4, lines 8-10.)

Exhibit "W", page 24, which is a June 2, 2017 report from Dr. O'Reilly with assessment of: "full thickness ulcer on the right great toe closed and diabetic foot exam." "Shoes were checked for foreign body and condition of innersoles." *(There is no mention of a prick of the 4th and 5th toes within this comprehensive report.)* (Exhibit "W" Medical Report of Kevin D. O'Reilly DPM dated June 2, 2017, Pages 24-27.)

The subpoenaed records from San Antonio Regional Hospital indicate a June 14, 2017 admission. *"Historian:* History provided by patient, 58 YOM with wife at bedside presents to the ED c/o right diabetic foot ulcer that the pt. sts may have begun yesterday. Pt explains that his right leg and foot began swelling x1 week ago. So he began wearing a compression sock. Pt sts that he has a hx of neuropathy. Pt also notes that he noticed his BP has been elevated recently, and that has been taking meds for it. *Mechanism of injury:* diabetic. *Time Course:* Sudden onset of symptoms, Date and time of onset was yesterday, Symptoms are worsening, are constant." *(WCJ note, there is no mention of a screw prick injury.)* (Exhibit "Z", Subpoenaed records from San Antonio Regional Hospital, January 15, 2020, Page 14.)

Notes [by]Dr. M. Potts [state]: "Pt states he stepped on a screw 1.5 weeks ago which pierced through sole of pt.'s shoe and sock, into pt.'s skin. Pt removed the screw and does not believe there is any FB presence. Swelling to RT foot began s/p injury." *(WCJ notes DOI May 27th is 2 ½ weeks before the evaluation.)* (Exhibit "Z", Subpoenaed records from San Antonio Regional Hospital, January 15, 2020, Page 15.)

Nursing notes [state]: "Pt presents with a CC of diabetic foot ulcer to Right foot. Pain 0/10 due to neuropathy. Pt. States he noticed the wound this morning. Pt little toe is wound to bottom lateral portion. 2nd, wound to R great toe which is being treated by podiatrist. *(WCJ note, there is no mention of a screw prick injury.)* (Exhibit "Z", Subpoenaed records from San Antonio Regional Hospital, January 15, 2020, Page 18.)

Consultation note on June 16, 2017 indicates: "*History of Present Illness:* The patient states that he stepped on screws approximately 2½ weeks ago, was seen by his podiatrist, Dr. Reilly for wound care management. Since then, he has noticed his foot swelling and redness. He has previous history of a BKA on the left lower extremity." (Exhibit "Z", Subpoenaed records from San Antonio Regional Hospital, January 15, 2020, Page 9.)

Applicant testified he cleaned the area and did not see exactly where the prick was. He did put a Band-Aid on the location and taped the Band-Aid on his foot for four

to five nights. He did not have the bandage on his foot during the June 2 evaluation. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 8, lines 9-10.)

Applicant told the entire crew to be careful when stepping on "stuff" and to be mindful throughout the night on May 28. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 9, lines 4-5.)

He recalls injuring his foot on May 27 because Johnny Miles's grandson came to work on the 24th and worked through the 28th. He remembers telling the grandson on the 28th that he had hurt his foot and be careful. May 29th was the grandson's birthday, and he did not come back to work. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 9, lines 17-20.) (MOH April 7, 2021, Page 2, lines 12-23.)

When he met Peter Ferri, he believed his job was only going to be a supervisor. He assumed the first company was to do the demolition after the permit was obtained. (Minutes of Hearing and Summary of Evidence, March 3, 2021, Page 9, lines 21-23.)

Peter Ferri testified he is CEO/ President of Step Construction Services, dba Hunter Construction and was awarded the contract at Suitsupply in April 2017. He first contacted Mr. Rice in April of 2017. At that time Mr. Rice was only to be in a supervisorial position. (Minutes of Hearing and Summary of Evidence, April 7, 2021, Page 5, lines 13-18.)

Mr. Ferri testified, Aycon Construction, Inc., was to start on May 23rd doing demolition. Aycon backed out of the demo and Mr. Ferri had to look at other subs to perform demolition. He could not find anyone to do the work on a timely basis. On May 27th he talked with Mr. Rice about performing the demolition. On May 28th they verbally agreed to do the job and he sent a contract on May 29th. (Minutes of Hearing and Summary of Evidence, April 7, 2021, Page 5, lines 21-24.) (MOH April 7, 2021, Page 7, lines 15-24)

Mr. Ferri testified, when he received the keys on May 27th the store was in a broom-swept condition. No screws were on the floor. He knows Mr. Jones did not go into the space prior to the 27th. (Minutes of Hearing and Summary of Evidence, April 7, 2021, Page 6, lines 3-5.)

(WCJ's Report, pp. 2-5.)

DISCUSSION

An employee bears the burden of proving injury arising out of and in the course of employment by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a) & 3202.5.) The Supreme Court of California has long held that an employee need only

show that the "proof of industrial causation is reasonably probable, although not certain or 'convincing.'" (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].)

Our system is based on medical evidence. (*Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838-839 [30 Cal.Comp.Cases 188]; (*City & County of San Francisco v. Industrial Acc. Com.* (*Murdock*) (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103]; *Bstandig v. Workers' Comp. Appeals Bd.* (1977) 68 Cal.App.3d 988 [42 Cal.Comp.Cases 114].) Medical evidence is required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

As explained in *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (Lab. Code, §§ 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].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." *(Hamilton*, *supra*, at

pp. 473, 475.) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Id.* at p. 475.) 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." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

It is also well established that the Appeals Board has the discretionary authority to develop the record when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 9 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].)

We generally accord great weight to a WCJ's findings on the credibility of witnesses as the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500].) When a WCJ's findings are supported by solid, credible evidence, they are to be accorded great weight by the Board and rejected only on the basis of contrary evidence of considerable substantiality. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza*, *supra*, at p. 318.) It has long been recognized, however, that evidence from a lay witness on an issue requiring expert opinion is not substantial evidence, and medical proof is required when issues of diagnosis, prognosis, and treatment are beyond the bounds of ordinary knowledge. (*City & County of San Francisco v. Industrial Acc. Com.* (*Murdock*) (1953) 117 Cal.App.2d 455, 459 [18 Cal.Comp.Cases 103].) The Appeals Board is empowered on reconsideration to resolve conflicts in the evidence, to make its own credibility determinations, and to reject the findings of the WCJ and enter its own findings on the basis of its review of the record. (*Rubalcava v. Workers' Comp. Appeals Bd.* (1990) 220 Cal.App.3d 901, 908.))

Here, the WCJ's finding that applicant failed to meet his burden of proof that he sustained injury on May 27, 2017 AOE/COE is not supported by any medical evidence. Although we acknowledge the WCJ's reservations regarding applicant's lack of credibility, the WCJ's determination is not dispositive. There is no medical evidence in the record with respect to whether the applicant sustained an industrial injury on May 27, 2017. Applicant was never evaluated by a medical-legal evaluator nor a treating physician regarding the alleged injury. The only medical

records in the record are the subpoenaed records from Kevin O'Reilly, DPM and San Antonio Regional Hospital, which do not address causation of the alleged injury on May 27, 2017. An alleged injury to the foot and toes for a diabetic individual cannot be resolved by lay opinion but instead requires a substantial medical opinion on causation.

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) medical evidence on an issue. The WCAB 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].) In accordance with that mandate, we will rescind the WCJ's decision and return this matter to the trial level for further proceedings consistent with this decision.

Upon return, we recommend that the parties further develop the medical record by obtaining a medical opinion from a Panel Qualified Medical Evaluator (PQME) addressing causation. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the August 30, 2021 Findings and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 2, 2025

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

BILLY JOHN JONES, JR.
LAW OFFICE OF ANDERSON AND CHANG
LEWIS, BRISBOIS, BISGAARD & SMITH LLP
OFFICE OF THE DIRECTOR-LEGAL UNIT (LOS ANGELES)

JL/abs

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