WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DAVID CASTILLO, *Applicant*

vs.

DESERT SANDS UNIFIED SCHOOL DISTRICT, permissibly self-insured, administered by Keenan & Associates; CIGA, by its servicing facility INTERCARE HOLDINGS INSURANCE SERVICES, for FREMONT INDEMNITY COMPANY, in liquidation; ESIS for PACIFIC EMPLOYERS INSURANCE COMPANY, *Defendants*

Adjudication Numbers: ADJ1022470 (RIV 0078928); ADJ1087337 (RIV 0040149); ADJ1910759 (LAO 0775591); ADJ2307027 (LAO 0775595); ADJ4230890 (RIV 0023055); ADJ821924 (LAO 0775593); ADJ3880940 (LAO 0775596); ADJ1593870 (LAO 0775597); ADJ1063869 (LAO 0775592); ADJ1337375 (LAO 0775594)

Riverside District Office

OPINION AND DECISION AFTER RECONSIDERATION

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

Defendant California Insurance Guarantee Association (CIGA) seeks reconsideration of two Findings and Award (F&As) issued on April 18, 2022, by the workers' compensation administrative law judge (WCJ) in case numbers ADJ3880940 (LAO 0775596) and ADJ4230890 (RIV 0023055). As relevant here, the WCJ found in pertinent part, in case number ADJ3880940, that applicant sustained industrial injury to his right knee, right shoulder, left shoulder, and lumbar spine, but not to his psyche, sleep disorder, internal, pulmonary, and sexual dysfunction, resulting in 6% permanent disability with the need for further medical treatment. In addition, the WCJ found in pertinent part, in case number ADJ4230890, that applicant sustained industrial injury to his right knee, resulting in 40% permanent disability with the need for further medical treatment. Finally, the WCJ found in pertinent part, in case number ADJ1022470, that applicant sustained

[1] Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been appointed in her place.

industrial injury to his right shoulder, left shoulder, lumbar spine, left and right knees, and pulmonary system, but not to his psyche, resulting in 16% permanent disability with the need for further medical treatment.

CIGA contends that the WCJ erred in ordering it to administer further medical treatment in case numbers ADJ3880940 and ADJ4230890 given that defendant, Desert Sands Unified School District, permissibly self-insured, administered by Keenan & Associates (Desert), is "other insurance" pursuant to Insurance Code section 1063.1(c)(9) and should be ordered to administer medical treatment. In addition, CIGA contends that, in case number ADJ4230890, there is no evidence that applicant filed a petition to reopen for new and further disability pursuant to Labor Code section 5410[2] and that the medical record otherwise does not support an augmented finding of permanent disability.

We have not received an answer from any party. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we grant reconsideration to find CIGA is not liable for further medical treatment but deny as to the new and further findings in case numbers ADJ4230890.

We have considered the allegations of the Petition for Reconsideration and 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 decisions in case numbers ADJ3880940 and ADJ4230890 and substitute new decisions to reflect that Desert, and not CIGA, shall be liable and administer further medical treatment. We will also, in case number ADJ4230890, defer the issue of new and further permanent disability.

FACTS

Applicant, while employed as a pool maintenance technician, claimed multiple injuries.

CIGA provides coverage for the following claimed injuries:

July 10, 1996 (ADJ1337375): Applicant claimed injury to his right knee and psyche;

1997 to the present (ADJ1593870): Applicant claimed injury in the form of headaches and to his eyes, neck, upper back and psyche;

1997 (ADJ1063869): Applicant sustained injury to both arms and hands and claimed injury to his psyche;

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

March 5, 1998 (ADJ1910759): Applicant sustained injury to both arms and hands and claimed injury to his psyche, right knee, left foot, and left big toe;

March 22, 1998 to March 1999 (ADJ3880940): Applicant claimed injury to his neck, shoulders, wrists, low back, right knee, psyche, sleep, internal, pulmonary, and sexual dysfunction;

1985 to 2000 (ADJ2307027): Applicant claimed injury to his neck, bilateral upper extremities, back, shoulders, psyche, eyes, internal, sexual dysfunction, and sleep;

April 2, 2000 (ADJ821924): Applicant claimed injury to his eyes, nose, pulmonary, psyche, and sexual dysfunction;

January 12, 1998 (ADJ4230890): Applicant claimed injury to his right knee.

Defendant was self-insured for the following claimed injury:

1970 to October 28, 2005 (ADJ1022470): Applicant claimed injury to his eye, nose, lungs, gastrointestinal system, both knees, back, neck, thoracic spine, cervical spine, both shoulders and in the form of a sleep disorder.

Defendant was insured by Pacific Employers Insurance Company, adjusted by ESIS for the following claimed injury:

February 26, 2001 (ADJ1087337): Applicant sustained injury to his groin, and claimed to have sustained injury to his leg and nervous system.

On March 3, 2021, the parties proceeded to trial. According to the Minutes of Hearing, in ADJ3880940, they raised the issues of:

1. Injury arising out of and in the course of employment.
2. Permanent and stationary date.
3. Permanent disability.
4. Apportionment.
5. Need for further medical treatment.
6. Attorney fees.
7. Whether disability is determined by new schedule versus old schedule.

In ADJ4230890, they raised the issues of:

1. Injury arising out of and in the course of employment.
2. Permanent and stationary date.
3. Permanent disability.
4. Apportionment.
5. Need for further medical treatment.
6. Attorney fees.

7. Whether disability is determined by new schedule versus old schedule.

(Minutes of Hearing (MOH), March 3, 2021.)

On March 11, 2021, by way of a letter, CIGA requested the following amendments to the MOH of March 3, 2021:

> 2. The following additional issue should be noted for each case: "Not a covered claim per Insurance Code §1063.1 et seq., due to "other insurance," within the meaning of Insurance Code §1063.1(c)(9)."
>
> 3. The following additional issue should be noted for each case: "The issue of reimbursement to CIGA is deferred."

On May 18, 2021, they returned to trial. The amendment to the MOH of March 3, 2021 to correct CIGA's name was noted. There were no other changes to the stipulations and issues.

On September 27, 2021, they returned to trial. The parties stipulated that with respect to the January 12, 1998 injury, the case resolved by way stipulations with request for award (Stipulations) for 13% permanent disability on December 2, 1998. (MOH, September 27, 2021.)

On February 8, 2022, they returned to trial. Applicant submitted additional exhibits and applicant testified. The matter was submitted.

On March 3, 2022, the WCJ vacated submission for further development of the record.

Pursuant to the independent medical examination (IME) report of David Wood, M.D., dated December 19, 2018, applicant began working for Desert in 1970 and began to experience pain in his arms and shoulders beginning 1998 due to repetitively carrying a pool pump, water pump and other equipment all weighing 50 pounds each. (Def. Ex. J) He carried jugs and bags full of chemicals, moved a barrel weighing 400 pounds with a hand dolly. (*Id.* at p. 3.) He also began in 1970 to experience pain in his nose and eyes from repetitively breathing in chlorine and other chemicals. (*Id.* at p. 3.) He retired in 2005 due to pain. (*Id.* at p. 4.)

Dr. Wood noted that on January 12, 1998 (ADJ4230890), applicant struck his right knee on a water heater sustaining an injury resulting in a partial medial meniscectomy in 1998. He returned to regular duty after reaching maximum medical improvement. (*Id.* at p. 23.)

He also noted that applicant also claimed to have cumulative trauma during the period from March 22, 1998 to March 1999 (ADJ3880940), related to job related activities such as constant lifting, pushing and pulling, bending, reaching, squatting, kneeling, gripping, grasping and other

aggravating activities. He underwent bilateral carpal tunnel releases and arthroscopic subacromial decompression of the right shoulder. (*Id.* at p. 23.)

He further noted that applicant claimed to have an additional cumulative injury during the period from 1970 to October 28, 2005 (ADJ1022470), where he claimed to have suffered a worsening of his neck, lumbar spine, shoulders and knees due to cumulative injury. Dr. Wood attributed applicant's neck injury to pushing, pulling and reaching with a vacuum while working for Desert.

With respect to the apportionment of permanent disability, Dr. Woods attributed 55% of the cervical spine injury to the 1970 to October 28, 2005 date of injury; 55% of the right shoulder to the March 22, 1998 to March 1999 date of injury and 20% to the 1970 to October 28, 2005 date of injury; 20% of the left shoulder to the March 22, 1998 to March 1999 date of injury and 55% to the 1970 to October 28, 2005 date of injury; 30% of the lumbar spine to the March 22, 1998 to March 1999 date of injury and 10% to the 1970 to October 28, 2005 date of injury; 15% of the right knee to the 1970 to October 28, 2005 date of injury and 60% to the January 12, 1998 date of injury; and 85% of the left knee to the 1970 to October 28, 2005 date of injury. (*Id.* at pp. 30-31.)

In its Petition for Reconsideration, CIGA raises the following issue for the first time:

> The other issue besides "other insurance" is whether applicant sustained new and further disability on the 1/12/98 specific injury (ADJ4230890), which settled by stipulated award in 1998 between applicant and the then-solvent Fremont Indemnity. Applicant filed no petition for new and further disability to reopen this case, or if he did, no physical copy of it exists. Although applicant offered no evidence he filed a petition to reopen, the WCJ awarded applicant new and further disability. The WCJ based this award on the findings of the Independent Medical Examiner Dr. Woods, but Dr. Woods' lone report does not actually state whether the additional disability is new and further disability.

(Petition for Reconsideration, p. 3.)

With respect to the petition to reopen, the WCJ wrote as follows in the Report:

> CIGA contends that applicant did not offer evidence of a Petition to Reopen the prior award. It is contended that the applicant did not meet his burden of proof to establish the existence of new and further disability.
>
> During the trial, the parties were advised that the WCAB did not have copies of filed documents. Due to the transition to EAM and paperless files, the paper files were not retained by the WCAB. It is believed that the documents were destroyed. The WCJ asked for copies of the Applications for Adjudication, the Stipulated Award for 13% in ADJ4230890, and any other relevant documents. The parties

were unable to (or did not) assist the WCJ. In reviewing the notes in ADJ4230890, a Stipulated Award was entered on 12/2/1998 and a Petition to Reopen (without a DOR) was filed on 3/20/20002. It is unknown what the Petition to Reopen consisted of. The applicant attorney did not cooperate in the request to recreate the destroyed files. The applicant attorney was aware of the prior settlement, but did not provide evidence that a timely Petition to Reopen was filed.

* * *

The applicant did not present evidence that supports re-opening the claim for new and further disability. However, in EAMS, there are notes to suggest that a Petition to Reopen was filed. The WCJ acknowledges that the applicant has not met his burden of proof. Taking into consideration Labor Code section 3202 and equitable factors, it was found that there was new and further disability. (Report, 5:25-28 to 6:1-5; 6:9-13)

On April 18, 2022, the WCJ issued three F&As which are the subject of CIGA's Petition for Reconsideration.

DISCUSSION

With respect to CIGA's liability, it is specifically defined in Insurance Code section 1063.1 as extending only to "covered claims." "[C]overed claims" under section 1063.1 "are not coextensive with an insolvent insurer's obligations under its policies" (*Industrial Indemnity Co. v. Workers' Comp. Appeals Bd.* (*Garcia*) (1997) 60 Cal.App.4th 548, 557 [62 Cal.Comp.Cases 1661]) and "does not include an obligation to insurers, insurance pools, or underwriting associations, nor their claims for contribution, indemnity, or subrogation, equitable or otherwise, except as otherwise provided in this chapter." (Ins. Code, § 1063.1(c)(5)(A).)

As a result, if CIGA and a solvent insurer are jointly and severally liable for a benefit, the solvent insurer must pay the benefit and CIGA is relieved of liability. (*CIGA v. Workers' Comp. Appeals Bd.* (*Weitzman*) (2005) 128 Cal.App.4th 307, 318-319 [70 Cal.Comp.Cases 556]; *CIGA v. Workers' Comp. Appeals Bd.* (*Hooten*) (2005) 128 Cal.App.4th 569, 573 [70 Cal.Comp.Cases 551]; *Denny's Inc. v. Workers' Comp. Appeals Bd.* (*Bachman*) (2003) 104 Cal.App.4th 1433, 1439 [68 Cal.Comp.Cases 1]; see *CIGA v. Workers' Comp. Appeals Board* (*Hernandez*) (2007) 153 Cal.App.4th 524, 537 [72 Cal.Comp.Cases 910] ["CIGA is not another workers' compensation insurer; it is a fund with responsibilities that are limited by statute in order to insure that the worker is protected. CIGA does not protect insurers."].)

Here, as noted by the WCJ in his Report, given that Desert shares joint and several liability with CIGA in all three cases, we agree that CIGA is not liable for further medical treatment and amend the decisions accordingly.

With respect to applicant's petition to reopen, pursuant to section 5410, an injured employee who has previously received workers' compensation benefits pursuant to an award is entitled to claim benefits for "new and further disability" within five years of the date of injury. (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, 925 [72 Cal.Comp.Cases 778].)

However, invocation of the Appeal Board's continuing jurisdiction under section 5410 requires the filing of an appropriate pleading with the Board within five years from the date of injury. (Lab. Code, §§ 5410, 5804.) If timely filed within the five-year period, the power of the Board to reopen and decide a matter extends beyond the five-year period. (*Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 324, 329, fn. 3 [35 Cal.Comp.Cases 513].) In construing the pleading and its filing, the Board construes the limitation provisions in the Labor Code liberally in favor of the injured employee unless otherwise compelled by the language of the statute and that interpretation of such enactments should not be in a manner resulting in the loss of compensation. (Lab. Code, § 3202; *Zurich Ins. Co. v. Workers' Comp. Appeals Bd.* (1973) 9 Cal.3d 848, 852 [38 Cal.Comp.Cases 500]; *Fruehauf Corp. v. Workmen's Comp. App. Bd.* (1968) 68 Cal.2d 569, 577 [33 Cal.Comp.Cases 300].)

Here, CIGA never raised the issue of whether a petition to reopen was filed or whether the Appeals Board had jurisdiction to consider the January 12, 1998 injury at the time of trial in 2021. In the March 11, 2021 letter to the WCJ, where CIGA requested that the WCJ amend the MOH of March 3, 2021, they made no request for the WCJ to consider the issue of jurisdiction over permanent disability in the January 12, 1998 injury. CIGA stipulated at the September 27, 2021 trial that applicant had entered into Stipulations on December 2, 1998 to 13%, and they proceeded with submission on the matter, including on the issue of permanent disability, and despite affirmative knowledge of the Stipulations. Moreover, litigation on the case continued beyond the date of the end of the five year period in January 2003, and more than twenty years after the case was resolved. Yet, CIGA raises the issue for the first time on reconsideration. There is no explanation in their Petition as to why the issue was not raised previously, and thus, we conclude that CIGA waived the issue of whether a petition to reopen was filed.

However, a decision "must be based on admitted evidence in the record" (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) 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*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.*, at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

The law has long recognized that where the Board cannot reach a just and reasoned decision on the existing record because the evidence is insufficient, unclear or conflicting, it has the power and even the duty to further develop the record under sections 5701 and 5906. When the record is inadequate to address the issues framed by the parties, "the WCJ has a duty to develop an *adequate* record." (*Kuykendall v Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264], italics added; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1120 [63 Cal.Comp.Cases 261].) The duty arises out of the Board's obligation to adjudicate completely the issues submitted for decision by the parties, consistent with principles of due process. (*Telles Transport v. Workers' Comp. Appeals Bd.* (*Zuniga*) (2001) 92 Cal.App.4th 1159, 1165 [66 Cal.Comp.Cases 1290].)

Finally, a WCJ may take judicial notice of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, § 452(h).)

Here, the parties stipulated that the parties entered into Stipulations in December 1998 that applicant had 13% permanent disability. Yet, in the decision, the WCJ found that applicant sustained 40% permanent disability without stating either way whether this was new and further disability or whether CIGA was entitled to a credit for the 13% benefits paid in 1998. Moreover, the medical evidence is unclear as to whether Dr. Woods took into account applicant's prior level of disability in opining on applicant's current level of disability. Therefore, the WCJ must develop

the record to enable a complete adjudication of the issue consistent with due process. (See *San Bernardino Community Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 934 [64 Cal.Comp.Cases 986]; *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; *McClune*, *supra*, 62 Cal.App.4th at pp. 1121-1122.)

Accordingly, as our Decision After Reconsideration, we rescind the decisions in ADJ3880940 and ADJ4230890, and substitute new decisions that find that CIGA and Desert have joint and several liability and order that Desert is to administer applicant's further medical treatment, and defer the issue of new and further disability in ADJ4230890. We make no other changes to any of the other decisions.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Award in ADJ3880940 and the Findings of Fact and Award in ADJ4230890 issued on April 18, 2022, by the WCJ are **RESCINDED** and the following are **SUBSTITUTED** therefor:

ADJ3880940 (LAO 0775596)

FINDINGS OF FACT

1. Applicant David Castillo, while employed during the period 3/22/1998 through 1999, as a pool maintenance technician, occupational group number 340, sustained an injury arising out of employment and in the course of employment to his right knee, right shoulder, left shoulder, and lumbar spine. The applicant did not sustain industrial injury to his psyche, sleep disorder, internal, pulmonary, and sexual dysfunction.

2. The injury caused permanent disability of 6%, equivalent to 18 weeks of indemnity, payable at the rate of $140.00 per week, in the total sum of $2,520.00.

3. Applicant may be in need of further medical treatment to cure or relieve from the effects of the injury.

4. California Insurance Guarantee Association and Desert Sands Unified School District, permissibly self-insured, administered by Keenan & Associates, have joint and several liability with respect to further medical treatment.

AWARD

AWARD IS MADE in favor of David Castillo against California Insurance Guarantee Association, by its servicing facility, Intercare Holdings Insurance Services, Inc., for Fremont Insurance, in liquidation as follows:

a) Permanent Disability award of 6%, equivalent to 18 weeks of indemnity payable at the rate of $140.00 per week, in the total sum of $2,520.00, payable commencing forthwith.

ORDER

Desert Sands Unified School District, permissibly self-insured administered by Keenan & Associates, is ordered to administer applicant's further medical treatment to cure or relieve from the effects of the injury.

ADJ4230890 (RIV 0023055)

FINDINGS OF FACT

1. Applicant David Castillo, while employed on 1/12/1998, as a pool maintenance technician, occupational group number 340, sustained an injury arising out of employment and in the course of employment to his right knee.

2. The issue of whether applicant has new and further disability is deferred.

3. Applicant may be in need of further medical treatment to cure or relieve from the effects of the injury.

4. California Insurance Guarantee Association and Desert Sands Unified School District, permissibly self-insured, administered by Keenan & Associates, have joint and several liability with respect to further medical treatment.

ORDER

Desert Sands Unified School District, permissibly self-insured, administered by Keenan & Associates, is ordered to administer applicant's further medical treatment to cure or relieve from the effects of the injury.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI , CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 23, 2025

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

DAVID CASTILLO
CASTILLO & ASSOCIATES
GUILFORD SARVAS & CARBONARA LLP
PEARLMAN, BROWN & WAX, LLP
HANNA BROPHY MACLEAN MCALEER & JENSEN, LLP

DLP/md

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