WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FELIX CABRERA, *Applicant*

vs.

OAA INVESTMENTS, INC.; ET AL.; CALIFORNIA RESTAURANT MUTUAL BENEFIT CORP., self-insured, administered by LWP CLAIMS SOLUTIONS, *Defendants*

Adjudication Number: ADJ11114421
San Diego District Office

OPINION AND DECISION AFTER RECONSIDERATION

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

Defendant California Restaurant Mutual Benefit Corporation (CRMBC) seeks reconsideration and/or removal of the February 19, 2021 Findings and Order (F&O) wherein the workers' compensation administrative arbitrator (WCA) found CRMBC's policy cancellation to be premature and not supported by evidence. CRMBC was therefore found liable for coverage of applicant's alleged injury.

CRMBC contends that it has no coverage obligations because at the time of injury, applicant was employed by new employer, OAA Investments, Inc. (OAA); OAA was not insured by CRMBC; Insurance Code section 676.8 is inapplicable to the case herein; and OAA failed to exhaust its administrative remedies in revocation of its affiliate certificate. (Petition, pp. 20-21.)

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

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

We have considered the Petition, the Answer, the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we treat the Petition as one for reconsideration and will affirm the WCA's February 19, 2021 F&O.

FACTS

Applicant, while employed by OAA (previously Josephine Development) as a tree trimmer at Castle Creek Golf Course on November 22, 2017, claimed that he sustained an injury arising out and in the course of employment (AOE/COE) to his head, neck, and back.

Prior to the alleged injury, on or about October 13, 2017, defendant Josephine Development finalized the sale of its business to co-defendant, OAA. (Report, p. 1.) At the time of the sale, Josephine Development was insured by CRMBC.

In October, November, and December of 2017, CRMBC received and accepted three premium payments from OAA totaling $6,635.16.

On February 14, 2018, upon learning of the alleged November 22, 2017 work injury, CRMBC sent a cancellation letter to OAA with a retroactive cancellation date of October 14, 2017. Notwithstanding this letter, the three payments were not returned by CRMBC to OAA.

On September 28, 2018, applicant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on the issue of coverage. The matter was set for hearing on November 21, 2018, then continued to February 5, 2019, and finally to August 6, 2019.

On February 10, 2020, the WCJ issued an Order for Appointment of Arbitrator Jim Hopkins.

On September 30, 2020, the WCJ issued an Order for Parties to Proceed with Arbitration.

On November 23, 2020, the parties proceeded to arbitration, and on February 19, 2021, the WCA issued a F&O which held, in relevant part, that Insurance Code section 676.8 supersedes "CRMBC's internal or contractual rules" and that per section 676.8, CRMBC could not cancel its policy with new owner, Mr. Alkasabi, until the passage of a minimum of thirty days after service of a notice of intent to cancel. The WCA held that the December 27, 2017 cancellation letter served as the notice of intent to cancel thereby making January 27, 2018 the earliest possible date CRMBC could cancel its policy. Since the January 27, 2018 cancellation date occurred after the November 22, 2017 alleged injury, the WCA held that CRMBC was liable for coverage of the subject injury.

DISCUSSION

I.

Preliminarily, we find it relevant here to discuss the distinction between a petition for reconsideration and a petition for removal. A petition for reconsideration is taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order is defined as one that determines "any substantive right or liability of those involved in the case" or a "threshold" issue fundamental to a claim for benefits. (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43Cal.Comp.Cases 661]; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd.* (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, at 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final'"]; *Rymer*, *supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer*, *supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, and other similar issues.

Here, since the February 19, 2021 F&O determines a threshold issue (coverage of applicant's claimed injury), it is a final order. Thus, we consider the Petition as one for reconsideration rather than removal.

II.

Turning now to the merits of the Petition, Insurance Code section 676.8 states, in relevant part, that:

> (b) After a policy is in effect, a notice of cancellation shall not be effective unless it complies with the notice requirements of this section and is based upon the occurrence, after the effective date of the policy, of one or more of the following:

(1) The policyholder's failure to make any workers' compensation insurance premium payment when due.

(2) The policyholder's failure to report payroll, to permit the insurer to audit payroll as required by the terms of the policy or of a previous policy issued by the insurer, or to pay any additional premium as a result of an audit of payroll as required by the terms of the policy or of a previous policy.

(3) The policyholder's material failure to comply with federal or state safety orders or written recommendations of the insurer's designated loss control representative.

(4) A material change in ownership or any change in the policyholder's business or operations that materially increases the hazard for frequency or severity of loss, requires additional or different classifications for premium calculations, or contemplates an activity excluded by the insurer's reinsurance treaties.

(5) Material misrepresentation by the policyholder or its agent.

(6) Failure to cooperate with the insurer in the insurer's investigation of a claim.

(c) A policy shall not be canceled for the conditions specified in paragraph (1), (2), (5), or (6) of subdivision (b) except upon 10 days' written notice to the policyholder by the insurer. A policy shall not be canceled for the conditions specified in paragraph (3) or (4) of subdivision (b) except upon 30 days' written notice to the policyholder by the insurer, provided that notice is not required if an insured and insurer consent to the cancellation and reissuance of a policy effective upon a material change in ownership or operations of the insured. The time periods and procedures in subdivision (a) of Section 1013 of the Code of Civil Procedure shall be applicable if the notice is mailed. If the policyholder remedies the condition to the insurer's satisfaction within the specified time period, the policy shall not be canceled by the insurer.

(Ins. Code, § 676.8(b)-(c).)

In the instant case, Josephine Development sold its business to OAA on October 13, 2017. As such, there was a material change in ownership, as contemplated under subsection (b)(4) above, starting on October 13, 2017. Thereafter, OAA continued to make monthly payments to CRMBC in October, November, and December of 2017. The payments were accepted by CRMBC. At no point did CRMBC attempt to return said payments. On November 22, 2017, applicant allegedly sustained a work injury to his head, neck, and back. The claim was initially filed against OAA, but applicant subsequently amended the DWC-1 to include prior employer, Josephine Development,

and CRMBC. The claim was denied by CRMBC via a letter dated February 14, 2018, with a retroactive cancellation date of October 14, 2017.

CRMBC argues that it is not an insurer, but rather, an insurance group, and therefore has no power to issue an "affiliate certificate of consent to self-insure" as such powers are only in the purview of CADIR. (Petition, p. 5.) CRMBC further contends that under Rules 15489.1 and 15420 any changes to ownership, such as the sale between Josephine Development and OAA, are to be "reported to OSIP within 30 days" and if coverage is sought to be retained, OAA is to provide "certain risk-related information" to both, CRMBC and OSIP. (*Ibid*.) Although we recognize the reporting requirements outlined under Administrative Direction (AD) Rules 15489.1 and 15420, we note that CRMBC ostensibly waived any such requirements when it failed to return policy payments made by OAA. The fact that the payments were applied retroactively for payments missed by Josephine Development well after notice of the subject injury, is further evidence of this waiver.

Additionally, pursuant to *Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96], the Appeals Board has broad equitable powers with respect to matters within its jurisdiction. In *Maples v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 827 [45 Cal.Comp.Cases 1106], the court observed that equitable principles are frequently applied to workers' compensation matters. In that case, the court held that based upon the principles of equitable estoppel, the Appeals Board erred in permitting the insurance carrier to claim an overpayment of temporary disability against applicant's permanent disability since the carrier unreasonably delayed in filing the medical report used to terminate benefits. (*Id*. at pp. 837-838.) The court noted that in cases wherein equitable estoppel is alleged, the party asserting the doctrine "must have been ignorant of the true facts and must have relied upon the words or conduct of the adverse party to his detriment." (*Id*. at p. 839; citing *Hurwitz v. Workers' Comp. Appeals Bd.* (1979) 97 Cal.App.3d 854.)

Here, in accepting payment and failing to issue advance written notice of termination or cancellation of group membership for a period of 45 days prior to termination or cancellation, as required under AD Rule 15480, CRMBC is estopped from alleging that it does not have coverage for the subject injury since OAA relied upon CRMBC for coverage and did not seek out other insurance to its detriment. (Cal. Code Regs., tit. 8, § 15480.) AD Rule 15480 further states, in relevant part, that:

> [i]n the case of cancellation or termination of coverage of a group member, whether voluntary or involuntary, the group self-insurer shall remain liable for all compensation liabilities of the group member resulting from any claim with a date of injury during the period of membership in the group self-insurer up to the effective date of the termination and revocation of the group member's Affiliate Certificate of Consent to Self-Insure, including the 45 day notice period in the event of involuntary termination.
>
> (*Ibid*.)

Assuming that CRMBC's cancellation letter dated December 27, 2017 served as proper notice of cancellation or termination from group membership, we agree with the WCA that January 27, 2018 is the earliest possible date CRMBC could have cancelled its policy, and since the January 27, 2018 cancellation date occurs after the November 22, 2017 alleged injury, CRMBC remains liable for coverage of the subject injury.

III.

Lastly, we note that CRMBC's Petition and verification are unsigned and there is no proof of service. Aside from the fact that section 5902 requires a petition for reconsideration to be verified, it is axiomatic that an attorney must sign any pleading, motion, or other document filed with the courts. (Lab. Code, § 5902; see also Cal. Code Regs., tit. 8, § 10510(d); *Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425 (Significant Panel Decision).) As such, if in the instant matter we were not affirming the WCA's February 19, 2021 F&O, applicant's Petition would have been dismissed. We note also that section 5905 requires service of a petition on all parties. Here, although all parties may not have been served with a copy of the Petition, all parties were served with the F&O, Report, Answer, and our Opinion and Order Granting Reconsideration. As such, it does not appear that any party was prejudiced by CRMBC's failures.

Accordingly, as our Decision After Reconsideration, we affirm the February 19, 2021 F&O.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 19, 2021 Findings and Order is **AFFIRMED.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 5, 2025

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

FELIX CABRERA
CALIFORNIA – SELF INSURANCE LAW
OSAMA ABDULLAH ALKASABI
GUY LEVY
OFFICE OF THE DIRECTOR – LEGAL UNIT
UNINSURED EMPLOYERS BENEFITS TRUST FUND
JIM HOPKINS (ARBITRATOR)

RL/*cs*

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