

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

JESSE CRUZ, *Applicant*

vs.

**BRISTOL INDUSTRIES; TRAVELERS PROPERTY CASUALTY COMPANY OF
AMERICA, *Defendants***

**Adjudication Number: ADJ14466153
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

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

Applicant seeks reconsideration of the Findings and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on June 3, 2022, wherein the WCJ found that while employed by defendant on June 17, 2020 as a machinist, applicant did not sustain injury arising out of and in the course of employment (AOE/COE) to his back, bilateral hips, bilateral legs, and bilateral feet.

Applicant challenges the order that applicant take nothing and seeks additional discovery.

We received a Report and Recommendation from the WCJ, which recommends that the Petition be denied.

We received an Answer from defendant.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report. Based on our review of the record, we will rescind the WCJ's decision and return the matter to the WCJ for further proceedings consistent with this opinion.

¹ Commissioner Sweeney, who was a member of the panel that granted reconsideration, no longer serves on the Appeals Board. A new panel member has been appointed in her place.

FACTUAL BACKGROUND

As found by the WCJ in the Findings and Order, while employed on June 17, 2020, applicant claims injury to his bilateral hips, bilateral legs, and bilateral feet.

Prior to the alleged injury applicant was seen as early as September 24, 2019, at Kaiser for chronic low back pain and peripheral neuropathy. (Exhibit 1, Kaiser Report, September 24, 2019, page 4.)

On October 18, 2019, a lumbar MRI showed “moderate bilateral L4 - 5 neural foraminal stenosis and moderate to severe bilateral neural foraminal stenosis at LS - S1 due to degenerative facet arthropathy and marginal osteophytes.” (Exhibit 3, Kaiser MRI, October 18, 2019, page 2.)

In a November 12, 2019, nursing note, there is nerve testing with impression of: “1. Abnormal electrodiagnostic study. 2. NCS evidence suggestive of a bilateral sural and superficial peroneal sensory neuropathy. 3. NCS evidence suggestive of a Left peroneal motor neuropathy with decreased motor conduction velocity. 4. NCS evidence suggestive of a Right tibial motor neuropathy with decreased motor conduction velocity. 5. NCS evidence suggestive of a generalized mixed sensory and motor polyneuropathy in the lower extremities.” (Exhibit 5, Kaiser Note, November 12, 2019, page 2.)

On May 1, 2020, the Kaiser records include a telephone encounter with applicant providing “im [*sic*] currently experienceing alot [*sic*] of heel and foot pain in both feet after two hours of standing at work.” (Exhibit 8, Kaiser Telephone Message, page 1, emphasis added.)

Thereafter, applicant began employment with defendant on May 26, 2020. (Exhibit 9, Offer letter May 6, 2020, page 1; Minutes of Hearing, Summary of Evidence (MOH), March 22, 2022, page 4 lines 14 to 15; MOH May 19, 2022, page 2 lines 9 to 10.)

A year later, on May 26, 2021, applicant sent a message to his Kaiser physician stating “Dr Takhar, yes the pain has become worse. My back has pain on both sides. Also my legs and feet hurt. When I take my shoes off it feels as if I have bruised all along my feet and ankles. My knees also hurt. The pain has escalated. Dr can you put me off from work. This injury happened at work. I do alot of twisting and bending at work.” In reply, Dr. Takhar sent the applicant a message which included the statement “I am not a work comp doctor, if you wish to determine if this is due to a work injury, you will need to file a claim through your work.” (Exhibit 11, Kaiser Telephone Message, May 26, 2021, page 2, emphasis added.)

At trial the date of injury was alleged as June 17, 2020, a specific date of injury. (MOH March 22, 2022, page 2, lines 3 to 6.)

Applicant testified that after the alleged injury he told Wendy (human resource manager) he was injured on the floor and was told “We don’t know if we can accommodate you.” (MOH March 22, 2022, page 5, lines 24 to 25; See Exhibit 16, Deposition of Jesse Cruz, June 30, 2021, page 36, lines 3 to 15.)

Applicant testified that on June 30, 2021, he went to Kaiser because of “shooting pain down the legs, pain in the back, and burning sensation in his feet.” (MOH March 22, 2022, page 3, lines 18 to 20.) He also testified that “Kaiser did not indicate any of the injuries were work related.” (MOH March 22, 2022, page 4, lines 4 to 9.) Applicant further testified “the incident occurred on June 17 per the employer, but he doesn’t know where that date came from.” He worked for three weeks after the injury and was in excruciating pain. He doesn’t recall the date of injury as he wasn’t sent to the clinic.” (MOH March 22, 2022, page 5, lines 16 to 19, emphasis added.)

The human resource manager for defendant, Wendy Geurts, testified:

In June, 2020, Mr. Cruz indicated he had issues with nerve endings in his feet and he had to sit down. He did not state the pain was work related. He said he was having problems for about a year prior. In July of 2020, Mr. Cruz indicated his back was bothering him. He did not state it was work related; he said it was due to an accident “about a year prior”. (MOH May 19, 2022, page 2, lines 12 to 16.)

And further:

Mr. Cruz did ask to work on specific machines and not other machines because it would be easier for him. This request was denied. She testified the request for accommodations did not come from a doctor. It came from Mr. Cruz himself. (MOH May 19, 2022, page 2, lines 16 to 18.)

In the Opinion on Decision, the WCJ stated “based on Applicant’s less than credible testimony, the testimony of Wendy Geurts, Applicant has numerous medical issues, however, none of which are industrially related.” (Findings and Order, Opinion on Decision, June 2, 2022, page 2; see Report, pages 3 to 4.)

DISCUSSION

A.

As an initial matter, we conclude that applicant’s Petition for Reconsideration was timely.

There are twenty days allowed within which to file a petition for reconsideration from a “final” decision. This time is extended by five days to a total of twenty-five days when the decision has been served by mail, fax, e-mail or any other method other than personal service upon an address in California. (Lab. Code, §§ 5900(a), 5903;² Cal. Code Regs., tit. 8, § 10605(a)(1).) Time to file is extended an additional five days to a total of thirty days if the decision has been served upon an address outside of California but within the United States. (Cal. Code Regs., tit. 8, § 10605(a)(2).) The time limit is also extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600(b))

To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

The order was served on June 3, 2022. The order included service on an out of state address as shown on the official address record (OAR), the claims administrator in Texas. Time to act is therefore extended to thirty days. Thirty days from June 3, 2022, is July 3, 2022, a Sunday. When the last day to act falls on a weekend, the time to file is extended to the next business day, which, as Monday was the July 4th Holiday, means July 5, 2022. Therefore July 5, 2022, was the last day to file a petition for reconsideration.

The Petition was filed on July 5, 2022, and it is therefore timely filed.

B.

Section 3600(a) provides liability for injuries sustained “arising out of and in the course of the employment.” An employer is liable for workers’ compensation benefits “without regard to negligence.” (Lab. Code, § 3600(a).) An employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing, Inc. v. Workers’ Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5.) Whether an employee’s injury arose out of and in the course of employment is generally a question of fact to be determined in light of the particular circumstances of the case. (*Wright v. Beverly Fabrics* (2002) 95 Cal.App.4th 346, 353 [67 Cal.Comp.Cases 51].)

² All statutory references are to the Labor Code unless otherwise noted.

For the purpose of meeting the causation requirement in a workers' compensation injury claim, it is sufficient if the work is a contributing cause of the injury. (*South Coast Framing, Inc. (Clark)*, *supra*, at pp. 298-299.) "The applicant in a workers' compensation proceeding has the burden of proving industrial causation by a 'reasonable probability.' (citation) 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, 1700-1701 [58 Cal.Comp.Cases 313].) Medical evidence that industrial injury was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workers' Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660].)

Although the factual issue of the occurrence of the alleged incident is a determination for the WCJ, the issue of injury is a medical determination, which requires expert medical opinion. As the Court of Appeal explained in *Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188]: "Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence. Expert testimony is necessary where the truth is occult and can be found only by resorting to the sciences."

In the June 2, 2022, order, the WCJ finds applicant did not sustain injury AOE/COE and in the accompanying opinion on decision concludes "[a]pplicant has numerous medical issues, however, none of which are industrially related." In the Report, the WCJ states "the record is void of medical evidence supporting Applicant's contention he sustained injury arising out of and in the course of employment" and therefore applicant failed to meet his burden of proving injury pursuant to Labor Code Section 3202.5. (Report, p. 3.)

Where, as here, the applicant has medical conditions such as chronic back pain and peripheral neuropathy that existed before the claimed injury, there is no medical opinion addressing causation of the alleged injury, and a doctor states "I am not a work comp doctor, if you wish to determine if this is due to a work injury, you will need to file a claim through your work", any determination regarding injury requires expert medical opinion. Expert testimony is necessary here as the truth is occult and can be found only by resorting to the sciences.

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on a threshold issue. (Lab. Code, §§ 5701, 5906; *Nunes v. State of California*,

Dept. of Motor Vehicles (Grace) (2023) 88 Cal.Comp.Cases 741, 752; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 392-394 [62 Cal.Comp.Cases 924]; *McDonald v. Workers' Comp. Appeals Bd., TLG Med. Prods.* (2005) 70 Cal.Comp.Cases 797, 802.) The Appeals Board has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403.)

Sections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138, 141-143 (Appeals Bd. en banc).) The Appeals Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall, supra*, at p. 404.)

Even before applicant began employment with defendant, the May 1, 2020, Kaiser record includes applicant reporting "heel and foot pain in both feet after two hours of standing at work."

A year after beginning work on May 26, 2021, applicant sent Kaiser a message stating "the pain has become worse. My back has pain on both sides. Also my legs and feet hurt. When I take my shoes off it feels as if I have bruised all along my feet and ankles. My knees also hurt. The pain has escalated. Dr can you put me off from work. This injury happened at work. I do alot of twisting and bending at work."

Here, there is no medical opinion addressing if injury occurred. This is not a situation where one party failed to muster evidence sufficient to overcome contrary evidence, but a complete lack of substantial evidence either way. It is not clear if there is no injury, a specific injury, more than one specific injury, a cumulative trauma injury or perhaps a combination. (Lab. Code, §§ 5411, 5412.) In relevant part, WCAB Rule 10517 states that "Pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof." (Cal. Code Regs., tit. 8, §§ 10517.) This means once there is substantial medical evidence in the record, the WCJ may enter findings based on that evidence. Before any further inquiry may be made into the merits of the claim and the defenses thereto, medical discovery is required.

On remand, we recommend that the parties initiate the section 4060/4062.3 panel qualified medical evaluator process or, if they agree, utilize an agreed medical examiner to obtain expert medical opinion on the issue of injury.

C.

The WCJ's decision was in part "based on Applicant's less than credible testimony". In workers' compensation proceedings, a WCJ's credibility determinations are "entitled to great weight because of the [WCJ's] 'opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand' [Citation.]" (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

The WCJ's opinion on decision "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 v. Lockheed Corporation (Hamilton)* (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, 351].) A decision "must be based on admitted evidence in the record" (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(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. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) 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." (*Hamilton, supra*, at p. 475.)

We acknowledge that the WCJ's findings on credibility are entitled to great weight because the WCJ had the opportunity to observe the witnesses and to weigh their statements in connection with their manner on the stand. (*Garza, supra*, 3 Cal.3d 312, 319.) However, we conclude that the lack of analysis or citation to the evidentiary record in the Opinion on Decision and in the WCJ's Report effectively abrogates the parties' rights to due process and falls short of the minimum standards set forth in *Hamilton, supra*.

While we accord to the WCJ's credibility determination the weight to which it is entitled, the WCJ may not enter a credibility determination in lieu of the statutorily required analysis of the issues presented as supported by citation to the evidentiary record. (Lab. Code, § 5313.)

At trial, applicant acknowledged his trial testimony was different from deposition testimony that he did not seek treatment for "these physical complaints" before being employed. (MOH March 22, 2022, page 5, lines 1 to 3; Exhibit 16, page 18, lines 14 to 17.) Applicant

explained that for peripheral neuropathy and his back he “looked at them as two separate entities.” (MOH March 22, 2022, page 5, lines 3 to 7; Exhibit 16, page 45, lines 23 to page 46, line 6.)

Even if less than credible, it is clear the entirety of applicant’s testimony was not uncredible. Both the applicant and defendant’s human resource manager congruently testified that after the alleged injury applicant asked for work accommodation which was denied.

The WCJ and the parties without objection admitted the entire transcript of applicant’s deposition taken June 30, 2021, as Joint Exhibit 16. (MOH May 19, 2022, page 3 lines 10 to 12.) The WCJ does not discuss the applicant testifying to being a veteran with VA benefits (page 46, lines 11 to 12); being a Los Angeles police officer assigned to the Rampart office in 1984 (page 48, lines 18 to 25); or being diagnosed with post-traumatic stress disorder (PTSD) in 1989 (page 47, lines 9 to 13), all of which may have a bearing on credibility.

Although the factual issue of the occurrence of the alleged incident is a determination for the WCJ, here it is unclear what the date of injury is, what medical evidence bears on injury, and how applicant’s “less than credible testimony” would lead to a finding of no injury. There is no discussion in the Opinion on Decision or the Report as to how “Applicant’s less than credible testimony” resulted in the decision. There is no discussion as to why applicant was found “less than credible.” In any further proceedings, both discussions are required by *Hamilton, supra*.

D.

We received an unsigned, and apparently ex parte, “Confidential Letter of Appeal.” The letter states it is filed with attached records from the Veteran’s Administration. We have not accepted nor considered the “Confidential Letter of Appeal” or the attached records. (Cal. Code Regs., tit. 8, § 10964.) We remind applicant’s attorney that “[a] party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading.” (Cal. Code Regs., tit. 8, § 10964(b).)

Upon receipt of a document that may constitute ex parte contact from a party, the Appeals Board is obligated to take certain actions. WCAB Rule 10410 (Cal. Code Regs., tit. 8, § 10410(b)), provides that “[w]hen the Appeals Board or a workers’ compensation judge receives an ex parte letter or other document from any party in a case pending before the Appeals Board or the workers’ compensation judge, the Appeals Board or the workers’ compensation judge shall serve copies of

the letter or document on all other parties to the case with a cover letter explaining that the letter or document was received ex parte in violation of this rule.”

Therefore, the Appeals Board will separately serve the “Confidential Letter of Appeal” on the parties. The records attached to the letter are not being served as the WCJ may address further service as appropriate at the trial level.

We express no opinion on the ultimate resolution of any matter in this case.

Accordingly, we rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of June 2, 2022, is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings by the WCJ consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 21, 2025

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

**JESSE CRUZ
LAW OFFICES OF JACOB EMRANI
SION & ASSOCIATES**

PS/oo

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