

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

**MAURICE LITTLES, *Applicant***

**vs.**

**WALMART STORES, INC.;  
ACE AMERICAN INSURANCE COMPANY, administered by  
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ11189387  
Marina del Rey District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Applicant seeks reconsideration of the February 18, 2025 Findings, Award, and Order (F&A), issued by a workers' compensation administrative law judge (WCJ), which found *inter alia* that applicant sustained injury to his right wrist and right hand while employed as a greeter by defendant Walmart Stores, Inc., insured by ACE American Insurance Company, administered by Sedgwick Claims Management Services, Inc.

Applicant contends that further development of the record is appropriate because he testified at trial that he injured additional body parts of head, neck, back, and left hip, and that the WCJ made no findings as to those claimed body parts.

We received an Answer from defendant.

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

We have considered the allegations of the Petition for Reconsideration, the Answer thereto, and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will grant reconsideration, rescind the WCJ's F&A, and return this matter to the WCJ for further proceedings consistent with this decision. This is not a final decision on the merits of any

threshold issues, and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

## FACTS

At trial, the parties stipulated that on June 7, 2015, applicant sustained injury to his right wrist and right hand while employed as a greeter by defendant. (Minutes of Hearing and Summary of Evidence (MOH), dated November 20, 2024, page 2, lines 3-8.)

Applicant testified that on the day of his injury he was assigned to check customers' receipts at the door. While other customers waited in line to have their receipts checked, one customer went around the line. Applicant told the customer to wait his turn, but the customer did not comply. Applicant grabbed the customer's shopping cart with his right hand. The customer grabbed applicant's thumb and twisted it toward the back of applicant's wrist. The customer also struck applicant's left hip with the shopping cart, put his shoulder into applicant's chest, and pushed him backwards over a bin of watermelons. Bystanders tried to pull the customer off of applicant. (*Id.*, pages 4-5.)

Agreed Medical Evaluator (AME), Peter Newton, M.D., issued reports dated December 29, 2020, January 27, 2021, April 25, 2023, and July 25, 2023, which were the only medical evidence offered at trial. (*Id.*, page 3, lines 6-18.) These reports indicated that applicant had sustained an industrial injury of June 7, 2015 to his right wrist and hand, but they did not provide any discussion of whether or not any other parts of applicant's body were injured on an industrial basis. (Joint AA, AME Report by Dr. Peter Newton, dated December 29, 2020, page 14; Joint BB, AME Report by Dr. Peter Newton, dated January 27, 2021, page 13; Joint CC, AME Report by Dr. Peter Newton, dated April 25, 2023, page 13; Joint FF, AME Report by Dr. Peter Newton, dated July 25, 2023, page 2.)

At trial, applicant testified that he explained exactly how he was injured to Dr. Newton, but Dr. Newton explained that he was only there to evaluate parts of applicant's hand. This testimony was summarized by the WCJ as follows:

The applicant agrees that, besides injuring applicant's right thumb, right hand, and right arm, the member<sup>1</sup> struck applicant's left hip with a cart. When the member grabbed applicant's right thumb and was twisting it, he pushed

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<sup>1</sup> Applicant refers to the customer as a "member" because he was working in a Sam's Club store. (See Joint AA, AME Report by Dr. Peter Newton, dated December 29, 2020, page 2, paragraph 2.)

applicant's right shoulder into his chest and pushed the applicant back and had him bent over a watermelon bin. In doing so, the member sprained applicant's neck and lower back, and as a consequence of that, applicant has headaches and back pain.

He takes aspirin but still has symptoms every day to his left hip, neck, back, and headaches. To reiterate, in the incident of 6/7/2015, the following body parts were injured: right hand, right thumb, right wrist, right arm, neck, back, left hip, and headaches.

In a conversation he had with Dr. Newton, he explained to the doctor exactly what happened, and then Dr. Newton showed him a document and said that was all he was here for. On the document was an itemized list of parts of his hand, and doctor Newton said that was what applicant was there for.

He still has symptoms in his head, neck, back, and left hip.

(MOH, dated November 20, 2024, pages 6-7.)

The WCJ issued the F&A dated February 18, 2025, finding that applicant sustained injury to his right wrist and right hand while employed as a greeter by defendant on June 7, 2015 as admitted by the parties and acknowledged by AME Dr. Newton, but without any discussion of applicant's unrebutted trial testimony indicating that Dr. Newton was told about applicant's complaints involving his right arm, neck, back, left hip, and headaches, but declined to comment on these because Dr. Newton was only "there for" parts of his right hand.

Based on applicant's trial testimony on November 20, 2024, applicant filed an amended claim form dated November 21, 2024 and an amended application for adjudication of claim dated December 4, 2024, both alleging injury to the head, neck, back, and left hip. He filed a post-trial petition in the form of a letter dated December 19, 2024, improperly titled as "Petition for Order Compelling Service of the Medical Record," seeking to further develop the record by having the AME evaluate and address whether applicant has sustained injury to these body parts.

On January 31, 2025, counsel for defendants filed written opposition to this post-trial request to develop the record.

Yet, in the February 18, 2025 decision, the WCJ made no finding as to the post-trial request and no finding as to the newly claimed body parts, and does not address it in her Opinion.

In her Report, the WCJ declines to recommend development of the record, based on the close of discovery indicated by Labor Code section 5502(d)(3), as applied in *San Bernardino Community Hospital v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986] and a 2014 panel decision, *Salazar v. Payless Shoe Source*, 2014 Cal. Wrk.

Comp. P.D. LEXIS 729. The Report indicates that the WCJ based her choice not to allow further development of the record upon the belief that she has no power to do so:

In the opinion of this WCJ, discovery closes at the MSC. Petitioner had “11” eleven Mandatory Settlement Conferences. It is also the opinion of this WCJ alleged discovery cannot be filed and considered after the date of submission, for any reason. The WCJ would have no jurisdiction to do so and it would be a violation of Defendant’s due process.

(*Id.*, page 4, lines 1-5.) The Report then acknowledges that applicant had complaints to his head, back, and left hip that were not discussed by the AME. (*Id.*, page 4, lines 6-19.) The WCJ concluded that she saw no reason for further discovery, citing the Appeals Board’s en banc decision in *Hamilton v. Lockheed Corp.* (2001) 66 Cal. Comp. Cases 473.

Applicant’s Petition for Reconsideration seeks to rescind the February 18, 2025 decision and develop the record by having the AME evaluate applicant’s right arm, neck, back, left hip, and head. (Petition for Reconsideration, dated March 10, 2025, page 6, lines 9-20.)

Defendant’s Answer contends that the WCJ’s decision is justified by the medical evidence, and that development of the record is not. (Defendant’s Answer to Applicant’s Petition for Reconsideration, dated March 18, 2025, page 7, lines 7-19.) However, defendant agrees that:

Testimony was taken again on November 20, 2024, and it was at that time that applicant alleged additional injuries to the head, neck back and hips. He also included testimony alleging that he was struck with a shopping cart and forcefully pushed up against a bin. Testimony concluded and the matter was submitted.

Applicant attorney made a post-trial motion after submission to develop the record and amended the Application for Adjudication of Claim. Defendant objected to the post-trial motion based on the motion being untimely as there was more than adequate time to develop the record prior to the close of discovery.

(Answer, p. 3, line 26 to p. 4, line 6.)

## DISCUSSION

### I

Former Labor Code<sup>2</sup> section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
  - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
  - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on April 3, 2025, and 60 days from the date of transmission is June 2, 2025. This decision is issued by or on June 2, 2025 so that we have timely acted on the petition as required by section 5909(a).

Further, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on April 3, 2025 and the case was transmitted to the Appeals Board on April 3, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 3, 2025.

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<sup>2</sup> All further statutory references are to the California Labor Code unless otherwise indicated.

## II

The California State Constitution mandates that the administration of workers' compensation laws "shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character," and this provision is "expressly declared to be the social public policy of this State, binding upon all departments of the State government." (Cal Const, Art. XIV, § 4.)

"Based on the constitutional mandate to accomplish substantial justice, 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], citing *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 392-394 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1120 [63 Cal.Comp.Cases 261]; *M/A Com-Phi v. Workers' Comp. Appeals Bd.* (1998) 65 Cal.App.4th 1020, 1025 [63 Cal.Comp.Cases 821].)

The Legislature enacted sections 5701 and 5906 to implement this constitutional mandate. (*Kuykendall, supra*, 79 Cal.App.4th at p. 403.) Section 5701 gives the Appeals Board or any WCJ the authority to take additional medical evidence at any time:

The appeals board may, with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be made, or the timebooks and payroll of the employer to be examined by any member of the board or a workers' compensation judge appointed by the appeals board. The appeals board may also from time to time direct any employee claiming compensation to be examined by a regular physician. The testimony so taken and the results of any inspection or examination shall be reported to the appeals board for its consideration.

Section 5906 specifically empowers the Appeals Board to order the taking of additional evidence upon the filing of a petition for reconsideration:

Upon the filing of a petition for reconsideration, or having granted reconsideration upon its own motion, the appeals board may, with or without further proceedings and with or without notice affirm, rescind, alter, or amend the order, decision, or award made and filed by the appeals board or the workers' compensation judge on the basis of the evidence previously submitted in the case, or may grant reconsideration and direct the taking of additional evidence. Notice of the time and place of any hearing on reconsideration shall be given to the petitioner and adverse parties and to other persons as the appeals board orders.

Later, the Legislature enacted section 5502(d)(3), limiting the admissibility of evidence at trial as follows:

Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

As explained by the Second District of the Court of Appeal in *Kuykendall, supra*, the limitations of section 5502, subdivision (d)(3), which were enacted as part of the 1989 omnibus reform legislation, left unchanged the broad power of the Appeals Board to develop the record under sections 5701 and 5906. "It is assumed that the Legislature has in mind existing laws when it passes a statute." [Citations.] "The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended." (*Estate of McDill* (1975) 14 Cal. 3d 831, 837-838.) Thus the Board has the authority, at any time, to order the taking of additional evidence." (*Kuykendall, supra*, 79 Cal.App.4th at pp. 404-405.) This differs from the earlier and less persuasive analysis of the Fourth District in *McKernan, supra*, which reasoned only that the provisions regarding the close of discovery under section 5502(d)(3) should be read as limiting the powers conferred upon the Appeals Board under sections 5701 and 5906 because the former is "clear and explicit" and the latter "more amorphous." (*McKernan, supra*, 74 Cal. App. 4th 928, 936.)

The court in *Kuykendall* also distinguished *McKernan* based on its facts, noting that in contrast to *McKernan*, the need to develop the record in *Kuykendall* was not identified at the mandatory settlement conference, but arose from testimony at trial: "The need for additional evidence became apparent only after Kuykendall testified that he did not remember what body parts he had listed on his application." (*Kuykendall, supra*, 79 Cal.App.4th at p. 406.) Similarly, in the present case applicant revealed in his un rebutted trial testimony that AME Dr. Newton ignored his description of injury to body parts other than those in the area of his right hand.

A medical opinion is not substantial evidence if it is based on inadequate medical histories or examinations. (*Escobedo v. Marshalls*, (2005) 70 Cal. Comp. Cases 604, 620-621 (Appeals Board en banc), citing *Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35

Cal.Comp.Cases 525]; *Zemke v. Workmen's Comp. Appeals Bd.*, 68 Cal.2d 794,798 [33 Cal.Comp.Cases 358].) Based on applicant's description of the injury at trial, it is now apparent that the four reports of Dr. Newton do not constitute substantial medical evidence because they do not include an adequate history of the mechanism of injury. The reports of Dr. Newton mention only that applicant "was in the process of stopping a shoplifter and grabbed the shopping cart, when he was assaulted. The shoplifter grabbed and twisted his right thumb, wrist, and forearm, and he felt immediate intense pain." (Joint AA, Report of AME Dr. Peter Newton, dated December 29, 2020, page 3, paragraph 2.) There is no mention in any of Dr. Newton's four reports that the customer who grabbed applicant's right thumb also struck applicant's left hip with a shopping cart, pushed him backwards over a crate of watermelons, and had to be physically removed from his position on top of applicant. No testimony was offered by defendants in rebuttal of this description of the injury that was provided by applicant at trial. Even though *both* parties should have discovered these obviously relevant facts years ago, their dereliction does not obviate the need to address what occurred at the time of injury with substantial medical evidence, nor does it deprive the Appeals Board of its power to order development of the record for the purpose of achieving substantial justice. We observe that applicant's Fifth Amendment objection does not appear to have any bearing on the need to obtain substantial medical evidence fully addressing his description of injury at trial. Likewise, applicant's testimony about the relationship of the present injury to his previous injury and his complaints about his heart condition, which were also highlighted in the WCJ's Report, do not eliminate the need to have AME Dr. Newton evaluate and fully address the injury as described by applicant at trial.

Accordingly, we grant applicant's Petition for Reconsideration, rescind the F&A and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings, Award, and Order issued by the WCJ on February 18, 2025 is **GRANTED**.



**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings, Award, and Order of February 18, 2025 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion, and a new decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**June 2, 2025**

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

**MAURICE LITTLES  
LAW OFFICES OF FRED L. FONG, APC  
ALBERT & MACKENZIE, LLP**

**CWF/oo**

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