WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ALEXANDER OLSHANSKY, *Applicant*

vs.

VLADIE STAR, aka VLADIMIR ARNOLDOV (ICH) STAROSELSKIY; AIRSTAR GROUP, INC.; SUMMITRIDGE ENTERPRISE, LLC; MIKHAIL CHEBAN, Beneficial Interest Holder of SUMMITRIDGE ENTERPRISE, LLC; UNINSURED EMPLOYERS BENEFITS TRUST FUND, Defendants

Adjudication Number: ADJ10832228

Marina del Rey District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted defendants' Petition for Reconsideration of the "Findings of Fact and Award"[1] (F&A) issued on October 25, 2022, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

The WCJ found that on March 4, 2019, it was found that applicant sustained industrial injury to his head and neurological system while employed by Vladie Star, also known as Vladimir Arnoldov(ich) Staroselskiy: Airstar Group, Incorporated; Summitridge Enterprise, LLC, as a heating and air conditioning installer on March 29, 2017. In pertinent part, the WCJ found that applicant sustained permanent total disability; and that the issues raised by Mikhail Cheban and Summitridge Enterprise, LLC, were previously decided in the March 4, 2019 Findings of Fact and Order, and thus, barred by the doctrine of res judicata.

Defendants, Mikhail Cheban and Summitridge, allege that the March 4, 2019 Findings of Fact and Order was not served upon defendants, violating their right to due process. Defendants further argue that the judge improperly excluded testimony from their witness, who was prepared to testify remotely.

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[1] Although the document is labeled a Findings and Award, the WCJ appears to have omitted issuing an award in error.

We have received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of 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 October 25, 2022 F&A, and substitute a new Findings and Award, which omits Finding of Fact 15 and includes an Award of benefits. We make no substantive change to the WCJ's findings.

FACTS

Per the WCJ's Report:

> This matter previously proceeded to trial and a Findings of Fact and Order issued on March 4, 2019. The Findings of Fact notes the participating parties as the Applicant (represented by the law firm of Hinden & Breslavsky) and Defendant - the Uninsured Employers Benefit Trust Fund. There was no appearance on behalf of the alleged employer. Prior to the issuance of the decision, the alleged employers - Defendants Vladie Stark aka Vladmir, Arnoldov(ich), Mikhail Cheban and Summitridge Enterprise - failed to appear at trial, thus an Order Issue for Personal Appearance issued. However, except for the Uninsured Employers Benefit Trust, none of the above named Defendants appeared, thus a Notice of Intention to Submit the Case was served, allowing the absent parties to respond to same explaining their failure to appear and/or why the matter should not be submitted for decision. There was no response.
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> The March 4, 2019 Findings of Fact and Order determined the following:
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> 1. Applicant, Alexander Olshansky. . . was employed as a Heating/AC Installer, at Los Angeles, California, by Vladie Star also known as Vladimir Arnoldov(ich) Staroselskiy; Airstar Group. Incorporated; Summitridge Enterprise, LLC and Mikhail Cheban, Beneficial Interest Holder of Summitridge Enterprise, LLC on March 29, 2017.
>
> 2. Applicant, Alexander Olshansky . . . , while employed on March 29, 2017, as a Heating/AC Installer, at Los Angeles, California, by Vladie Star, also known as Vladimir Arnoldov(ich) Staroselskiy, Airstar Group, Incorporated; Summitridge Enterprise, LLC and Mikhail Cheban, Beneficial Interest Holder of Summitridge Enterprise, LLC sustained injury arising out of and in the course of employment to his head and neurological system.
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> 3. Vladie Star aka Vladimir Arnoldov(ich) Staroselskiy, Airstar Group Incorporated, Summitridge Enterprise, LLC and Mikhail Cheban, Beneficial Interest Holder of Summitridge Enterprise, LLC failed to appear at trial and did not respond to the Notice of Intention to Submit.

4. There is jurisdiction over Vladie Star also known as Vladimir Arnoldov(ich) Staroselskiy and Airstar Group, Incorporated.

No party filed a petition for reconsideration or took any action regarding the March 4, 2019 decision. The decision became final.

This matter returned to calendar for adjudication of additional issues. This matter was set before the Honorable Terry L. Smith as a Mandatory Settlement Conference on June 17, 2021. The Minutes of Hearing reflect the appearance of Applicant's counsel - Leon Kleyman and Defendant Mikhail Cheban. The matter was set for trial and the parties required to file Pre-Trial Conference Statement and Exhibits 20 days prior to the trial date. The Minutes of Hearing also noted that "Mr. Cheban claims violation of due process as he lives in Russia". The trial date assigned was August 25, 2021 before this Judge.

At the August 25, 2021 trial, the Minutes of Hearing recorded the parties present as Leon Kleyman (Hinden and Breslavsky), Nora Tu-Willis (OD Legal) and Mikhail Cheban. The Minutes of Hearing also notes as follows:

> Defendant's request for continuance granted to obtain legal representation. Parties to file joint Pre-Trial Conference Statement prior to next hearing date. Parties to file and serve exhibits 5 days prior to the next hearing date.

The trial was continued to November 18, 2021. Specially appearing on behalf of Mikhail Cheban and Summitridge was Attorney Jamie A. Blunt at trial. A letter of representation was filed on behalf of Mikhail Cheban and Summitridge Enterprise, LLC designating Attorney Jamie A. Blunt as counsel dated October 26, 2021. This matter was initially set for December 29, 2021, but based upon a request for continuance, the matter was re-set for trial on February 23, 2022. Additional continuances occurred and this matter finally proceed to trial on May 5, 2022 with the identification of the issues and admission and/or identification of exhibits. As reflected in the May 5, 2022 Minutes of Hearing, after reciting the Findings of Fact and Order that issued on March 4, 2019, two separate sets of stipulations and issues were identified by the parties as there was no joint stipulation and issues by all three parties.

As agreed by UEBTF and Applicant, in addition to the Findings of Fact and Order that issued on March 4, 2019 (see above), the following were the Stipulations and Issues identified by those two parties:

1. The parties stipulate that the employer has furnished no medical treatment.
2. No attorney fees have been paid and no attorney fee arrangements have been made.

As agreed by UEBTF and Applicant, the following issues were raised and framed as follows:

1. Earnings, with the Employee claiming $984.48 based upon W-2.
2. Temporary disability, with the employee claiming the period of 3/30/2017 through 3/29/2018.
3. Permanent and stationary date, with the employee claiming 3/29/2018 based on the AME report of Doctor Ezekiel Fink.
4. Permanent disability.
5. Apportionment.
6. Occupational Group Number, with the employee claiming Group Number 481.
7. Need for further medical treatment.
8. Liens, which include EDD.
9. Attorney fees.
10. Penalties and interest on temporary disability, permanent disability, medical treatment, mileage per Labor Code section 4650(d) and Labor Code section 5814.
11. Applicant is totally disabled pursuant to Labor Code section 4662.
12. The assertion that UEBTF is not subject to penalties and interest – Labor Code section 3716.2.
13. The assertion that the AME failed to make any definite statement regarding apportionment. Further development of the record is needed.

Defendants Mikhail Cheban/Summitridge Enterprise, LLC raised the following issues:

1. Jurisdiction of Mikhail Cheban/Summitridge.
2. Employment.
3. The assertion that Mikhail Cheban is a substantial shareholder/beneficial interest holder of Summitridge Enterprise, LLC.
4. Due process rights.

All parties offer exhibits as evidence. Applicant's exhibits were entered into evidence with no objection by any party. Defendant Mikhail Cheban/Summitridge's exhibits were marked for identification only, except for the exhibits that were previously placed into evidence in the prior trial.

No testimony was allowed by Defendant Mikhail Cheban and the matter was submitted.

After the Findings of Fact and Award issued, Defendants Mikhail Cheban and Summitridge Enterprise, LLC. Filed a Petition for Reconsideration. An Answer to the Petition was filed by Applicant. No response was received on behalf of Defendant UEBTF.

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

DISCUSSION

The sole issue for reconsideration is defendants' challenge to the 2019 finding that they employed applicant. Defendants argue that they were never served with the decision, and thus, their right to due process was violated. Defendants further argue that the WCJ excluded testimony of defendants' witness.

> The WCAB is bound by the basic rules of law and procedure. (Citation.) These basic rules of procedure require the board to give res judicata effect to its final decisions. (Citations.) The fact that the WCAB "is not bound by common law or statutory rules of evidence and procedure, may receive hearsay evidence, may proceed informally, and may adopt less stringent rules and regulations than those applicable in court does not alter the applicability of the doctrine of res judicata to its findings." (Citation.)

(*Dow Chemical Co. v. Workers' Comp. Appeals Bd.* (1967) 67 Cal.2d. 483, 491 (citations omitted).)

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd*. (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is ". . . one of 'the rudiments of fair play' assured to every litigant . . ." (*Id*. at p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "[The] commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id*. at p. 577.)

While the complete exclusion of a witness' testimony could result in a violation of due process, a WCJ has discretion to exclude evidence that is not relevant to the proceedings. However, when excluding testimony, the WCJ needs to create a record in support of such an order. (See *Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473 (Appeals Board en banc).) In the future, the WCJ may wish to solicit an offer of proof on the record before deciding whether to exclude testimony. The WCJ may also consider permitting testimony, but limiting the testimony to those issues the WCJ deems relevant.

For purposes of reconsideration, and because an offer of proof was not taken at the trial level, we accept as true the factual offer of proof by defendants contained in their Petition. However, even assuming that defendants was not served with the 2019 findings, that would only

extend the time for defendants to seek reconsideration of the 2019 findings until such time as they became aware of its existence.

Where an order can be shown to have been defectively served, the time limit begins to run as of the date of receipt of the order. (*Hartford Accident & Indemnity Co. v. Workers' Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1 [43 Cal.Comp.Cases 1193].) According to defendants' own trial brief, defendants learned of the existence of the 2019 findings and the workers' compensation case in 2021. Defendants should have taken immediate steps to seek reconsideration, but did not.

Defendants argue that they were not properly joined and not properly served because their address is not correctly listed in the Official Address Record. We do not find defendants' argument persuasive. First, it is incumbent upon every party to furnish the court with their correct address upon learning that their address on file is incorrect. (Cal. Code Regs., tit. 8, § 10205.5.) A review of the court's record shows that defendants' allegedly incorrect address has not changed throughout these proceedings. Next, defendants have appeared in person at multiple hearings, even though they claim that the notices of hearing were mailed to an incorrect address. (Minutes of Hearing, June 17, 2021; Minutes of Hearing, August 25, 2021; Minutes of Hearing, November 18, 2021.) We would finally note, that even the notice of representation filed by defendants' own counsel was served upon his own client at the very same address that defendants claim is not correct. Defendants' own conduct contradicts the proffered testimony that his address on file is not correct. Thus, even if the testimony were in evidence, we would find it barred by principles of estoppel.

On June 17, 2021, defendants argued that their right to due process was violated. The only way for defendants to raise this argument is for defendants to have knowledge that the matter proceeded to trial in their absence. Assuming defendants genuinely failed to receive the 2019 findings, defendants should have immediately sought reconsideration of the findings upon learning of their existence. The time limit in Labor Code section 5900 is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd*. (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650, 656]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008, 1011]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com.* (*Hinojoza*) (1962) 201 Cal.App.2d 545, 549 [27

Cal.Comp.Cases 73, 75-76].) The 2019 findings are final as defendants failed to timely seek reconsideration.

Although we are, in essence, affirming the decision of the trial judge, we must reissue the Findings and Award as the initial F&A failed to include an award of benefits.

Accordingly, as our Decision After Reconsideration we rescind the October 25, 2022 F&A, and substitute a new Findings and Award, which omits Finding of Fact 15 and includes an Award of benefits.

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 issued on October 25, 2022, is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. It is found that Applicant, Alexander Olshansky's average weekly earnings were $984.48.

2. It is found that Applicant was temporary disabled from the period of March 30, 2017, through March 28, 2018.

3. It is found that Applicant was permanent and stationary on March 29, 2018.

4. It is found that Applicant's occupational group number is 481.

5. It is found that Applicant is entitled to a permanent disability award of 100%, payable at the rate of $656.32 per week, beginning March 29, 2018 and payable for life, less credit for indemnity paid and less the attorney fee awarded herein.

6. It is found that Applicant is entitled to an unapportioned award.

7. It is found that no further development of the record is necessary.

8. It is found that Applicant is need of further medical treatment to cure and/or relieve from the effects of the injury herein.

9. It is found that Applicant is entitled to reimbursement for out-of-pocket medical costs and mileage in amounts to be adjusted by the parties or determined herein upon the filing of a petition and supporting documents. Jurisdiction reserved.

10. It is found that the issue(s) regarding liens is deferred.

11. It is found that UEBTF is not subject to penalties and interest pursuant to Labor Code section 3716.2.

12. The issues of penalties and interest is removed from submission. Jurisdiction reserved.

13. Based upon the WCAB Rules of Practice and Procedure §10844 and the guidelines for awarding an attorney fee set forth in the Policy and Procedure Manual §1.140, a reasonable attorney's fee is found to be $101,078.68 based upon the Attorney Fee Calculation attached and fully incorporated herein.

14. It is found the issues raised by Defendants Mikhail Cheban / Summitridge were previously decided in the March 4, 2019 Findings of Fact and Orders. No timely appeal was made, and thus the March 4, 2019 decision is final.

AWARD

AWARD IS MADE in favor of **ALEXANDER OLSHANSKY** and against **MIKHAIL CHEBAN**, beneficial interest holder of **SUMMITRIDGE ENTERPRISE, LLC**, and **VLADIE STAR** aka **VLADIMIR ARNOLDOV(ICH) STAROSELSKIY**, and **AIRSTAR GROUP, INC**., jointly and severally as follows:

A) Temporary disability for the period of March 30, 2017, through March 28, 2018, payable at the rate of $656.32 per week.

B) Permanent total disability beginning March 29, 2018, and continuing, payable at the rate of $656.32 per week and subject to adjustment pursuant to Labor Code section 4659(c), less credit for indemnity paid and less reasonable attorney's fees of $101,078.68, which are to be commuted pursuant to the October 21, 2022 calculation of the Disability Evaluation Unit.

C) Future medical treatment to cure or relieve from the effects of the industrial injury.

D) All other issues are deferred.

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

November 2, 2026

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

ALEXANDER OLSHANSKY
HINDEN & BRESLAVSKY
OFFICE OF THE DIRECTOR – LEGAL UNIT
LAW OFFICE OF JAMIE A. BLUNT
VLADIE STAR AKA VLADIMIR ARNOLDOVICH

EDL/cm

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