

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JANCHAI PAYNE, *Applicant*

vs.

**UCLA, Permissibly Self-Insured, administered by SEDGWICK CMS; LOS ROBLES
REGIONAL MEDICAL CENTER; ACE AMERICAN INSURANCE COMPANY,
administered by BROADSPIRE; *Defendants***

**Adjudication Numbers: ADJ10222709; ADJ11429678
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

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

Applicant seeks reconsideration of the Joint Findings and Order (F&O) issued on December 28, 2021, wherein the workers' compensation administrative law judge (WCJ) found that (1) the testimony of applicant as a witness is found to be not credible, taking into account demeanor and presentation, and viewed in the context of contradictory or impeachment evidence; (2) the credibility of applicant and the persuasiveness of the evidence are questions of fact and, therefore, questions for the WCJ and the Appeals Board; (3) all evidence was admitted and evidence relying on applicant's credibility was given very little or no weight; and (4) all other issues are rendered moot, deferred and reserved by the finding that applicant's testimony lacked credibility.

The WCJ ordered that (1) the testimony of applicant is found to be not credible; (2) the WCJ does not find injury due to applicant's lack of credibility; and (3) all other issues are rendered moot, deferred and reserved.

¹ Commissioner Sweeney no longer serves on the Appeals Board. Commissioner Capurro has been substituted in her place.

Applicant contends that the WCJ erroneously (1) found that she did not sustain injury arising out of and occurring in the course of employment (AOE/COE) based solely upon the finding that she lacked credibility; and (2) failed to rule upon applicant's request for additional discovery by way of Panel Qualified Medical Evaluators and to otherwise develop the medical record.

We received Answers from defendants.

We received a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have reviewed the contents of the Petition, the Answers, and the Report. Based upon our review of the record, and for the reasons set forth below, as our Decision After Reconsideration, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On November 24, 2020, the matter proceeded to trial in ADJ10222709. In that case, applicant claims to have sustained injury AOE/COE while employed by UCLA as a hospital lab technician, during the period May 1, 2014 through November 11, 2015, to her bilateral upper extremities, bilateral wrists, bilateral hands, bilateral arms, neck, digestive system (stomach), fingers, both shoulders, elbows, internal, dental, nervous system, pulmonary and vision.

The issues raised for determination were stated as follows:

1. Injury arising out of and in the course of employment.
2. Applicant attorney's motion to strike PQME Klassen is vigorously opposed by both defendants, including possible deposition unavailability.
3. Applicant's request for an additional panel in internal medicine is opposed by defendants.
4. Applicant's attorney objects to trial at this time and seeks further discovery.

(Minutes of Hearing and Order of Consolidation, November 24, 2020, pp. 2:22-3:2, pp. 3:7-12.)

Also on November 24, 2020, the matter proceeded to trial in ADJ11429678. In that case, applicant alleges that she sustained injury AOE/COE during the period May 11, 2014 through November 11, 2015, while employed by Los Robles Regional Medical Center as a pharmacy technician, to her neck, cervical spine, right and left shoulder, both hands, wrists, arms, shoulders, elbows, internal, dental, nervous, neuro, pulmonary, vision and stomach. (*Id.*, p. 3:21-24.)

The issues to be decided were as follows:

1. Injury arising out of and in the course of employment.
2. The defense of Labor Code Section 3600(a)(10).
3. The defense of the statute of limitations.
4. Applicant attorney's motion to strike the PQME Dr. Klassen as set forth in the companion case.
5. Applicant attorney's claim for additional discovery, as set forth in the companion case.
6. Applicant attorney objects to trial on AOE/COE as there is a need for further discovery.

(*Id.*, p. 4:7-14.)

In the Report, the WCJ states:

The decision stated Applicant has no credibility to fortify the medical opinions in the matter and this judge has found no injury. The basic facts are applicant, now 49-years-old, had other prior illnesses, incidents, and injuries before the UCLA claim. She also had concurrent employment (Los Robles claim) when she claimed her industrial pain, numbness and swelling to the fingers, wrist, elbow, shoulder on the right arm in the UCLA claim (Exh. 25, dated October 1, 2015) from pain since July 2015. In hindsight one can see, the Applicant gave incomplete or different histories on a number of non-industrial historical causation items as the UCLA claim developed.

...
Applicant was not inherently believable including impeachment, giving incomplete histories, using a stenographer notebook during testimony at WCAB, not credible reactions during trial and there are more.

...
Inherent believability was not with the applicant as she testified. This was despite the start of testimony beginning in English. The court later encouraged her to use the Thai interpreter as she would understand the questions better and have her LCS 3202 right to a clear and accurate record.

(Report, pp. 3-10.)

DISCUSSION

Labor Code section 5953² provides, in pertinent part:

The findings and conclusions of the appeals board on questions of fact are conclusive and final and are not subject to review. Such questions of fact shall include ultimate facts and the findings and conclusions of the appeals board.

(§ 5953.)

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

The finding of ultimate facts under section 5953 is sufficient, and findings on special probative facts are not required. (*Lumbermen's Mut. Casualty Co. v. Industrial Acci. Com.* (1946), 29 Cal.2d 492 [11 Cal.Comp.Cases 289].)

Section 5313 provides:

The appeals board or the workers' compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

(§ 5313.)

The WCJ is required by section 5313 to issue findings on ultimate facts. (*DPR Construction v. Workers' Comp. Appeals Bd.* 111 Cal.App.5th 1136, 1143 (citing *Argonaut Ins. Exchange v. Ind. Acc. Com.* (1958) 49 Cal.2d 706, 712.) For example, a finding that an employee's injury arose out of and in the course of employment is sufficient. (*Id.* (citing *Walter v. Industrial Acc. Com.* (1930) 209 Cal. 635, 638).)

The WCJ may obtain "additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record . . . the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138, 141 (Appeals Board en banc).)

In this case, the parties framed the issues of injury AOE/COE and whether applicant is entitled to an additional panel in internal medicine and other discovery for trial in ADJ10222709 and ADJ11429678. (Minutes of Hearing and Order of Consolidation, November 24, 2020, pp. 3:7-12, 4:7-14.) However, the WCJ issued no findings as to any of these issues.

Rather, the WCJ found that applicant's testimony lacked credibility, that the question of credibility was a question of fact, and that applicant's lack of credibility rendered all other issues moot. (F&O.) The WCJ then ordered that applicant could not establish injury based upon her lack of credibility. (*Id.*)

The findings do not purport to address the ultimate fact of whether applicant sustained injury, only the probative conclusion as to applicant's lack of credibility. (See *Lumbermen's Mut.*

Casualty Co., supra.) And the order that applicant could not establish injury is otherwise without support because any determination of injury AOE/COE must be based upon medical evidence. (See *Insurance Company of North America v. Workers' Comp. Appeals Bd. (Kemp)* (1981) 122 Cal.App.3d 905 [46 Cal.Comp.Cases 913]; *Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838-839 [30 Cal.Comp.Cases 188]; see also *Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

In addition, the findings do not purport to address the issues of whether applicant may be entitled to the additional panel or the need for other discovery, including whether the medical opinions in the record are deficient. (See *McDuffie, supra.*)

The WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award, there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (§ 5313; see also *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) 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, supra*, at p. 476, (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351]).)

The Appeals Board has the discretionary authority to order development of the record when appropriate to provide due process or fully adjudicate the issues consistent with due process. (See *San Bernardino Community Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261, 264-265].)

Because the WCJ issued no findings on the issues of whether applicant sustained injury AOE/COE and whether applicant is entitled to an additional panel in internal medicine and other discovery, we will rescind the F&O and return the matter to the trial level for development of the record as to these issues. In doing so, we recommend that the WCJ first determine whether the additional discovery sought by applicant is warranted; and second, whether the medical record establishes injury AOE/COE in ADJ10222709 and ADJ11429678. Again, although the question

of whether the alleged cumulative trauma incidents giving rise to each injury claim occurred is subject to determination by the WCJ's assessment of witness credibility, the ultimate determination of whether applicant sustained injury AOE/COE in ADJ10222709 and ADJ11429678 must be based upon medical evidence and not solely witness credibility. (See *Kemp, supra.*)

Accordingly, we will 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 Joint Findings and Order issued on December 28, 2021 is **RESCINDED** and the matter is **RETURNED** to the trial court for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 16, 2026

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

**JANCHAI PAYNE
LAW OFFICES OF JIM T. RADEMACHER
FLOYD SKEREN MANUKIAN LANGEVIN
COSTFIRST CORP.
TOBIN LUCKS, LLP
MIDAS RECOVERY SERVICES
SEDGWICK
PINNACLE LIEN SERVICES**

SRO/kl

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