

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

OSCAR SANDOVAL, *Applicant*

vs.

THE STRIP JOINT, INC.; STATE COMPENSATION INSURANCE FUND, *Defendants*

**Adjudication Number: ADJ9402316
Los Angeles District Office**

**OPINION AND DECISION
AFTER
RECONSIDERATION**

We previously granted reconsideration to further study the legal and factual issues raised in the Petition for Reconsideration (Petition) filed by The Dental Trauma Center (Dental Trauma).¹ This is our Opinion and Decision After Reconsideration.

Dental Trauma seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on June 2, 2022, wherein the WCJ found that Dental Trauma was collaterally estopped from seeking reimbursement for medical treatment services provided to applicant on a lien basis; and that all other issues stemming from Dental Trauma's lien claim were moot. The WCJ issued a "take-nothing" order.

We received an Answer from defendant State Compensation Insurance Fund (SCIF).

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto.

Based on our review of the record, and as discussed below, as our Decision After Reconsideration, we will rescind the Findings and Order issued on June 2, 2022 and return the matter to the trial court for further proceedings consistent with this decision.

¹ Commissioner Sweeney, who was previously on the panel in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

BACKGROUND

We will briefly review relevant facts from applicant's case-in-chief.

Applicant claimed injury arising out of and in the course of employment (AOE/COE) to his neck, head, jaw/teeth, right shoulder, right elbow, right wrist, left wrist, lumbar spine, psyche, and in the form of sleep disorder, while employed by defendant as a furniture stripper on February 12, 2014.

Applicant was evaluated by orthopedic Agreed Medical Evaluator (AME) Lee C. Woods, M.D., who concluded that applicant suffered an industrial injury to the cervical spine, right shoulder, right elbow, right wrist, and lumbar spine. (Bd. Exhs. 1-4.) In a report issued on November 20, 2017, the AME opined that applicant had reached permanent and stationary status as to these injuries. (Bd. Exh. 4, AME Dr. Woods, 11/20/17, pp. 9-10.)

On April 25, 2017, applicant obtained a self-procured oral cranial examination by Dr. Mayer Schames, D.D.S. In a report issued May 7, 2017, Dr. Schames diagnosed applicant with Bruxism (clenching and grinding of the teeth), myofascial pain, and inflammation of the right temporomandibular joint "caused or aggravated on an industrial basis." (App. Exh. 2, Dr. Schames, 5/7/17, pp. 12-13.) On February 26, 2018, Dr. Schames re-evaluated applicant, and in a report issued the same day, Dr. Schames stated, "I feel this patient has reached a plateau and is permanent and stationary in, my area of expertise" and "...Mr. Sandoval's problems in my area of expertise are 100% related to the industrial injury." (App. Exh. 1, Dr. Schames, 2/26/18, pp. 4, 6.)

On February 13, 2019, the matter proceeded to trial. Exhibits were entered into evidence and the stipulations and issues were framed, in relevant part:

STIPULATIONS

1. Oscar Sandoval, born [], while employed on February 12, 2014, as a furniture stripper, at Torrance, California, by The Strip Joint, Inc., sustained injury arising out of and in the course of employment to lumbar spine, right shoulder, right wrist, right elbow and neck, and claims to have sustained injury arising out of and in the course of employment to jaw, head, left wrist, sleep and psych.

* * *

ISSUES

1. Parts of body injured.

* * *

10. Defendant alleges applicant's dental report by Dr. Schames is not substantial medical evidence.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), 2/13/2019, pp. 2-3.)

Trial was continued to April 23, 2019. Applicant submitted additional evidence including as relevant here: a report from Dr. Mayer Schames, DDS, dated February 26, 2018 (App. Exh. 1) and an initial report and Request for Authorization from Dr. Mayer Schames, DDS, dated May 2, 2017. (App. Exh. 2.) During trial, applicant testified in relevant part as follows:

With regard to his treatment with Dr. Schames, DDS, in 2017, he states he went there, because he was clenching his teeth when sleeping. Dr. Schames said because of his nervousness, Applicant was clenching his teeth. The doctor gave him a mouth guard to wear at night.

...

Before Dr. Schames, he saw a dentist on his own and recalls having those problems with clenching his teeth. It started about a year after his injury where he would clench and grind his teeth, and he felt like his teeth were moving a lot. Between February 2015 (when he first noticed his teeth problems) and May 2017 (when he first saw Dr. Schames), he did not tell Dr. Kornberg about his teeth, because Dr. Kornberg was not seeing him for that. He does not recall telling Dr. Woods about his teeth. . . . He saw a dentist by the last name Halloway through his wife's insurance on a private basis.

(MOH/SOE, 4/23/29, pp. 4-5.)

On May 10, 2019, the WCJ issued an F&A finding, among other things,

FINDINGS OF FACT

1. Oscar Sandoval, born [], while employed on February 12, 2014, as a furniture mover, group 560, in Torrance, California, by The Strip Joint Inc., whose workers' compensation insurance carrier was State Compensation Insurance Fund, sustained injury arising out of and in the course of employment to his lumbar spine, right shoulder, right wrist, right elbow, and cervical spine.

(F&A, 5/10/19, p. 1.)

The F&A did not include any findings, orders, or award regarding applicant's other body parts, including the jaw or dental/teeth system. In the Opinion in Decision (Opinion), the WCJ stated that Dr. Schames's medical reports did not constitute substantial medical evidence of injury AOE/COE to the dental/teeth system because Dr. Schames failed to obtain a full or accurate history from applicant or review relevant medical records prior to issuing his reports. (Opinion, 5/10/19, pp. 4-6.)

On June 4, 2019, applicant filed a Petition for Reconsideration of the F&A, which was upheld by the WCAB by an Opinion and Order Denying Petition for Reconsideration issued on August 2, 2019.

On October 12, 2020, applicant and his employer signed a Compromise & Release (C&R) settling the following body parts: 200 neck; 420 back; 518 leg; and 700 multiple parts. (C&R, 10/12/20, p. 3, ¶ 1.) The “comments” portion of the C&R stated: “Settlement incorporates the findings & award dated 5/10/19...Findings & Award dated 5/10/19 44% PD - lumbar spine, right shoulder, right wrist/hand, and right elbow.” (C&R, pp. 6-7, ¶ 9, comments.) The WCJ issued an Order Approving Compromise and Release (OACR) on October 16, 2020.

On March 16, 2022, the matter proceeded to a lien trial.² The stipulations and issues were framed as follows:

STIPULATIONS

1. Oscar Sandoval, born [] while employed on February 12, 2014, as a furniture mover, at Torrance, California, by The Strip Joint, Incorporated, sustained injury arising out of and in the course of employment to lumbar spine, right shoulder, right wrist, right elbow, and cervical spine, and claims to have sustained injury arising out of and in the course of employment to jaw (dental/mouth), head, left wrist (carpal tunnel syndrome), sleep, and psyche.

ISSUES

1. Lien Claimant, The Dental Trauma Center, collaterally estoppel from pursuing its lien and conducting further discovery subsequent to the WCAB’s determination after Applicant's Petition for Reconsideration on the case in chief and after the case settled by C&R?

LET THE RECORD FURTHER REFLECT that the threshold issue is collateral estoppel. All other lien issues, including admissibility of the April 12, 2021, report of Dr. Schames are deferred at this time. The sole question is whether Dental Trauma Center can pursue its lien subsequent to the WCAB’s determination after reconsideration where the dental/teeth were found not industrial.

(MOH, 3/16/22, p. 2.)

On June 2, 2022, the WCJ issued the disputed F&O, which contained a single Finding of Fact, stating:

² The court admitted SCIF’s and Dental Trauma’s trial briefs into evidence. However, briefs are not evidence, they are argument, and they may not substitute for actual evidence. (Cal. Code Regs., tit. 8 § 10803(a).)

Lien claimant, Dental Trauma Center, is collaterally estopped from pursuing its lien, and that given this threshold issue having been determined herein, all other issues stemming from the underlying lien are moot, and any further discovery conducted by the lien claimant after the case in chief was determined is not reimbursable and does not make the prior dates of services reimbursable based upon a finding of non-AOE/COE.

(F&O, 6/2/22, p. 1, Finding of Fact No. 1.)

In the accompanying Opinion on Decision, the WCJ stated:

The issue presented is whether the lien of Dental Trauma Center is collaterally estopped from pursuing its lien and conducting further discovery subsequent to the WCAB's final Order regarding a finding of non-AOE/COE for the dental/teeth by the undersigned WCJ. The parties filed trial briefs which were designated as Lien Claimant's 1 and Defendant's A. Defendant also objected to the admissibility of Dr. Schames's subsequent report dated 4/12/2021, which was also after the case settled by C&R in 2020. Dr. Schames's attempt to clarify the record and review records so that his prior reports would be considered substantial medical evidence retroactively and payable, but first he would have to make the AOE/COE determination found so that the treatment would be paid.

The parties all agree that the Applicant filed a Petition for Reconsideration on 6/24/19³, partially indicating that further discovery is necessary to make the record substantial. This issue was determined by the WCAB and further discovery was not allowed. This WCJ's finding of non-AOE/COE was upheld so that became a final decision on the merits. The lien claimant is attempting now, after that decision became final and after the case settled by C&R, to correct the medical records and refer back, in hopes that the reports will become payable now.

* * *

And again, the issue has been decided already after the appeals process, and cannot be re-tried by another subsequent "party" that basically steps into Applicant's shoes in these supplemental proceedings.

Since there is a finding of no industrial injury, any treatment received from nonindustrial body parts is not compensable, and the fact lien claimant later attempted to "cure" what was previously determined to be insubstantial medical reporting does not mean it can re-litigate the AOE/COE issue again. Therefore...I do find that lien claimant, Dental Trauma Center, is collaterally estopped from trying AOE/COE on the dental/teeth again....Applicant failed to prove up this particular body part or system, and we cannot disturb that 2019 determination.

³ Per the Electronic Adjudication Management System (EAMS), applicant filed its Petition for Reconsideration on 6/4/19, not 6/24/19. Presumably, the WCJ's statement is a typographical error and the WCJ intended to state that applicant filed a Petition for Reconsideration on 6/4/19.

(Opinion on Decision, 6/2/22, pp. 1-3.)

Dental Trauma filed a timely, verified petition for reconsideration of the June 2, 2022 Findings and Order.

DISCUSSION

The sole issue presented is whether Dental Trauma is precluded, or collaterally estopped, from pursuing its lien claim for dental treatment services provided to applicant. In deciding this issue, we find it helpful to explain the three primary theories of preclusion, namely, *res judicata*, collateral estoppel, and law of the case.

I. *Preclusion*

a. *Res Judicata*

The California Supreme Court has explained that “...*res judicata*, ‘prohibits a second suit between the same parties on the same cause of action.’ [Citation.] ‘Claim preclusion arises if a second suit involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit.’ [Citation.]” (*Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 91.)

There is no claim preclusion here because as discussed below, there was no final judgment on the merits of injury AOE/COE to the dental/teeth system in the case-in-chief such that *res judicata* is relevant.

b. *Collateral Estoppel*

Collateral estoppel “precludes relitigation of issues argued and decided in prior proceedings. [Citation.] Traditionally, we have applied the doctrine only if several threshold requirements are fulfilled. First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. [Citations.]” (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341, fn. omitted.)

Here, in her Report, the WCJ states “this WCJ found on the issue of body parts, that applicant had injured his low back, neck, and right shoulder, wrist and elbow, *but not the head, jaw/dental, sleep, psyche, and left wrist.*” (Report, 7/13/22, p. 2, emphasis added.) The WCJ continued, stating, “collateral estoppel applies and the case merits were decided in 2019. The lien

claimant cannot now re-try AOE/COE as to the teeth/dental body part/system so that [its] bills can be retroactively paid.” (*Id.*, p. 5.)

Contrary to the WCJ’s conclusion, however, the 2019 F&A only contains a finding of injury AOE/COE to applicant’s lumbar spine, right shoulder, right wrist, right elbow, and cervical spine. (F&A, 5/10/19, p. 1, Finding of Fact No. 1.) There are *no* Findings of Fact as to whether applicant sustained injury AOE/COE to the dental/teeth system. (Lab. Code, § 5313; *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621 (Appeals Bd. en banc) [“It is the duty of the WCAB to make ‘findings upon all facts involved in the controversy’”].) Only in the Opinion on Decision did the WCJ discuss the dental/teeth system, stating, “Schames’ reports...are not considered substantial medical evidence and cannot be the basis for an award of benefits for the teeth or jaw.” (Opinion on Decision, 5/10/19, p. 5.) However, statements in an Opinion on Decision are not findings of fact; their purpose is to explain the basis for the decision. (Lab. Code, § 5313; *Twentieth Century-Fox Film Corp. v. Workers’ Comp. Appeals Bd.* (1983) 141 Cal.App.3d 778 [48 Cal.Comp.Cases 275].) Absent an express finding of fact as to injury AOE/COE to the dental/teeth system, the issue was not “necessarily decided” in the 2019 F&A. Additionally, the WCAB’s 2019 Opinion and Order Denying Petition for Reconsideration made no such finding.

Based on the foregoing, injury AOE/COE to the dental/teeth system was not “necessarily decided” at any point in the case-in-chief, and, as a result, the third element of collateral estoppel is not satisfied. For the same reason, there was no “final decision on the merits” on this issue in the first proceeding, which is the fourth element of collateral estoppel. Thus, Dental Trauma is not collaterally estopped from litigating injury AOE/COE to the dental/teeth system until such time as a final finding on that body part is issued.

We also note that, at times, the WCJ appears to have assigned a collateral estoppel effect to the C&R settling applicant’s case-in-chief in 2020. (Opinion on Decision, 6/2/22, p. 2; Report, 7/13/22, p. 5.) The legal principles governing C&Rs are the same as those governing other contracts. (*Burbank Studios v. Workers’ Comp. Appeals Bd. (Yount)* (1982) 134 Cal.App.3d 929, 935 [47 Cal.Comp.Cases 832]; *Camacho v. Target Corp.* (2018) 24 Cal.App.5th 291 [83 Cal.Comp.Cases 1014].) The plain language of the C&R describes the body parts being released at that time as: 200 neck; 420 back; 518 leg; and 700 multiple parts. (C&R, 10/12/20, p. 3, ¶ 1, p. 3.) There is no evidence that, by this language, the parties intended to settle injury to the dental/teeth system. In fact, the C&R expressly incorporated the WCJ’s 2019 F&A, which, as noted

above, only included a finding of injury AOE/COE to the lumbar spine, right shoulder, right wrist, right elbow, and cervical spine. Thus, there was no agreement to bind the various interests on this issue at that point. As a result, the WCJ is incorrect insofar as she may have believed that the C&R has a collateral estoppel effect upon Dental Trauma's claim. (Cf. *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 91-92 ["Where a settlement agreement expressly excludes certain claims, the resulting dismissal does not preclude further litigation on the excluded claim."].)

c. *Law of the Case*

The law of the case principle is also not applicable to prevent lien claimant from proceeding because there was no final finding on the issue. "The doctrine of 'law of the case' deals with the effect of the *first appellate decision* on the subsequent *retrial or appeal*: The decision of an appellate court, stating a rule of law necessary to the decision of the case, conclusively establishes that rule and makes it determinative of the rights of the same parties in any subsequent retrial or appeal in the same case." (*Leider v. Lewis* (2017) 2 Cal.5th 1121, 1127, quoting *Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, emphasis in original.)

Taken together, sections 5313 and 5815 require the WCJ to "make and file findings upon all facts involved in the controversy" and to issue a corresponding award, order or decision that states the "reasons or grounds upon which the [court's] determination was made." (Lab. Code, §§ 5313, 5815; see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621 (Appeals Bd. en banc) (*Blackledge*) ["It is the duty of the WCAB to make 'findings upon all facts involved in the controversy'"].) The WCJ's decision "must be based on admitted evidence in the record" (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc)), and the decision must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

Here, the WCJ's May 10, 2019 findings did not comply with the requirement in section 5313 that the WCJ "make and file findings upon all facts involved in the controversy." (Lab. Code, § 5313; Cal. Code Regs., tit. 8, § 10787(c)(5); *Blackledge, supra*, 75 Cal.Comp.Cases at p. 621.) In the 2019 proceeding, there were multiple claimed body parts framed as issues for trial, including the jaw, head, left wrist, sleep and psych. The 2019 findings, however, only addressed injury to

applicant's lumbar spine, right shoulder, right wrist, right elbow, and cervical spine, and were silent as to injury to the jaw, head, left wrist, sleep and psych. That is, there was no finding regarding the additional body parts of jaw or dental at issue here. Thus, although the body part was listed as an issue in the minutes of hearing, and discussed in the Opinion on Decision, the issue was not actually "decided on the merits," as required.

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*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 [43 Cal.Comp.Cases 661]) or determines a "threshold" issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) As applicable here, when a WCJ makes a finding that is affirmed on appeal or if a new finding is made by the appellate body, and there are no further appeals, the finding is final. But if no finding is made, then there is no final determination of the issue. That is, the absence of a finding does not equate to a final finding on the issue.

Here, in the WCAB's 2019 Opinion and Order Denying Reconsideration, i.e., the *first appellate decision*, the panel stated that it agreed with the WCJ that applicant did not meet the burden on the issue of injury AOE/COE to the teeth/jaw. *But no actual finding of no injury was made as to the teeth/jaw.* Without an actual final finding by the WCJ, our decision did not and could not affirm that finding, so that there is no "law of the case." Thus, Dental Trauma is not precluded by the law of the case from claiming injury AOE/COE to the jaw or to the dental system in the first instance.

CONCLUSION

Based on the foregoing, as our Decision After Reconsideration, we rescind the WCJ's Findings and Order issued on June 2, 2022, and return the matter to the trial court 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 Findings and Order issued June 2, 2022 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 22, 2026

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

**OSCAR SANDOVAL
LAW OFFICES OF SOLOV & TEITELL
STATE COMPENSATION INSURANCE FUND
THE DENTAL TRAUMA CENTER
LAW OFFICE OF SAAM AHMADINIA**

AC/mt

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