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

**JOHN WOODWARD,**

*Applicant,*

vs.

**TRI CORP CONSTRUCTION; NATIONAL  
UNION FIRE INSURANCE COMPANY OF  
PITTSBURGH, PA,**

*Defendants.*

**Case No. ADJ6872063**  
**(Sacramento District Office)**

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

Defendant seeks reconsideration of the June 30, 2014 Findings and Award issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that there was new and further disability under Labor Code<sup>1</sup> section 5410 and good cause under section 5803 to grant applicant's Petition to Reopen; that applicant sustained psychiatric injury arising out of and occurring in the course of employment (AOE/COE); and that applicant has need of further psychiatric medical treatment. The parties previously settled applicant's orthopedic claim by a January 26, 2011 Stipulated Award providing that applicant sustained admitted industrial injury to his right shoulder, right elbow, right wrist, right humerus, and right upper extremity while employed as a construction superintendent on June 6, 2009 causing 2% permanent disability and need for further medical treatment. Applicant filed a timely Petition to Reopen on June 21, 2011 and an amended Petition to Reopen on September 21, 2011, both alleging new and further disability, including the need for a psychiatric consultation. Following additional proceedings, the Petition to Reopen was tried on April 4, 2014 and resulted in the decision from which defendant seeks reconsideration herein.

Defendant contends that the WCJ erred in finding applicant's psychiatric injury compensable.

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

1 Defendant argues that applicant's claim is barred under the doctrine of res judicata; that the psychiatric  
2 injury is not new and further disability because applicant knew of the psychiatric injury at the time of the  
3 January 26, 2011 settlement; and that applicant failed to establish good cause to reopen.

4 Applicant filed an Answer. The WCJ issued a Report and Recommendation on Petition for  
5 Reconsideration (Report) recommending that we deny reconsideration.

6 Based on our review of the record and for the reasons discussed below, we will grant  
7 reconsideration for the sole purpose of amending the WCJ's decision to find that applicant's psychiatric  
8 injury is a compensable consequence injury of the June 30, 2014 admitted orthopedic injury. We will  
9 otherwise affirm the WCJ's decision.

10 Defendant does not dispute the WCJ's finding of new and further disability and good cause to  
11 reopen as to the orthopedic injuries and does not dispute that there is substantial medical evidence  
12 establishing industrial causation of the psychiatric injury or the need for psychiatric treatment. Therefore  
13 we need not address those issues. Instead, defendant only disputes the finding of compensability of the  
14 psychiatric injury based either on the doctrine of res judicata or the argument that new and further  
15 disability and good cause to reopen do not exist where applicant knew of the psychiatric injury at the  
16 time of the January 26, 2011 Stipulated Award settlement and did not assert that injury at that time. We  
17 disagree.

18 A psychiatric injury does not fall within the ambit of the workers' compensation system until it  
19 causes either disability or a need for medical treatment and it is diagnosed "using the terminology and  
20 criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders,  
21 Third Edition-Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals  
22 generally approved and accepted nationally by practitioners in the field of psychiatric medicine." (Lab.  
23 Code, §§ 3208.3(a); 139.2.) This is true of all claims of psychiatric injury whether or not an injury stands  
24 alone or is a compensable consequence of a physical injury. (See *Lockheed Martin Corp. v. Workers'*  
25 *Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1237, 1239-1240, 1249 [67 Cal.Comp.Cases 245].)  
26 Moreover, while it is true that final decisions of the Appeals Board have res judicata effect (*Scott v.*  
27 *Industrial Acc. Com.* (1956) 46 Cal.2d 76, 83 [1956 Cal. LEXIS 155]; *French v. Rishell* (1953) 40 Cal.2d

1 477, 480 [1953 Cal. LEXIS 210]), the Appeals Board is given powers under sections 5803, 5804, and  
2 5410 to rescind, alter, or amend any order, decision, or award within five years from the date of injury.  
3 Therefore, orders, decisions, or awards of the Appeals Board are not final until that period has expired.  
4 Given the non-finality of such orders, decisions, or awards during the period of continuing jurisdiction,  
5 the doctrine of res judicata is not applicable. (*Azadigian v. Workers' Comp. Appeals Bd.* (1992) 7  
6 Cal.App.4th 372, 379 [57 Cal.Comp.Cases 391].) (*Casualty Ins. Co. v. Industrial Acc. Com.* (1964) 226  
7 Cal.App.2d 748, 756-757.)

8 In this case, the parties entered into a Stipulated Award on January 26, 2011, as described above,  
9 addressing only orthopedic injuries. According to defendant, at the time the parties entered into the  
10 Stipulated Award, applicant was aware of his psychiatric symptoms but failed to allege psychiatric injury  
11 at the time of the settlement. Defendant cites to numerous medical records summarized in the  
12 November 13, 2012 AME report of psychiatrist Gordon Baumbacher, M.D., that establish applicant's  
13 awareness of psychiatric symptoms. These medical records include treatment records dated  
14 March 3, 2008 noting anxiety disorder; a treatment note dated June 25, 2009 from Mercy Medical Group  
15 describing major anxiety due to workers' compensation claim and job situation; a treatment note dated  
16 July 27, 2009 describing anxiety due to shoulder pain; a treatment record dated January 14, 2010 noting  
17 "increased anxiety due to ongoing issues with Workers' Compensation issues, with right shoulder pain,  
18 and a sister with recent bilateral mastectomy" and noting psychiatric medication use "four years ago" to  
19 control anxiety;" and the October 25, 2010 agreed medical examination (AME) report of orthopedist  
20 Peter Mandell M.D., which stated that applicant suffered from depression and hypertension.  
21 (Dr. Baumbacher's 11/13/12 report at pp. 3-5, Applicant's Exhibit 3.)

22 Following the January 26, 2011 settlement, applicant filed a timely Petition to Reopen on  
23 June 20, 2011 and an amended Petition to Reopen on September 21, 2011 both alleging new and further  
24 disability and good cause to reopen, including the need for a psychiatric consultation recommended by  
25 Vinay Reddy M.D., on April 18, 2011.

26 Applicant was initially evaluated by Dr. Baumbacher, the psychiatric AME, on March 7, 2012.  
27 He issued a report issued on March 16, 2012 (Applicant's Exhibit 2). Dr. Baumbacher made diagnoses

1 "in accordance with the criteria of the Diagnostic and Statistical Manual of the American Psychiatric  
2 Association," as follows: 1) major depressive disorder, single episode, nonpsychotic, moderate (296.22);  
3 2) anxiety disorder NOS (300.00); and 3) pain disorder associated with both psychological factors and a  
4 general medical condition. (Dr. Baumbacher's 3/16/12 report at p. 28, Applicant's Exhibit 2.)

5 In addressing causation, Dr. Baumbacher provided a *Rolda* analysis in light of applicant's  
6 termination. Dr. Baumbacher wrote:

7 The injury of that date and events that followed had had major impact resulting in  
8 chronic pain, associated physical limitations, in the claimant's experience an  
9 unresolved, unstable dominate right shoulder, and change in his work status. The  
10 consequences of the injury June 3, 2009, therefore had been sufficiently problematic  
11 that the preponderance of evidence indicates with reasonable medical probability that  
12 the injury on June 23, 2009 [*sic*], and the events that followed shortly thereafter  
13 (termination of the claimant's employment) had been predominant (greater than 50  
14 percent) as to all causes combined of psychiatric impairment and need for treatment  
15 associated with symptomatology diagnosable as Major Depressive Disorder, Single  
16 Episode, Nonpsychotic, Moderate; Anxiety Disorder NOS; and Pain Disorder  
17 Associated with Both Psychological Factors and a General Medical condition.

14 [A]s a consequence, the proportionate causal effects from the claimant's termination  
15 of June 15, 2009, with reasonable medical probability would not exceed 20 percent  
16 and therefore would not reach the threshold of substantial (35 to 40 percent).  
(*Id.* at pp. 36-37.)

17 Dr. Baumbacher did not find applicant permanent and stationary with regard to his psychiatric  
18 status. (*Id.* at p. 35.) He felt that additional psychiatric treatment was indicated including both  
19 pharmacotherapy and counseling. (*Id.* at p. 37.)

20 On November 13, 2012, Dr. Baumbacher issued a supplemental report in response to questions  
21 posed by defense counsel. (Applicant's Exhibit 3.) He was asked how applicant's psychiatric condition  
22 changed from the period prior to January 26, 2011 to the period after January 26, 2011. Dr. Baumbacher  
23 responded:

24 At the time of my report of March 16, 2012, the Stipulation date of January 26, 2011,  
25 had not been referenced by the claimant or in referral correspondence. Therefore,  
26 shifts that may have occurred in emotional status pre and post this date had not been  
27 specifically referenced. However, referenced records do reference a change in  
emotional status following the date of January 26, 2011. For example, Dr. Vinay  
Reddy in a report of April 18, 2011, had described a Beck Depression Inventory score  
of 24. Dr. Reddy in a report of May 31, 2011, noted that the Beck Depression

1 Inventory score had increased to 40 and then by June 28, 2011, had dropped to 34,  
2 and then on July 26, 2011, had increased to 36. Dr. Reddy's report of  
3 January 12, 2012, noted a Beck Depression Inventory score of 35. These scores  
4 would indicate that beginning in the second third of the year 2011 the Beck  
5 Depression Inventory scores increased from levels in the moderate range to levels in  
6 the severe range and remain at the higher level into early 2012. These records would  
7 support a finding that Beck Depression Inventory scores increased after the first third  
8 of the year in 2011 and with some fluctuation remained elevated into the beginning of  
9 2012. At the time of my examination on March 14, 2012, the Beck Depression  
10 Inventory score was 32. While Beck Depression Inventory scores had not been  
11 present for the period prior to January 26, 2011, the scores available subsequent to  
12 that date had indicated an upward trend that had stabilized at the somewhat higher  
13 level by the latter half of 2011."

14 (Dr. Baumbacher's 11/13/12 report at pp. 6-7, Applicant's Exhibit 3.)

15 Thus, there is some evidence in the record that, prior to the January 26, 2011 settlement, applicant  
16 was aware of psychiatric symptoms, that he had received treatment for those symptoms, and that he may  
17 have attributed those symptoms, at least in part, to his specific orthopedic injury of June 6, 2009.  
18 Nevertheless, none of the summarized records rise to the level of substantial medical evidence  
19 establishing industrial causation for the psychiatric injury pursuant to section 3208.3(a) which requires  
20 disability or a need for medical treatment and a diagnosis using terminology and criteria of the American  
21 Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders. Such evidence did not  
22 arise until after the January 26, 2011 settlement in the form of Dr. Baumbacher's March 7, 2012  
23 psychiatric AME report. There, he diagnosed applicant's psychiatric condition and found that the  
24 orthopedic injury was the predominate cause. Defendant does not dispute either of those findings on  
25 reconsideration. In addition, Dr. Baumbacher found that applicant's psychiatric symptoms increased  
26 after January 26, 2011. This increase in symptoms consists of a demonstrable change in condition  
27 leading to new and further disability under section 5410. (*Nicky Blair's Restaurant v. Workers' Comp.*  
*Appeals Bd.* (1980) 109 Cal.App.3d 941, 954 [45 Cal.Comp.Cases 876].) Therefore, we affirm the  
WCJ's finding of new and further disability under section 5410.

However, when an employee, who has sustained an industrial injury to one body part, suffers an  
injury to another body part as a consequence, it is not a new and independent injury. Instead, it is a  
compensable consequence injury that relates back to the original injury date. (*Southern Cal. Rapid*

1 *Transit Dist. v. Workers' Comp. Appeals Bd. (Weitzman)* (1979) 23 Cal.3d 158 [44 Cal.Comp.Cases  
2 107]; *Laines v. Workers' Comp. Appeals Bd.* (1975) 48 Cal.App.3d 872; *Dixon v. Ford Motor Co.* (1975)  
3 53 Cal.App.3d 499.) Thus, it was error for the WCJ to find psychiatric injury arising out of and  
4 occurring in the course of employment (AOE/COE). Therefore, we will amend the WCJ's decision to  
5 find that the psychiatric injury is a compensable consequence of the specific injury on June 6, 2009. We  
6 otherwise affirm the WCJ's decision.

7 Finally, we note that applicant's attorney cited the unpublished decision of *State Compensation*  
8 *Insurance Fund v. Workers' Comp. Appeals Bd. (Hancock)* (2010) 75 Cal.Comp.Cases 1336 multiple  
9 times in the Answer. Applicant's attorney is admonished for citing this unpublished case without  
10 alerting the Appeals Board that this is an unpublished case in violation of California Rules of Court, rule  
11 8.1115(a).

12 Accordingly, for the reasons stated herein, we will grant reconsideration, for the sole purpose of  
13 amending the WCJ's decision to find that applicant's psychiatric injury is a compensable consequence  
14 injury of the June 30, 2014 admitted orthopedic injury. We will otherwise affirm the WCJ's decision.

15 For the foregoing reasons,

16 **IT IS ORDERED** that defendant's Petition for Reconsideration of the June 30, 2014 Findings  
17 and Award is **GRANTED**.

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1 IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers'  
2 Compensation Appeals Board, that the June 30, 2014 Findings and Award is **AFFIRMED, EXCEPT** as  
3 **AMENDED** below.

4 **FINDINGS OF FACT**

5 \* \* \*

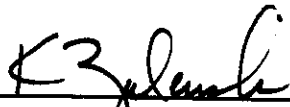
6 3. Applicant sustained psychiatric injury as a compensable consequence of the  
7 industrial orthopedic injury on June 3, 2009.

8 \* \* \*

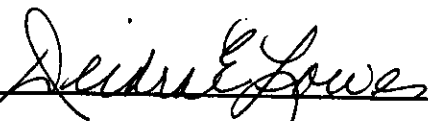
9 **WORKERS' COMPENSATION APPEALS BOARD**

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12 **MARGUERITE SWEENEY**

13 I CONCUR,

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15 \_\_\_\_\_  
16 **KATHERINE ZALEWSKI**

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19 **DEIDRA E. LOWE**



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

21 **SEP 23 2014**

22  
23 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**  
24 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

25 **JOHN WOODWARD**  
26 **MCMONAGLE STEINBERG**  
27 **DENNIS ISAAC**

27 **PG:jmp**

