WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

BILLY DYKSTRA, ***Applicant***

vs.

GILTON SOLID WASTE MANAGEMENT, INC., STATE COMPENSATION INSURANCE FUND; CALIFORNIA INSURANCE GUARANTEE ASSOCIATION through its servicing facility, TRISTAR RISK MANAGEMENT for SUPERIOR NATIONAL INSURANCE, in liquidation, ***Defendants***

Adjudication Numbers: ADJ1004210 (STK 0099464); ADJ3914401 (STK 0099465); ADJ1467268 (STK 0099462); ADJ754893 (STK 0070105); ADJ1000131 (STK 0070104)
Lodi District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision after Reconsideration.

Defendant State Compensation Insurance Fund (SCIF) filed a Petition for Reconsideration (Petition) seeking to vacate a Findings, Award, and Order (FA&O) issued on April 30, 2021 by a workers compensation judge (WCJ). The WCJ found in relevant part that defendants were jointly and severally liable with respect to a December 16, 1996 Stipulations with Request for Award, wherein applicant's injuries caused 70.25% permanent disability to the right knee, low back, and psyche. The settlement also indicated that SCIF was responsible for 20% of the overall liability and Superior National Insurance, now insolvent, was responsible for the remaining 80%. The WCJ found SCIF responsible for administration and payment of the future medical award without reimbursement from California Insurance Guarantee Association (CIGA) on behalf of Superior National Insurance as well as reimbursement for any post liquidation medical expenses paid by CIGA.

SCIF contends that the Stipulations with Request for Award did not establish joint and several liability and that since the Award is now final, liability for benefits should remain split between SCIF and CIGA (on behalf of Superior National Insurance).

CIGA filed an Answer and the WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that reconsideration be denied.

We have considered the Petition and the Report. We have also reviewed the record in this matter. Based upon our review of the record, and the reasons discussed below, we will affirm the WCJ's FA&O.

FACTS

Applicant and defendants SCIF and Superior National Insurance agreed to settlement via Stipulations with Request for Award. The settlement was approved by a WCJ on December 16, 1996. The settlement, which encompassed five dates of injury, was based upon the parties' agreement that applicant had 70.25% permanent disability to the right knee, low back, and psyche. The settlement indicated that SCIF was responsible for 20% of the overall liability and Superior National Insurance responsible for the remaining 80%.

On September 26, 2000, Superior National Insurance went into liquidation. Thereafter, CIGA resumed liabilities on behalf of Superior National Insurance.

On January 6, 2020, CIGA filed a Petition for Reimbursement seeking reimbursement from SCIF for post liquidation benefits that were paid for medical treatment and life pension benefits. CIGA contended that liability for the Award was joint and several between SCIF and Superior National, and that SCIF was "other insurance."

On April 12, 2021, CIGA and SCIF proceeded to trial on CIGA's Petition for Reimbursement. They stipulated to the relevant facts (Exhibit 1), which the WCJ ultimately approved by way of his FA&O. According to the pre-trial conference statement, the other issues raised were whether there was medical evidence that "SCIF's injuries contributed to the need for benefits; whether the stipulation between SCIF and Superior National in the agreement was a final order; [and] whether CIGA's claim was barred by laches or estoppel as a result of CIGA's pursuit of repayment 20 years after it assumed the claims of Superior National "after the destruction of physical files." No witness testimony was offered. The only other evidence that was submitted was the Stipulations with Request for Award (Exhibit 2).

On April 21, 2021, the parties returned to trial, and submitted the medical evidence that was the basis for the settlement: a report from Dr. Curry dated July 25, 1994 (Exhibit 3) and a report from Dr. Mandell, dated November 4, 1994 (Exhibit 4). No witness testimony was offered.

On April 30, 2021, the WCJ issued the FA&O, wherein SCIF was found responsible for administration of the future medical award and payment of future medical benefits as well as for

reimbursement of any post liquidation medical expenses paid by CIGA on behalf of Superior National Insurance. The issues of the life pension and the amount of reimbursement were deferred.

DISCUSSION

Pursuant to Insurance Code section 1063.2(a), CIGA's fundamental statutory mandate is to pay and discharge the "covered claims" of insolvent insurers. Insurance Code section 1063.1(c)(1) sets forth the general definition of "covered claims," which, as relevant here, includes "the obligations of an insolvent insurer ... (i) imposed by law and within the coverage of an insurance policy of the insolvent insurer … [and] (vi) in the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the workers' compensation law of this state … ." (See also *Cal. Ins. Guar. Ass'n v. Workers' Compensation Appeals Bd.* (2004) 117 Cal.App.4th 356 [69 Cal.Comp.Cases 186]; *Cal. Ins. Guar. Ass'n v. Workers' Compensation Appeals Bd.* (2003) 112 Cal.App.4th 364 [68 Cal.Comp.Cases 1448].) Insurance Code section 1063.1(c)(9)(i) provides that "'[c]overed claims' [do] not include any claim to the extent it is covered by any other insurance of a class covered by this article [14.2] available to the claimant or insured [.]" As such, in cases where there is coverage by a solvent insurer, CIGA has no duty to pay and discharge any claims.

Case and statutory law, however, make clear that CIGA is not an "insurer" in the ordinary sense as CIGA is not an insurance company, its duties are not co-extensive with the insolvent insurer's obligations, and it does not stand in the shoes of the insolvent insurer. (*Isaacson v. California Ins. Guarantee Assn.* (1988) 44 Cal.3d 775, 786; *Baxter Healthcare Corp. v. California Ins. Guarantee Assn.* (2000) 85 Cal.App.4th 306, 309-310; *American Nat. Ins. Co. v. Low* (2000) 84 Cal.App.4th 914, 920; *Mercury Ins. Co. v. Enterprise Rent-A-Car Co. of Los Angeles* (2000) 80 Cal.App.4th 41, 51; *Industrial Indemnity Co. v. Workers' Comp. Appeals Bd.* (*Garcia*) (1997) 60 Cal.App.4th 548, 556 [62 Cal.Comp.Cases 1661, 1666-1667]; *California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd.* (*Conces*) (1992) 10 Cal.App.4th 988, 996- 997 [57 Cal.Comp.Cases 660, 664-666]; *Denny's Inc. v. Workers' Comp. Appeals Bd.* (*Bachman*) (2003) 104 Cal.App.4th 1433, 1438 [68 Cal.Comp.Cases 1, 4].)

Here, SCIF contends that the Stipulations with Request for Award did not establish joint and several liability and the Award is now final, and as such, unable to be altered pursuant to *Gomez v. Casa Sandoval*; *Nokes v. Placer Savings Bank* (2003) 68 CCC 753 (WCAB en banc) and *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd.* (2013) 218 Cal.App.4th 258

[Cal.Comp.Cases 758]. SCIF therefore believes CIGA should step into the shoes of now insolvent Superior National Insurance and continue the split in liability as outlined in the original Stipulations with Request for Award.

In the instant case, the Stipulations with Request for Award indicates that liability was to be split 80% and 20% between Superior National Insurance and SCIF, respectively, based upon the agreed medical evaluator (AME) reports of Drs. Curry and Mandell. Although the settlement occurred several decades prior, liability is continuing for medical treatment and payment of the life pension.

As noted above, however, CIGA is not an ordinary insurer and therefore cannot stand in the shoes of an insolvent insurer. Further, pursuant to Insurance Code section 1063.1(c)(9)(i), in cases where "other insurance" is available, CIGA has none of the duties it would otherwise have for "covered claims" under Insurance Code section 1063.2(a). In such instances, CIGA may seek reimbursement from the "other" insurer for any benefits paid after insolvency.

Moreover, the *Nokes* holding referenced above does not accurately reflect the current state of the law. It is now well established that, contrary to the holdings in *Nokes*, the WCAB cannot apportion liability for medical treatment and temporary disability indemnity between CIGA and insurers. (*California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd. (Weitzman) (2005)* 128 Cal.App.4th 307 [70 Cal.Comp.Cases 556]; *CIGA v. Workers' Comp. Appeals Board (Hooten) (2005)* 128 Cal.App.4th 569 [70 Cal.Comp.Cases 551].) Furthermore, in a recent case, a Court of Appeal held that CIGA was not bound by the liability allocation agreed between the parties in a Compromise and Release prior to CIGA's administration of the claim because, although the Compromise and Release was a judgment, "the judgment merely apportioned liability; it did not change the joint and several nature of the now-apportioned liability." (*California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd. (Lopez)* (2016) 245 Cal.App.4th 1021 [81 Cal.Comp.Cases 317].) In sum, the current state of the law is that, if CIGA and an insurer are jointly and severally liable for non-permanent disability benefits, the WCAB cannot apportion liability between CIGA and an insurer. Therefore, CIGA is not bound by a pre-liquidation settlement apportioning liability.

In addition, there is no apportionment of medical treatment. (*Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal. 2d 399 [33 Cal.Comp.Cases 647], *Dorman v. Workers' Comp. Appeals Bd.* (1978) 78 Cal. App. 3d 1009, 1020 [43 Cal. Comp. Cases 302, 309].) Particularly where treatment to overlapping body parts for multiple injuries is involved or where treatment for

multiple body parts is to be completed simultaneously under the direction of one or more treaters, division of liabilities would cause not only confusion and inefficiencies in billing and payments, but delays in obtaining necessary medical treatment. As such, for medical treatment of injuries, a single defendant may be found jointly and severally liable.

Here, given the fact that one or more injuries occurring during SCIF's liability period have contributed to applicant's need for medical treatment, SCIF is jointly and severally liable for applicant's medical treatment, and as such, is liable to CIGA for reimbursement of any reasonable and necessary medical treatment expenses paid by CIGA after Superior National Insurance's insolvency.

Turning to the issue of life pension, Labor Code section 4659(a) provides in relevant part: "If the permanent disability is at least 70 percent, but less than 100 percent, 1.5 percent of the average weekly earnings for each 1 percent of disability in excess of 60 percent is to be paid during the remainder of life, after payment for the maximum number of weeks specified in Section 4658 has been made." In the instant case, the Stipulations with Request for Award has indicated a 70.25% permanent disability. As such, life pension benefits are applicable to the current case.

In *Baker v. Workers' Comp. Appeals Bd.* (2011) 52 Cal.4th 434 [76 Cal.Comp.Cases 701], the Supreme Court explained the purpose of permanent disability and life pension benefits:

> Permanent disability and life pension benefits are intended to compensate the injured worker for the long-term, residual effects of an industrial injury once the worker has attained maximum medical recovery. (*Department of Rehabilitation v. Workers' Comp. Appeals Bd.* (2003) 30 Cal.4th 1281, 1291 [135 Cal. Rptr. 2d 665, 70 P.3d 1076] (*Department of Rehabilitation*).) Total permanent disability benefits are weekly payments made for life to injured workers who are 100 percent disabled. (§ 4659, subd. (b).) They generally commence on the date the injured worker reaches a medically stable condition (permanent and stationary) because, at that point, the full nature and extent of the worker's permanent disability, if any, can be determined. (*Department of Rehabilitation*, supra, 30 Cal.4th at p. 1292.) Life pensions *are a form of supplemental partial permanent disability benefit*, consisting of payments to a subclass of seriously injured workers, i.e., those whose "permanent disability is at least 70 percent, but less than 100 percent." (§ 4659, subd. (a).) *Life pension payments commence once the worker's partial permanent disability payments have been exhausted*, and thereafter continue weekly for life. (Ibid.)"

(*Baker*, 52 Cal.4th at 438, italics added.)

In *Baker*, the Supreme Court noted that life pension benefits are intended to compensate the applicant for the long-term, residual effects of an industrial injury. In this way, life pension payments function as a form of supplemental partial permanent disability benefit. Given that life

pension payments are partial permanent disability benefits, it would appear life pension benefits should be treated in the same manner as permanent disability benefits in cases involving CIGA. Thus, we agree with the WCJ's decision to defer the issue of the life pension, given the potential need for further development of the record on the issue.

Finally, SCIF contends that CIGA's claims should be barred under the equitable doctrine of laches and/or that CIGA should be collaterally estopped from pursuing its claims.

Laches is an affirmative defense, and therefore SCIF had the affirmative burden of proof. (Lab. Code, § 5705.) "Generally speaking, the existence of laches is a question of fact to be determined by the trial court in light of all of the applicable circumstances... (*Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624 (*Miller*).)[1] The Supreme Court describes the requisite showing for a claim to be barred by laches as follows:

> As we pointed out in *Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d 351 [82 Cal. Rptr. 337, 461 P.2d 617], the affirmative defense of laches requires unreasonable delay in bringing suit "plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." (*Id*., at p. 359, fns. omitted.) *Prejudice is never presumed; rather it must be affirmatively demonstrated by the defendant in order to sustain his burdens of proof and the production of evidence on the issue. (Id., at p. 361.)" (Miller, supra, 27 Cal.3d at p. 624, emphasis added.)*

"[U]nreasonable delay by the plaintiff is not sufficient to establish laches. There must *also* be prejudice to the defendant resulting from the delay or acquiescence by the plaintiff." (*Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037, 1049-1051, italics in the original.)

As stated by the WCJ in his Opinion:

> In equity, the doctrine of laches and/or estoppel may apply. Laches is an equitable defense. Laches is the failure of one party to assert its rights in a timely fashion where the delay is prejudicial to the other party. If both elements are met, then the right or relief sought can be denied or "estopped".
>
> The existence of laches is a question of fact and cannot be found absent manifest injustice. Estoppel on the other hand is an equitable doctrine that prevents someone from arguing something or asserting a right that contradicts what they previously said or agreed to.

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[1] "The appeals board has broad equitable powers with respect to matters within its jurisdiction. (*Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [28 Cal.Rptr.2d 30].) Thus, equitable doctrines. . .are applicable in workers' compensation litigation. (*State Farm General Ins. Co. v. Workers' Comp. Appeals Bd.* (2013) 218 Cal.App.4th 258, 268 [159 Cal.Rptr.3d 779]; 2 Hanna, Cal. Law of Employee Injuries and Workers' Compensation (rev. 2d ed. 2016) § 24.03[1], p. 24-14 (rel. 81-3/2015).)" (*Truck Ins. Exchange v. Workers' Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685].)

> The WCAB has equitable powers. However, the facts of this case are not sufficient to provide SClF with equitable relief. While the statutory scheme under which CIGA operates may on occasion produce an unfair result, there is no evidence that CIGA's conduct in waiting over twenty years to try and change administrators and seek reimbursement in this matter prejudiced SCIF. Absent evidence of prejudice, the doctrine of laches cannot be applied.
>
> In addition, the doctrine of estoppel does not apply. The agreement in question was between Superior National Insurance Company and State Compensation Insurance Fund. If Superior National Insurance Company had been acquired by another insurance company, then the new insurance company would be bound to the terms of the Superior National Agreement. However, CIGA was not a party to the agreement. CIGA made no agreement that it is now trying to back out of. CIGA is not an insurance company and is not bound by agreements made by Superior National Insurance Company and SCIF.

(Opinion on Decision, p. 14.)

Here, SCIF presented no evidence that it was prejudiced other than alleging that 20 years had elapsed. Thus, we agree with the WCJ that SCIF did not meet its burden on this issue.

Accordingly, we affirm the WCJ's May 20, 2021 FA&O.

For the foregoing reasons,

IT IS ORDERED as the Opinion and Decision After Reconsideration of the Workers' Compensation Appeals Board, the May 20, 2021 Findings, Award, and Order is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 7, 2024

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

BILLY DYKSTRA
KELLY DUARTE
MULLEN & FILIPPI
STATE COMPENSATION INSURANCE FUND

RL/*cs*

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