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No. _____

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In the
Supreme Court of the United States

JOCELYN A. JOHNSON,
Petitioner,

v.

WORKERS' COMPENSATION APPEALS BOARD OF THE
STATE OF CALIFORNIA, COCA-COLA BOTTLING
COMPANY, ALEXIS RISK MANAGEMENT, KEMPER
INSURANCE, BROADSPIRE,
Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of California

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Workers' Compensation Judge relying on medical reports according to Senate Bill 31 guidelines and not the permanent disability rating schedule a denial of due process?
2. Does the Workers' Compensation Judge omitting substantial medical evidence and reports deny due process under the Fourteenth Amendment?
3. Does Workers' Compensation Appeals Board prematurely destroying the Board's adjudication files deny due process?
4. Whether the statute of limitations is unconstitutional when the Due Process Clause of the Fourteenth Amendment is violated?

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OPINIONS BELOW

The Supreme Court of California Order denying review, dated November 13, 2019. App. 1. The Court of Appeal of the State of California Second Appellate District Division Three Order denying the petition for a writ of review, dated September 10, 2019. App. 2. The Opinion and Order Denying Petition for Reconsideration in the Worker's Compensation Appeals Board State of California, dated November 13, 2019. App. 3. The Findings and Order Opinion on Decision Opinion in the Worker's Compensation Appeals Board State of California, dated March 5, 2019. App. 10. All of the above decisions are unpublished.

JURISDICTION

This Petition for a Writ of Certiorari is filed within 90 days of the denial of the California Supreme Court for a hearing order entered on November 13, 2019. The Court's Jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a) and 28 U.S.C. § 2403(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Fourteenth Amendment
§ 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Constitution Article XIV § 4:

The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers' compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workers for injury or disability, and their dependents for death incurred or sustained by the said workers in the course of their employment, irrespective of the fault of any party. A complete system of workers' compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workers and those dependent upon them for support to the extent of relieving from the consequences of any injury or death incurred or sustained by workers in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provision for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the

establishment and management of a state compensation insurance fund; full provision for otherwise securing the payment of compensation; and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the state government.

The Legislature is vested with plenary powers, to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workers' compensation, as herein defined.

The Legislature shall have power to provide for the payment of an award to the State in the case

of the death, arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to employees of the employer.

Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the state compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed.

California Constitution Article III § 1:

The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land.

California Penal Code § 550

(a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any person to do any of the following:

* * *

(10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim for payment submitted by

or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

(1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(2) Prepare or make any written or oral statement that is intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

California Insurance Code § 1871.4

(a) It is unlawful to do any of the following:

(1) Make or cause to be made a knowingly false or fraudulent material statement or material representation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(2) Present or cause to be presented a knowingly false or fraudulent written or oral material statement in support of, or in opposition to, a claim for compensation for the purpose of obtaining or denying any compensation, as defined in Section 3207 of the Labor Code.

(3) Knowingly assist, abet, conspire with, or solicit a person in an unlawful act under this section.

(4) Make or cause to be made a knowingly false or fraudulent statement with regard to entitlement to benefits with the intent to discourage an injured worker from claiming benefits or pursuing a claim.

* * *

California Labor Code § 5950

Any person affected by an order, decision, or award of the appeals board may, within the time limit specified in this section, apply to the Supreme Court or to the court of appeal for the appellate district in which he resides, for a writ of review, for the purpose of inquiring into and determining the lawfulness of the original order, decision, or award or of the order, decision, or award following reconsideration. The application for writ of review must be made within 45 days after a petition for reconsideration is denied, or, if a petition is granted or reconsideration is had on the appeal board's own motion, within 45 days after the filing of the order, decision, or award following reconsideration.

California Labor Code § 5951

The writ of review shall be made returnable at a time and place then or thereafter specified by court order and shall direct the appeals board to certify its record in the case to the court within the time therein specified. No new or additional evidence shall be introduced in such court, but the cause shall be heard on the record of the appeals board, as certified to by it.

STATEMENT

On December 21, 2017, Petitioner Jocelyn A. Johnson filed a Declaration of Readiness to Proceed as instructed by information and assistance officers Douglass Ross and Rosa Stephanian. On August 29, 2018, a hearing was held where pretrial statements were submitted. Workers' Compensation Judge Penny Barbosa limited the issue to fraud only. January 31, 2019 trial was held. Evidence from applicant and defendant Coca-Cola Bottling Company were submitted on March 5, 2019. Workers' Compensation Judge Cassandra V. Stajdunar finding and order opinion on decision issued. On March 25, 2019, a petition for reconsideration was filed with the Workers' Compensation Appeals Board on the following grounds: U.S. Constitution Fourteenth Amendment § 1; California Constitution Article XIV § 4, and Article III § 1. A Petition for Writ of Review filed July 8, 2019. California Court of Appeal Second District order denying review on September 10, 2019. A Petition for Review filed in the California Supreme Court on September 20, 2019, and was denied on November 13, 2019.

REASONS FOR GRANTING THE PETITION

A State Court of Appeals has so far departed from the accepted and usual course of Judicial proceeding as to call for an exercise of this Court's Supervisory Power.

When the WCAB prematurely destroyed petitioner's adjudication file in violation of Cal Code of Regulations Title 8 § 10208.7(a) 1-10, it deprived petitioner of her due process rights under the Fourteenth Amendment. Due Process guarantees a right to a fair hearing in Workers' Compensation Proceedings as expressly affirmed in *Beverly Hills Multispecialty Group Inc v. WCAB*, 26 Cal. App. 4th 789, 806 (1994). "A denial of due process to a party ordinarily compels annulment of the Board's decision only if it is reasonably probable that absent the procedural error, the party would have attained a more favorable result." *Redner v. Worker's Comp. Appeals Board* (1971) 5 Cal. 3d 83, 93 [95 Cal., Rptr. 447, 485 P.2d 799].

The Workers' Compensation Appeals Board premature destruction of records wrongly deprives injured workers of the right of Judicial Review. In *Escorbo v. Marshalls*, 70 Cal. Comp Cases 604 (2006), the WCAB set forth the requirements of substantial evidence at 620-621 in this en banc decision. It is well established that any decision of the WCAB must be supported by substantial evidence. Lab. Code § 5952(d).

In *Rucker v. Worker's Compensation Appeals Board*, [82 Cal. App. 4th 153], the Board is bound by the due process clause of the Fourteenth Amendment to the

United States Constitution to give the parties before it a [82 Cal. App. 4th 158] fair and open hearing. The right to such a hearing is one of the rudiments of fair play assured to every litigant by the Fourteenth Amendment as a minimal requirement.

Tyler v. Workers' Compensation Appeals Board (1997) 56 Cal. App. 4th 389 [65 Cal. Rptr. 2d 431] held that under the circumstances, due process required the development of the evidentiary record to enable a complete adjudication of the issues.

In *Gangwish v. Workers' Compensation Appeals Board* [89 Cal. App. 4th 1287] the Court of Appeals found that Ganwish was denied due process when he complains he was denied the opportunity for rebuttal, which violated due process. Gangwish is correct.

In *Fortich v. WCAB* (1991), an elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, [233 Cal. App. 3d 1453] under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

In *Flores v. Reegs, Inc.*, 2014 Cal. Wrk. Comp. P.D. LEXIS 427, the Workers' Compensation Appeals Board found nine violations of the parties' right to due process when the WCJ issued determinations on several issues that had not been submitted at trial. *See also, Cedeno v. American National Insurance Co.*, 62 Cal.Comp.Cases 939 (1997).

CONCLUSION

For the reasons set forth above, this court should grant the petition for Certiorari.

Respectfully submitted,

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APPENDIX

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