

App. 1

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**APPENDIX A**

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**Court of Appeal, Second Appellate District,  
Division Three – No. B298896**

**S258107**

**[Filed November 13, 2019]**

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

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**JOCELYN A. JOHNSON, Petitioner,**

**v.**

**WORKERS' COMPENSATION APPEALS BOARD  
and COCA-COLA BOTTLING COMPANY,  
Respondents.**

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The petition for review is denied.

**CANTIL-SAKAUYE**

*Chief Justice*

App. 2

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**APPENDIX B**

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**IN THE COURT OF APPEAL OF THE STATE  
OF CALIFORNIA SECOND APPELLATE  
DISTRICT DIVISION THREE**

**No. B298896  
(W.C.A.B. No. ADJ2941365)**

**[Filed September 10, 2019]**

JOCELYN A. JOHNSON,	)
Petitioner,	)
	)
v.	)
	)
WORKERS' COMPENSATION	)
APPEALS BOARD and COCA-COLA	)
BOTTLING COMPANY,	)
Respondents.	)
	)

**ORDER**

THE COURT:

The petition for a writ of review filed herein has been read and considered.

The petition is denied.

<u>s/</u>	<u>s/</u>	<u>s/</u>
EDMON, P. J.,	LAVIN, J.,	EGERTON, J.

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APPENDIX C

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WORKERS' COMPENSATION APPEALS  
BOARD

STATE OF CALIFORNIA

Case No. ADJ2941365 (BGN 0131581)  
(Los Angeles District Office)

[Filed November 23, 2019]

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JOCELYN JOHNSON,	)
	)
<i>Applicant,</i>	)
	)
vs.	)
	)
	)
COCA COLA BOTTLING COMPANY;	)
KEMPER NATIONAL INSURANCE,	)
	)
<i>Defendants.</i>	)

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OPINION AND ORDER DENYING  
PETITION FOR RECONSIDERATION

Applicant in pro per seeks reconsideration of the March 5, 2019 Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ). By the F&O, the WCJ found that neither the November 27, 1996 Findings and Award nor the June 18, 2002 Findings and Award was procured by fraud.

#### App. 4

Applicant contends that the Findings and Awards describe an incorrect beginning date for her injury, that the incorrect date of injury was the basis for the formal rating, that the agreed medical evaluator (AME) did not fully address her medical conditions, and that she was denied due process.

We have not received an answer from defendant. The WCJ is unavailable and has not prepared a Report and Recommendation on Petition for Reconsideration.

We have considered the allegations of applicant's Petition for Reconsideration. Based on our review of the record and for the reasons discussed below, we will deny applicant's Petition for Reconsideration.

#### BACKGROUND

In her Opinion on Decision, the WCJ stated that,

Ms. Johnson suffered a cumulative trauma injury during the period 6/19/1985<sup>1</sup> to 6/19/1988 while working at Coca Cola. A trial was held, and in 2002, a Findings and Award issued awarding Ms. Johnson 41.25% permanent disability. Ms. Johnson filed a Petition for Reconsideration that was denied, a Writ that was denied, and a Petition to the Supreme Court of California that was unanswered.

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<sup>1</sup> The prior Findings and Awards stated that applicant's injury began on "October, 1987." On January 31, 2019, the parties stipulated that applicant's injury began on June 19, 1985. (Minutes of Hearing and Summary of Evidence, January 31, 2019, p. 2.)

App. 5

At some point in time, the paper case file was destroyed by the WCAB.  
(Findings and Order Opinion on Decision, March 5, 2019, p. 2.)

On January 31, 2019, the matter proceeded to trial on the issue of fraud. (Minutes of Hearing and Summary of Evidence, January 31, 2019, p. 2.) In relevant part, applicant's exhibits included applicant's May 13, 2002 cross-examination of the rating specialist and the transcript of applicant's January 18, 1996 deposition of the agreed medical evaluator. (*Id.* at pp. 3-5.) The WCJ admitted applicant's exhibits into evidence, and neither party called a witness to testify. (*Id.* at p. 6.) Applicant filed a trial brief and an amended trial brief.

On March 5, 2019, the WCJ determined that applicant failed to submit evidence that would support a finding of fraud and stated that,

There are limited instances in which the court might reopen a Findings and Award more than five years after the original date of injury. The primary bases upon which a case might be reopened would involve extrinsic fraud. (*See, e.g., Rogers v. WCAB*, 68 Cal.Comp.Cases 975 (Cal.App.4th Dist. May 20, 2003).)

In her filed trial briefs, the applicant alleges the trial judge erred in his interpretation of medical evidence that was submitted to him at the time of trial and upon which he based his decision in 2002. (*See. i.e., Amended Trial Brief of the Applicant* filed 12/3/18 at 3:15-4:16; 4:26-5:6.)

Insofar as the applicant's allegations involve evidence that was available at the time of the original trial decision and was present at the time the applicant's appeals of that decision were denied, the undersigned does not find a legal basis upon which to reopen the applicant's original award.

(Findings and Order, Opinion on Decision, March 5, 2019, pp. 1-3.)

### DISCUSSION

Labor Code section 5803<sup>2</sup> provides in relevant part that,

[t]he appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division, and the decisions and orders of the rehabilitation unit established under Section 139.5. At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.

(Lab. Code, § 5803.)

The Worker Compensation Appeals Board's power to re-open pursuant to section 5803 "should be exercised with great caution and when fraud, inadvertence, mistake, or excusable neglect are clearly shown." (*Nicky Blair's Rest.*, *supra*, 109 Cal.App.3d at

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<sup>2</sup> All future statutory references are to the Labor Code unless otherwise specified.

957.) Further, the Workers Compensation Appeals Board is powerless to reopen pursuant to section 5803 in the absence of good cause. (*Id.* at 955.) Additionally, a petition to reopen may not be used to litigate issues that should have been raised in a timely petition for reconsideration and it may not be used to relitigate the original award. (*Nicky Blair's Rest. v. Workers' Comp. Appeals Bd* (1980) 109 Cal.App.3d 941, 956 [45 Cal.Comp.Cases 876].) This is because the failure of an aggrieved party to raise an issue by seeking reconsideration constitutes a waiver of the issue. (See Lab. Code, §§ 5902 and 5904; *Cedillo v. Workmen's Comp. Appeals Bd.* (1971) 5 Cal.3d 450, 455-456 [36 Cal.Comp.Cases 497, 501]; *U.S. Auto Stores v. Workmen's Comp. Appeals Bd. (Brenner)* (1971) 4 Cal.3d 469, 476 [36 Cal.Comp.Cases 173, 177-178]; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650, 656].) Further, when a party fails to prevail on a petition for reconsideration, the Appeals Board will not entertain a successive petition by that party unless the party is newly aggrieved. (*Goodrich v. Industrial Acc. Com.* (1943) 22 Cal.2d 604, 611 [8 Cal.Comp.Cases 177]; *Ramsey v. Workmen's Comp. Appeals Bd.* (1971) 18 Cal.App.3d 155, 159 [36 Cal.Comp.Cases 382]; *Crowe Glass Co. v. Industrial Acc. Com. (Graham)* (1927) 84 Cal.App. 287, 293-295 (14 IAC 221).) As stated in our en banc opinion in *Navarro v. A & A Framing* (2002) 67 Cal.Comp.Cases 296, 299:

The general rule is that where a party has filed a petition for reconsideration with the Board, but the party does not prevail on that petition for reconsideration, the petitioning party cannot

attack the [Appeal's] Board's action by filing a second petition for reconsideration; rather, the petitioning party must either be bound by the [Appeals] Board's action or challenge it by filing a timely petition for writ of review.

Further, in *Kulcher v. Kulcher* (1969) 1 Cal. 3d 467, 470-471 the California Supreme Court declared that there is a basic public policy favoring finality of judgments, and that an award may be set aside upon a showing of extrinsic fraud, which "usually arises when a party is denied a fair adversary hearing because he has been deliberately kept in ignorance of the action or proceeding or in some other way fraudulently prevented from presenting his claim or defense." (*Id.* at 471.) However, relief from the judgment is to be denied "... if a party has been given notice of an action and has not been prevented from participating therein. He has had an opportunity to present his case to the court and to protect himself from mistake or from any fraud attempted by his adversary" (*Id.* at 472).

Here, applicant seeks to reopen the 1996 and 2002 Findings and Awards on the basis that they were procured by fraud. She argues that the Findings and Awards were based on an incorrect date of injury, that the agreed medical evaluator did not fully address her conditions, and that she was denied due process. Applicant did not meet her burden to show extrinsic fraud because she could have raised these contentions at the 2002 hearing and raised any concerns she had about the AME's reporting when she deposed him on January 18, 1996. Likewise, applicant had the opportunity to raise any concerns she had about her



App. 9

permanent disability rating when she cross-examined the rating specialist on May 13, 2002. Applicant's 2002 Petition for Reconsideration was destroyed, and we do not know what contentions she raised in that Petition. If applicant failed to raise her current contentions in the 2002 Petition for Reconsideration, she waived the contentions. Conversely, if applicant raised her current contentions in her 2002 Petition for Reconsideration, she is bound by the 1996 and 2002 Findings and Awards because they were not set aside on appeal.

Thus, there is no good cause to reopen the 1996 and 2002 Findings and Awards on the basis of fraud. Accordingly, we will deny applicant's Petition for Reconsideration of the March 5, 2019 Findings and Order.

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**APPENDIX D**

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**STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board**

**Case No. ADJ2941365**

**[Filed March 5, 2019]**

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JOCELYN JOHNSON,

*Applicant,*

vs.

COCA COLA BOTTLING COMPANY;  
KEMPER NATIONAL INSURANCE,

*Defendants.*

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**FINDINGS AND ORDER  
OPINION ON DECISION**

The above-entitled matter having been heard and regularly submitted, the Honorable Cassandra Stajduhar, Workers' Compensation Judge, now decides as follows:

**FINDINGS OF FACT**

1. Jocelyn Johnson, born 9/16/1955, while employed during the period June 19, 1985 to June 19, 1988, as a bottler, at Downey, California, by Coca Cola, did sustain injury arising out of and in the course of

App. 11

employment to her low back, shoulders, respiratory, neck, and psyche.

2. A Findings and Award issued in 2002 for 41.25 percent Permanent Disability.

3. A Petition for Reconsideration was denied September 10, 2002 and subsequent appeals were denied.

**ORDER**

**IT IS ORDERED** the applicant has failed to submit evidence to support a finding of fraud.

DATE: March 5, 2019

s/ \_\_\_\_\_  
**Cassandra V. Stajduhar**  
WORKERS' COMPENSATION JUDGE

App. 12

**CASE NO: ADJ2941365**

JOCELYN JOHNSON,

vs.

COCA COLA BOTTLING COMPANY;  
ALEXIS RISK MANAGEMENT,

WORKER'S COMPENSATION JUDGE: Cassandra  
Stajduhar

DATE OF INJURY: 06/19/1985 TO 06/18/1988

**OPINION ON DECISION**

This matter was submitted for decision on the issue of fraud as alleged by the applicant, Ms. Johnson.

Ms. Johnson suffered a cumulative trauma injury during the period 6/19/1985 to 6/19/1988 while working at Coca Cola. A trial was held, and in 2002, a Findings and Award issued awarding Ms. Johnson 41.24% permanent disability. Ms. Johnson filed a Petition for Reconsideration that was denied, a Writ that was denied, and a Petition to the Supreme Court of California that was unanswered.

At some point in time, the paper case file was destroyed by the WCAB.

Ms. Johnson now has a number of allegations with respect to the court's 2002 trial decision as set forth in her Trial Brief and Amended Trial Brief filed with the Court.

There are limited instances in which the court might reopen a Findings and Award more than five years after the original date of injury. The primary bases upon which a case might be reopened would involve extrinsic fraud. (*See, e.g., Rogers v. WCAB*, 68 Cal. Comp. Cases 975 (Cal. App. 4th Dist. May 20, 2003).)

In her filed trial briefs, the applicant alleges the trial judge erred in his interpretation of medical evidence that was submitted to him at the time of trial and upon which he based his decision in 2002. (*See. i.e., Amended Trial Brief of the Applicant* filed 12/3/18 at 3:15-4:16; 4:26-5:6.) Insofar as the applicant's allegations involve evidence that was available at the time of the original trial decision and was present at the time the applicant's appeals of that decision were denied, the undersigned does not find a legal basis upon which to reopen the applicant's original award.

The court does not find evidence to support a finding of fraud; the applicant's request to reopen her case is denied.

DATE: March 5, 2019

s/ \_\_\_\_\_  
**Cassandra V. Stajduhar**  
WORKERS' COMPENSATION JUDGE

App. 14

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**APPENDIX E**

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STATE OF CALIFORNIA

PETE WILSON, Governor

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DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION  
INFORMATION & ASSISTANCE UNIT

P.O. BOX 420603

San Francisco, CA 94142

Tel: (415) 975-0700

[Seal]

August 14, 1998

Ms. Jocelyn Johnson

5329 Clark Street

Lynwood, CA 90262-5501

Dear Ms. Johnson:

Per your request we are forwarding information regarding a copy of your Worker's Compensation Appeals Board (WCAB) file.

The fees per California Code of Regulations 9990 is 10 cents per page plus tax and postage. Your file contains 413 pages for a cost of \$41.30 plus \$3.10 tax and appropriate postage. If you wish the copy of your file, please discuss this with the Van Nuys district office. You should also discuss obtaining a file from your attorney. Another option is hiring a copy service to go to the board and copy the file for you.

App. 15

Very truly yours,

s/\_\_\_\_\_

K.C. Edgington  
Information & Assistance Officer

/kce

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**APPENDIX F**

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STATE OF CALIFORNIA

GRAY DAVIS, *Governor*

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**DEPARTMENT OF INDUSTRIAL RELATIONS**

Workers' Compensation Appeals Board

P.O. BOX 429459

San Francisco, CA 94142-9459

Tel: (415) 703-4580

[Seal]

January 27, 2000

Joseph A. Lane  
Clerk, Court of Appeal  
Second Appellate District  
Division Two  
300 South Spring Street, Rm. 2217  
Los Angeles, CA 90013

RE: 2<sup>nd</sup> Civil No. B138205, Coca-Cola Bottling  
Co. v. WCAB and Jocelyn A. Johnson  
[WCAB Case No. BGN 0131581]

Dear Sir:

Respondent Workers' Compensation Appeals Board will not be filing an answer to the petition for writ of review recently filed in the above-referenced matter. In not filing an answer, no reflection is intended upon the merits of the petition or the decision rendered by the Board.



App. 17

Very truly yours,

s/\_\_\_\_\_  
Vincent Bausano  
Assistant Secretary, WCAB  
State Bar No. 130912

VB/vpd

cc: Heisler & Bray  
Attn: Douglas M. Bray, Esq.  
6351 Owensmouth Ave., Ste. 100  
Woodland Hills, CA 91367

Jocelyn Johnson  
5329 Clark Street  
Lynwood, CA 90262