

No. 19-1164

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 REHEARING

JOCELYN A. JOHNSON
5329 Clark Street
Lynwood, CA 90262
(562) 502-0546

Petitioner Pro Se

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CONSTITUTION

U.S. Const. Art. III, Sec. 2 1

RULE

U.S. Sup. Ct. R. 44.2 1

PETITION FOR REHEARING

Pursuant to U.S. Supreme Court Rule 44.2 Petitioner Jocelyn A. Johnson hereby respectfully petition this Court for rehearing of this case. An order vacating its denial for Writ of Certiorari entered on May 26, 2020, and grant certiorari. The Petition for Rehearing is filed within 25 days.

REASONS FOR GRANTING

Article III of the U.S. Constitution Section 2

The Judicial Power shall extend to all cases, in Law and equity, arising under this, Constitution, the law of the United States, and treaties made, or which shall be made, under their authority.

There are intervening circumstances of a substantial or controlling effect petitioner also assert standing under Article III Section 2

- (1) She has suffered injury in fact that is concrete, particularized, and actual or imminet
- (2) injury was caused by the defendant
- (3) the injury would likely be redressed by the requested Judicial relief.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561 (1992).

Petitioner an employee of Coca-Cola Bottling Company and a vested member in good standing with Teamsters Local Union 896 a participant in Erisa's defined pension benefit plan under union contract. And have not received pension plan benefit payments.

James J. Thole, et al. Petitioners v. U.S. Bank A., et al.
(June 1, 2020) No. 17-1712.

Petition allege a concrete injury in fact and have suffered by the action of defendant, likely to be redressed by a favorable decision.

CONCLUSION

Petitioner pray the order denying Certiorari be vacated and rehearing Granted. Alternatively reverse and remand to Court of Appeal Second Appellate District vacating its order denying review an order the relief requested.


Respectfully submitted,

JOCELYN A. JOHNSON
5329 Clark Street
Lynwood, CA 90262
(562) 502-0546

Petitioner Pro Se

CERTIFICATION

The foregoing is restricted to the grounds specified in 44.2 S. Ct. R. and it is presented in good faith and not for delay.


Jocelyn A. Johnson
Petitioner Pro Se

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APPENDIX A

**STATE OF CALIFORNIA
WORKERS' COMPENSATION BOARD**

BGN 0131581

**WORKERS' COMPENSATION JUDGE:
ROBERT Y. NAKAGAWA**

[Filed June 18, 2002]

JOCELYN JOHNSON)
)
-vs-)
)
COCA COLA BOTTLING CO,)
KEMPER INSURANCE)
COMPANY)

)

DATE OF INJURY: OCTOBER 1987 THROUGH
JUNE 19, 1988

OPINION ON DECISION

INTRODUCTION:

The November 2, 1990 Minutes of Workers' Compensation Judge Carlos Rodriguez, when the applicant was represented by David Lilly, reflect Stipulations and Issues and Exhibit # 1 and A. The matter was taken off calendar.

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The June 12, 1992 Minutes of Workers' Compensation Judge Rodriguez reflect Exhibit #2 and B. The disposition reflects the matter will stand submitted when mutually requested.

On October 4, 1996, the applicant was represented by Manuel Graiwer and the parties found Stipulations and Issues and took in Exhibits #X1 and X2 and the case was submitted.

The November 27, 1996 Findings and Award, which was not in the Workers' Compensation Appeals Board found injury to the low back, neck, shoulders, respiratory system and psyche due to her employment from October, 1987 through June 19, 1988. Her earnings were \$498.00 per week resulting in a temporary disability compensation rate of \$322.00 per week and a permanent disability rate of \$140.00 per week. Temporary disability was found from June 20, 1988 through February 1, 1990 at \$332.00 per week. Further medical treatment was found based upon Agreed Medical Examiner, Dr. Endler's June 7, 1994 report and April 11, 1995 deposition as well as Agreed Medical Examiner, Dr. Wixen's June 22, 1995 deposition at Page 33-34, plus Agreed Medical Examiner, Dr. Gillis' August 31, 1995 report. The issues of permanent disability, apportionment, self-procured medical treatment, medical-legal costs, Serious and Willful Misconduct, earnings under the Thrifty Drug Store holding, and VRTD were deferred.

Order Denying Reconsideration issued on January 23, 1997.

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The August 12, 1997 Minutes reflect the applicant's attorney was relieved and the case was taken off calendar for applicant to find a new attorney.

The July 15, 1999 Minutes reflect the case was to stand submitted on August 15, 1999 on issues of Vocational Rehabilitation with Exhibits #1, A, and B.

The Court issued a September 15, 1995 Findings and Award of VRTD from February 2, 1990 through May 9, 1997 at \$332.00 per week, less credit for sums paid and days worked with 15% withheld as attorney's fees, less credit for a VRTD overpayment from June 16, 1998 to May 3, 1999 to be adjusted.

The Order Denying Defendant's Petition for Reconsideration issued on December 1, 1999.

The February 7, 2001 MSC of Workers' Compensation Judge Ward states good cause for one last continuance so pro per applicant could find an attorney.

The March 15, 2001 MSC Minutes of Workers' Compensation Judge Van Riper states the case was set in error before him and was continued to June 11, 2001 before Workers' Compensation Judge Nakagawa.

The June 11, 2001 Trial Minutes reflect two letters from the applicant and responses were not in the file. The matter was continued on notice to September 24, 2001.

The Workers' Compensation Judge served a June 12, 2001 letter stating the applicant does not have a right to a jury trial before the Workers' Compensation Appeals Board.

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The defendant filed a June 28, 2001 Petition to Remove to request no further continuances. The July 25, 2001 Order denied the Petition.

On September 24, 2001, the applicant's request for continuance or order taking off calendar to get an attorney was denied. The Court issued a thirty-day Notice of Intention to refer the matter to the Disability Evaluation Unit with seven days to request cross-examination or rebuttal, otherwise to stand submitted.

On December 27, 2001, the Court served the November 21, 2001 Formal Rating and Rating Instructions.

On January 8, 2002, the applicant filed her Motion to Strike the Ratings and Request to cross-examine the Disability Evaluator.

On March 14, 2002, the case was set for trial to cross-examine the Rater. The trial was continued to May 16, 2002 due to the unavailability of the Workers' Compensation Judge.

RIGHT TO JURY TRIAL:

The Court finds the applicant does not have a right to jury trial, pursuant to Labor Code §5300.

SELF-PROCURED MEDICAL TREATMENT:

Self-procured medical treatment is to be adjusted by the parties or determined herein upon the filing of a petition and supporting documents.

MEDICAL-LEGAL COSTS:

Medical-legal costs are to be adjusted by the parties or determined herein upon the filing of a petition and supporting documents.

EARNINGS REGARDING THE THRIFTY DRUG STORE HOLDING:

The applicant contends her earnings should be adjusted to reflect union raises.

The issue is moot because the applicant is maximum for permanent disability.

PERMANENT DISABILITY AND APPORTIONMENT - ORTHOPEDIC:

Agreed Medical Examiner, Dr. Endler's February 8, 1994 report states at Page 11 that the applicant is restricted from lifting from ground to waist level, particularly with her knee extended due to low back disability.

Agreed Medical Examiner, Dr. Endler's June 7, 1994 deposition states at Page 16 that the applicant should not be working above shoulder level due to her neck disability. At Page 38 the applicant's low back disability precludes prolonged standing, repeated bending, stooping and squatting. At Page 40, the applicant is precluded from lifting more than fifty pounds.

Agreed Medical Examiner, Dr. Endler's April 11, 1995 deposition states at Page 16 the applicant is precluded from climbing, ascending and descending ladders, and

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reaching at shoulder height in a repetitive manner due to neck and shoulder disability.

Agreed Medical Examiner, Dr. Endler's April 11, 1995 deposition states at Page 42 that he ascribes 50 percent of low back, neck, and shoulder disability to industrial causation.

PERMANENT DISABILITY AND APPORTIONMENT
- PSYCHE:

Agreed Medical Examiner, Dr. Wixen's July 7, 1992 report states the following Work Function Impairments:

1. Very slight
2. Very slight
3. Slight
4. Slight
5. Slight
6. Slight
7. Slight
8. Slight

apportioned 30% due to her perception of stress, harassment, and unfair treatment during her employment at Coca Cola. The remaining 70% is due to the physical discomfort and disability caused by her asthma.

Agreed Medical Examiner, Dr. Wixen's June 22, 1995 deposition at Page 32 states the overall disability is very slight. At Pages 35-36 the emotional condition precludes severe emotional stress.

PERMANENT DISABILITY AND APPORTIONMENT
- INTERNAL:

Agreed Medical Examiner, Dr. Gillis' August 31, 1995 report states the applicant's occupationally-related pulmonary disability precludes pulmonary toxic job environments.

Agreed Medical Examiner, Dr. Gillis' January 18, 1996 deposition states at Page 99-105, and Page 111, the applicant is precluded from working around dust, fumes, chemicals and exhaust fumes and ought not work in enclosed buildings consisting of tight-building syndrome, work environments that don't have good, adequate, clean air flow nor exhaust fumes.

At Page 114, the doctor states he couldn't have imposed a retrospective prophylactic restriction.

Based upon the aforementioned Agreed Medical Examiner reports and depositions, the formal rating instructions and the November 21, 2001 Formal Rating, the following rating instructions apply:

50%	(18.1) - 55 - 19F - 55 - 53)	26:2
	(7.3)	
	1.41 - 10 - 19F - 10	9:1
	6.1 - 10 - 19F - 10	9:1

MDT 41:1

which is 188.25 weeks at \$140.00 per week totalling \$26,355.00 payable beginning May 4, 1999, less credit for sums paid less attorney's fees to be withheld

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SERIOUS AND WILLFUL MISCONDUCT OF
EMPLOYER:

This issue is deferred.

ATTORNEY'S FEES:

The Court is of the opinion \$3,950.00 be withheld
pending further order.

Date: 6-18-02

/s/Robert Y. Nakagawa
ROBERT Y. NAKAGAWA
WORKERS' COMPENSATION JUDGE

Filed and served on:

6-18-02

On all parties on the
Official Address Record

By: /s/

APPENDIX B

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

Case No. BGN 0131581

[Filed July 1, 2003]

CHERLYN JOHNSON,)
)
 Applicant)
)
 vs.)
)
 COCA COLA BOTTLING COMPANY;)
 KEMPER NATIONAL INSURANCE,)
)
 Defendants.)
)

**ORDER GRANTING
APPOINTMENT OF
GUARDIAN AD LITEM AND TRUSTEE**

Pursuant to the June 11, 2003 Petition, CHERYLN JOHNSON, the applicant's daughter, is appointed as the applicant's Guardian ad Litem and Trustee.

Date: 7-1-03

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/s/Robert Y. Nakagawa
ROBERT Y. NAKAGAWA
WORKERS' COMPENSATION JUDGE

Filed and served on:

7-1-03

On all parties on the
Official Address Record

By: /s/

APPENDIX C

STATE OF CALIFORNIA
WORKERS' COMPENSATION
APPEALS BOARD

Case No. BGN 0131581

[Filed July 30, 2003]

JOCELYN JOHNSON,)
Applicant)
)
vs.)
)
COCA COLA BOTTLING CO.;)
KEMPER NATIONAL INSURANCE,)
)
Defendants.)
)
)

**ORDER RESCINDING ORDER GRANTING
GUARDIAN AD LITEM AND TRUSTEE**

A Petition for Reconsideration having been filed on July 23, 2003, and good cause appearing pursuant to the provisions of WCAB Rule 10859, as amended, effective February 1, 1995,

IT IS ORDERED that the Order issued on July 1, 2003, in the above-entitled case be, and hereby is rescinded.

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The matter is set for conference and further proceedings on notice at Department 7, 320 W. 4th Street, 9th Floor, Los Angeles, California 90013 before the Honorable Robert Y. Nakagawa, Workers' Compensation Judge.

Date: 7-30-03

/s/Robert Y. Nakagawa
ROBERT Y. Nakagawa
WORKERS' COMPENSATION JUDGE
WORKERS' COMPENSATION APPEALS BOARD

Filed and Served by mail on:

7-30-03

On all parties on the
Official Address Record
By /s/

APPENDIX D

STATE OF CALIFORNIA GRAY DAVIS, *Governor*

DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation,
Workers' Compensation Appeals Board
320 West Fourth Street, 9th Floor,
Los Angeles, CA 90013
tel: (213) 576-7335

May 21, 2003

Ms. Cherilyn Johnson
5329 Clara Street
Lynwood, California 90262

Cherlynn Johnson, Guardian ad Litem on behalf
of Jocelyn Johnson, an Incompetent
Case No. BGN 0131581

Dear Ms. Johnson:

In response to your Petition dated April 30, 2003,
please file and serve DWC WCAB Form #8, "Petition
for Appointment of Guardian ad Litem and Trustee".

Very truly yours,
s/

Robert Y. Nakagawa
Workers' Compensation Judge

RYN:cd

cc: Heisler & Bray, 6351 Owensmouth Avenue #100,
Woodland Hills, CA 91367