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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

RAVINDERJIT SINGH,

Petitioner,

v.

WORKERS' COMPENSATION
APPEALS BOARD and CALIFORNIA
DEPARTMENT OF CORRECTIONS
AND REHABILITATION,

Respondents.

F075483

(WCAB No. ADJ8763257)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for writ of review from a decision of the Workers' Compensation Appeals Board. Marguerite Sweeney, Katherine Zalewski, and Frank M. Brass, Commissioners. Donald H. Johnson, Workers' Compensation Administrative Law Judge.

Adams, Ferrone & Ferrone and Ryan T. Trotta for Petitioner.

Eric D. Ledger and Anne Schmitz for Respondent Workers' Compensation Appeals Board.

Carla Anene, Mary Huckabaa, and Ryan J. Artola for Respondent California Department of Corrections and Rehabilitation.

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* Before Gomes, Acting P.J., Franson, J., and Smith, J.

Ravinderjit Singh (Singh) petitions for a writ of review from an order of the Workers' Compensation Appeals Board (WCAB). (Lab. Code,¹ § 5950; Cal. Rules of Court, rule 8.495.) In light of the WCAB's admitted error that it failed to consider whether the employer provided modified work in assessing entitlement to temporary disability, we will vacate the WCAB's decision and remand for further proceedings.

BACKGROUND

Singh was employed as a physician with the California Department of Corrections and Rehabilitation (CDCR) at North Kern State Prison in Delano, California, when she claimed to have suffered a January 8, 2013, industrial injury to her psyche following a fire marshal order to close examination room doors while examining inmates.

Qualified Medical Evaluator (QME) John M. Stalberg, M.D., issued five medical reports regarding Singh between June 6, 2013, and November 12, 2014. Following a workers' compensation hearing in July 2014 and the admission of additional evidence in October 2016, a workers' compensation administrative law judge (WCJ) found, *inter alia*, that the injury did not cause permanent disability and that based on Dr. Stalberg's reporting, Singh "failed to meet the burden of showing entitlement to any period of temporary total disability."

Singh petitioned the WCAB for reconsideration, contending primarily that she was entitled to temporary disability. The WCAB issued its own decision on March 6, 2017, finding Dr. Stalberg's medical reporting lacking and that Singh "failed to follow-up with Dr. Stalberg and provide the requisite information for him to determine the period she was temporarily totally disabled." The WCAB accordingly agreed with the WCJ and denied reconsideration.

¹ Further statutory references are to the Labor Code.

DISCUSSION

In petitioning this court for a writ of review, Singh reasserts her entitlement to temporary disability payments. Singh notes that Dr. Stalberg opined she could return to work inside the prison with the reasonable accommodation of either leaving the examination room open or having a chaperone during examinations, but that the prison refused to accommodate her work restriction.

The WCAB filed a letter brief with this court, stating that it “would admit error in this case and request that the Opinion and Order Denying Petition for Reconsideration (“Opinion”) issued on March 6, 2017, be annulled and that this matter be returned to the Board for further proceedings.” The WCAB explains that while it focused its analysis on whether Singh proved temporary disability, she correctly pointed out in her petition for writ of review that “where an employer fails to provide modified work to an injured employee, temporary partial disability is deemed total. (*Huston v. Workers’ Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 868.)” The WCAB explained that the record appeared incomplete, that it may have improperly analyzed Singh’s claim of temporary total disability, and expressed its desire to return the matter to the WCJ for further proceedings.

In response to this court’s inquiry as to whether this court should grant peremptory relief in light of the WCAB’s letter brief, the CDCR contends the matter should not be remanded because “[i]t is well established that an appellant cannot complain about an error that he or she created.” The CDCR asserts any lack of an adequate record is invited error of Singh’s own making by not further developing the record. (*Mesecher v. County of San Diego* (1992) 9 Cal.App.4th 1677, 1685.)

Given the WCAB’s admission it did not consider all available legal theories that might have entitled Singh to benefits, we conclude the WCAB’s decision fails to “state the evidence relied upon and specify in detail the reasons for the decision” as required under section 5908.5. The WCAB’s failure to set forth its reasoning in adequate detail

constitutes a sufficient basis to annul the decision and remand for a statement of reasons. (*Le Vesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627; *Painter v. Workers' Comp. Appeals Bd.* (1985) 166 Cal.App.3d 264, 268; *City of Fresno v. Workers' Comp. Appeals Bd.* (1985) 163 Cal.App.3d 467, 470.) Because the deficiency of the WCAB's reasoning is apparent from the face of its decision coupled with its admission before this court, certification of the record and further briefing would add nothing to the presentation already submitted. (See *Goodenough v. Superior Court* (1971) 18 Cal.App.3d 692, 697.)

This decision should not be construed as expressing any opinion regarding the merits of either Singh's claim or the CDCR's defense related to invited error, to which the WCAB may find relevant this court's decision in *Telles Transport, Inc. v. Workers' Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159.

DISPOSITION

Let a writ of review issue returnable before this court forthwith.

The Workers' Compensation Appeals Board's March 6, 2017, "Opinion and Order Denying Petition for Reconsideration" is annulled. The matter is remanded to the Workers' Compensation Appeals Board to conduct any further proceedings it deems appropriate.