

Am

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

4 **JOHN ARESKO,**

5 *Applicant,*

6 vs.

7 **MARINE WORLD AFRICA USA; TIG**
8 **SPECIALTY INSURANCE COMPANY,**
9 **administered by TRISTAR RISK**
10 **MANAGEMENT,**

11 *Defendants.*

Case No. ADJ3396302 (WCK 0043860)
(Oakland District Office)

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

12 Applicant, John Aresco, seeks reconsideration of the Opinion and Decision after Reconsideration
13 issued by the Appeals Board on February 27, 2014. In that decision, we found that Applicant, while
14 employed by Marine World Africa USA on July 18, 1998, as a janitor/maintenance worker, sustained
15 industrial injury to his internal system in the nature of Guillian-Barre syndrome, but that his claim of
16 injury to the psyche is barred by Labor Code section 3208.3(d).¹ Our determination that the claim of
17 injury to the psyche is barred caused us to reduce his level of permanent disability from 47% down to
18 13%. In our decision, we noted that the record was unclear how applicant was injured at work, and
19 concluded regardless of whether the injury was caused by eating tainted food, picking up trash, or eating
20 a berry given to him by a co-worker, none of these can be considered an "extraordinary" employment
21 condition within the meaning of section 3208.3(d). Because of this determination, we indicated that we
22 need not reach a determination on whether the injury was also "sudden."

23 By the Petition for Reconsideration and Request for Permission to File Exhibit and to Take
24 Judicial Notice (Petition), applicant asserts that his claim of injury was not barred by section 3208.3(d)
25 because, although he was employed less than six months at the time of the injury, the claim of psychiatric
26

27 ¹ All further statutory references are to the Labor Code.

1 injury resulted from a sudden and extraordinary employment condition. Applicant also contends that the
2 award of 47% permanent disability originally awarded should be reinstated.

3 Other than asserting that our decision was "incorrect" because we referred to the July 18, 1998
4 injury as an "admitted" injury, applicant's Petition does not present arguments which were not previously
5 raised and considered in our prior determination. We have reviewed the record and have considered the
6 allegations of the Petition, as well as the arguments in defendant's Answer. Based on our review of the
7 record, for the reasons stated in our prior Opinion and Decision after Reconsideration, which we
8 incorporate herein, we will deny applicant's Petition.

9 After correctly stating at page 9 of its Petition that the common theme in cases which have
10 analyzed Labor Code section 3208.3(d) is that the "work condition" which must be uncommon, unusual,
11 or totally unexpected in order to qualify as an extraordinary employment condition, applicant then notes
12 in the following paragraph that the type of illness suffered by applicant "...is a *rare* condition and a *rare*
13 occurrence" (emphasis in original). Applicant then contends that because the type of illness experienced
14 by applicant is rare, it must also be found to be extraordinary. Applicant's logic is flawed, however,
15 because it is not the medical condition which must be extraordinary. Rather, section 3208.3(d) specifies
16 that it is the "employment condition" which must be extraordinary. With respect to applicant's work
17 activities which resulted in the injury, however, there was nothing unusual, uncommon, or unexpected.

18 Lastly, with respect to the allegation that we incorrectly referred to the July 18, 1998 injury as an
19 "admitted" injury, applicant's attorney is referring to a prior decision from June 14, 2000, at which time
20 the injury was in dispute. According to page 2 of the March 27, 2013 Minutes of Hearing and Summary
21 of Evidence, at which time the *current* issues for determination were framed, the first admitted fact is that
22 applicant sustained injury arising out of and in the course of employment to his internal system in the
23 nature of Guillain-Barre syndrome. Accordingly, the injury was correctly referred to as an admitted
24 injury in our decision.

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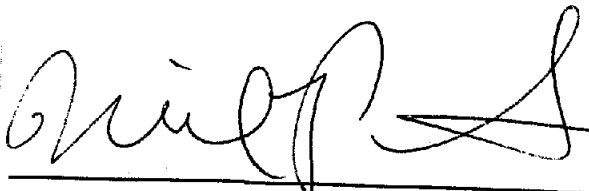
1 For the foregoing reasons,

2 **IT IS ORDERED** that the Petition for Reconsideration and Request for Permission to File
3 Exhibit and to Take Judicial Notice be **DENIED**.

4 **WORKERS' COMPENSATION APPEALS BOARD**

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7 _____
8 **RONNIE G. CAPLANE**

9 **I CONCUR,**

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11 _____ **DEPUTY**
12 **NEIL P. SULLIVAN**

13 **CONCURRING, BUT NOT SIGNING**
14 _____
15 **DEIDRA E. LOWE**

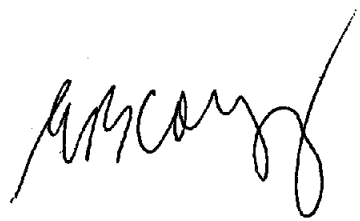


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17 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

18
19 **MAY 19 2014**

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

22 **JOHN ARESO**
23 **LARSON, VANDERSLOOT & RIVERS**
24 **SHAW, JACOBMEYER, CRAIN & CLAFFEY**

25 

26 **JG:mm**