WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

APRIL MEDLEY, *Applicant*

vs.

CALIFORNIA DEPARTMENT OF CORRECTIONS & REHABILITATION, PLEASANT VALLEY, legally uninsured; STATE COMPENSATION INSURANCE FUND, adjusting agency, *Defendants*

Adjudication Number: ADJ14870064
Fresno District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the January 11, 2024 Amended Findings, Award & Opinion on Decision (F&A), wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant's claim was not barred by the statute of limitations.

Defendant contends that compensation is barred by Labor Code[1] section 5405 because applicant commenced proceedings for the collection of benefits more than one after the May, 2020 date of injury.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

[1] All further references are to the Labor Code unless otherwise noted.

FACTS

Applicant claimed injury to her heart while employed as a Licensed Vocational Nurse (LVN) by defendant California Department of Corrections and Rehabilitation (CDCR) from March 29, 2010 to June 1, 2021.

The parties have selected Alan Ross, M.D., as the Qualified Medical Evaluator (QME) in internal medicine.

On December 18, 2023, the parties proceeded to trial, framing issues, in relevant part, of whether compensation for applicant's claim is barred by section 5405. The applicant testified, and the parties submitted the matter for decision on the same day.

On January 11, 2024, the WCJ issued the F&A, finding in relevant part that "applicant's cumulative trauma is not barred by the Statute of Limitations." (Finding of Fact No. 5.) The WCJ's Opinion on Decision explains that applicant's first date of knowledge sufficient to establish a date of injury pursuant to section 5412 was July 1, 2021. Accordingly, the Application for Adjudication of Claim filed on July 7, 2021 was timely. (Opinion on Decision, at p. 9.)

Defendant's Petition avers applicant had knowledge that her disability was caused by work in May, 2020, when a nurse practitioner at her cardiologist's office informed applicant she needed to be off work because it was a stressful environment. (Petition, at p. 3:23.) Defendant further asserts that applicant's education, training, and experience as an LVN was such that applicant should have recognized her condition as industrially caused. Accordingly, applicant's Application for Adjudication, filed on July 7, 2021 was filed more than one year from the May, 2020 date of injury, and compensation is barred by section 5405.

DISCUSSION

The WCJ found that compensation for applicant's claim of cumulative injury ending June 1, 2021 was not barred by section 5405, which limits the time in which an employee may commence proceedings for the collection of California workers' compensation benefits. Section 5405 provides:

> The period within which proceedings may be commenced for the collection of the benefits provided by Article 2 (commencing with Section 4600) or Article 3 (commencing with Section 4650), or both, of Chapter 2 of Part 2 is one year from any of the following:
>
> (a) The date of injury.

> (b) The expiration of any period covered by payment under Article 3 (commencing with Section 4650) of Chapter 2 of Part 2.
> (c) The last date on which any benefits provided for in Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 were furnished.

Thus, an applicant must commence proceedings with the WCAB within one year of (1) the date of injury or (2) the expiration of the period covered by the employer's last payment of disability indemnity or (3) the date of the last furnishing by the employer of medical, surgical or hospital treatment. (*J.T. Thorp, Inc. v. Workers' Comp. Appeals Bd.* (*Butler*) (1984) 153 Cal.App.3d 327 [49 Cal.Comp.Cases 224, 229] (*Butler*).)

In cases involving an alleged cumulative trauma injury, the date of injury is governed by Labor Code section 5412, which holds:

> The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.

The court of appeal has defined "disability" per section 5412 as "either compensable temporary disability or permanent disability," noting that "medical treatment alone is not disability, but it may be evidence of compensable permanent disability, as may a need for splints and modified work. These are questions for the trier of fact to determine and may require expert medical opinion." (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998, 1005 [59 Cal.Comp.Cases 579] (*Rodarte*).)

With respect to the "knowledge" component of section 5412, whether an employee knew or should have known his disability was industrially caused is a question of fact. (*City of Fresno v. Workers' Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53] (*Johnson*).)

The burden of proving that the employee knew or should have known rests with the employer. This burden is not sustained merely by a showing that the employee knew he had some symptoms. (*Id.* at p. 471.) This is because "the medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters." (*Peter Kiewit Sons v. Industrial Acci. Com.* (*McLaughlin*) (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188].)

Here, defendant avers applicant sustained compensable disability for purposes of establishing a section 5412 date of injury when she was hospitalized at the end of April, 2020. (Petition, at p. 3:12.)

With respect to the knowledge requirement of section 5412, defendant contends that applicant first obtained knowledge that her disability was caused by work when a nurse practitioner at her cardiologist's office told her in May, 2020, that she needed to be off work because it was a stressful environment. (Petition, at p. 3:23.) Defendant also contends that applicant's professional training and background as an LVN afforded her "an enhanced comprehension of how stress can affect a medical condition compared to a lay person." (Petition, at p. 5:12.) On this basis, knew or reasonably should have known that her congestive heart failure was related to her work as an LVN for the CDCR. (*Id.* at p. p. 5:14.)

The WCJ's Report approaches the question of knowledge under section 5412 as follows:

> Applicant testified she filed the claim form in July 2021 because officers at the prison recommended she file a work comp injury claim. (MOH page 5, lines 1-3). This trial testimony was credible and remains unrebutted. This Court took Judicial Notice of Applicant's Claim Form, and the date the Application for Adjudication of Claim was filed.
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> The claim form is dated July 7th, 2021 and signed by Applicant. The bottom half of the claim form states the claim form was provided to Applicant on July 1st, 2021 and returned to the employer on July 13th, 2021. The Application for Adjudication of claim was filed on July 7th, 2021.
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> July 1st, 2021 is the date of injury for the cumulative trauma pursuant to Labor Code Section 5412. Although Applicant had disability at the end of April 2020, she did not have knowledge that her heart condition could be related to work until July 2021. Applicant gained this knowledge after speaking with officers at work. Therefore, the Application for Adjudication of Claim is not time barred pursuant to a statute of limitations defense.
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> (Report, at p. 4.)

The question of "[w]hether an employee knew or should have known his disability was industrially caused is a question of fact." (*Johnson, supra*, 163 Cal.App.3d at p. 469.) "The date of injury is a statutory construct which has no bearing on the fundamental issue of whether a worker has, in fact, suffered an industrial injury … the purpose of section 5412 was to prevent a

premature commencement of the statute of limitations, so that it would not expire before the employee was reasonably aware of his or her injury." (*Butler, supra,* 153 Cal.App.3d at p. 341.)

Here, we are not persuaded that applicant obtained the requisite knowledge of the industrial causation of her disability in May, 2020, sufficient to commence the running of the statute of limitations. While applicant was reportedly advised in 2020 by her cardiologist to avoid stress, the only medical evidence in the record is the QME's reports and deposition, and the records from applicant's cardiologist were not submitted. Thus, the record does not contain sufficient evidence to establish that applicant was informed in 2020 that her work caused her cardiac-related disability, or that applicant was aware she had sustained a cumulative injury. (See *County of San Bernardino v. Workers' Comp. Appeals Bd.* (*Nelson-Watkins*) (2018) 83 Cal.Comp.Cases 1282, 1285-1286 [2018 Cal. Wrk. Comp. LEXIS 46] (writ denied) [applicant's correlation of symptoms with work exposures insufficient to establish knowledge her condition was caused by employment]; *Hughes Aircraft Company v. Workers' Comp. Appeals Bd.* (*Zimmerman*) (1993) 58 Cal.Comp.Cases 220 [1993 Cal. Wrk. Comp. LEXIS 2853] (writ den.) [general medical advice that work stress was depleting applicant's immune system insufficient to confer knowledge for purposes of section 5412]; see also *Zenith Insurance Co. v. Workers' Comp. Appeals Bd.* (*Yanos*) (2010) 75 Cal.Comp.Cases 1303, 1305-1306 (writ denied) [2010 Cal. Wrk. Comp. LEXIS 208] [statute of limitations does not begin to run prior to applicant's knowledge she had sustained a cumulative trauma and that injury was work-related].)

Nor are we persuaded that applicant possessed the necessary background or training to identify her employment exposures as causative of her cardiac condition. Applicant's testimony was that her normal duties involved "providing medications, acting as a first responder, nursing, or assisting nurses, and assisting physicians." (Minutes, at p. 4:4.) Applicant further explained that "her first responder duties as responding to stabbings, assaults, seizures, drug overdoses, basically anything involving the need for medical assistance." (Minutes, at p. 4:5.)

However, the record reflects no specialized training in identifying or diagnosing latent cardiac conditions or training or medical experience that would otherwise allow applicant to identify the industrial nature of her condition. Moreover, the QME has opined at length that causation of applicant's dilated cardiomyopathy is "complex and complicated," and that "most of the time, we never know because an endomyocardial biopsy is not taken…and it was not done in this case." (Ex. 3, Report of Alan Ross, M.D., dated January 24, 2022, at pp. 33-34.) Given the

QME's assessment of the significant difficulty in determining medical causation of applicant's condition, we are disinclined to find that applicant should have, through the exercise of reasonable diligence, known her condition was caused by industrial exposures. (See also, *Peter Kiewit Sons v. Industrial Acci. Com.* (*McLaughlin*) (1965) 234 Cal.App.2d 831 [30 Cal.Comp.Cases 188] "[i]n a field which forces the experts into hypothesis, unaided lay judgment amounts to nothing more than speculation"].)

The first evidence in the record of applicant's knowledge occurs during the week of July 1, 2021, when applicant returned to work after an extended medical absence. Applicant's testimony was that upon her return to work, she was speaking with some of the officers who recommended she file a claim for workers' compensation benefits. (Minutes, at p. 4:2.) The WCJ found applicant's testimony to be fully credible (Opinion on Decision, at p. 8), and we accord to that determination the great weight to which it is entitled. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500].)

The evidentiary record thus establishes that applicant requested and received a claim form on July 1, 2021, which she filed with the Appeals Board along with an Application for Adjudication of Claim on July 7, 2021. (Report, at p. 4.) Because the first evidence of knowledge for purposes of establishing a section 5412 date of injury occurred no earlier than July 1, 2021, we conclude that the date of knowledge, and by extension, the date of injury pursuant to section 5412, occurred no earlier than the first week of July, 2021.

Applicant initiated proceedings for the collection of benefits when she filed the Application for Adjudication of Claim on July 7, 2021, which was within one year of the date of injury. We therefore concur with the WCJ's determination that compensation is not barred by section 5405.

We will affirm the F&A, accordingly.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 2, 2024

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

APRIL MEDLEY
FERRONE & FERRONE
STATE COMPENSATION INSURANCE FUND

SAR/abs

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*