

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

**MIGUEL MARTINEZ, *Applicant***

**vs.**

**BAKERSFIELD COUNTRY CLUB; ICW GROUP, *Defendants***

**Adjudication Numbers: ADJ10656698, ADJ10656738  
Bakersfield District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

In order to further study the factual and legal issues in this case, we<sup>1</sup> granted applicant's Petition for Reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of June 7, 2019, wherein it was found that applicant's claims were barred by the statute of limitations. In these cases, applicant claims that, while employed as a dishwasher, he sustained industrial injury to his right arm, right wrist, low back, right hip, and right shoulder on January 22, 2014 (ADJ10653738) and sustained industrial injury to his back on September 30, 2013 (ADJ10656698).

Applicant contends that the WCJ erred in finding that his claims were barred by the statute of limitations. We have received received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated by the WCJ in the Report, which we adopt, incorporate, and quote below, we will affirm the Findings and Order of June 7, 2019. Footnotes have been omitted, and the applicant's birthdate has been redacted. We note that defendant's denial notices appear to comply with Administrative Rule 9812 as it read at the time of the denials.

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<sup>1</sup> The Order Granting Reconsideration was signed by former Commissioner Deidra Lowe, who is no longer an Appeals Board Commissioner, and Deputy Commissioner Anne Schmitz, who was not available to participate in this decision. Commissioner Marguerite Sweeney and Commissioner José H. Razo have been substituted in their place.

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**I. INTRODUCTION:**

Petitioner, Applicant, seeks relief from the June 7, 2019 Findings and Order (Order) by filing a timely, verified Petition for Reconsideration (Petition).

In ADJ10656698, Applicant, Miguel Martinez, born [redacted], while employed on September 30, 2013 as a dishwasher, Occupational Group 322, claims to have sustained injury to the back arising out of, and in the course of employment by, Bakersfield Country Club.

In ADJ10656738, Applicant, Miguel Martinez, born [redacted], while employed on January 22, 2014 as a dishwasher, Occupational Group 322, claims to have sustained injury to the right arm, right wrist, low back, right hip, and right shoulder arising out of, and in the course of employment by, Bakersfield Country Club.

The Petition's listing of statutory authority for filing is consistent with Labor Code §5903, Sections (a), (c), and (e) since it recites those provisions.

The Petition contends, generally, that the June 7, 2019 Order be overturned, a finding be made that neither claim is barred by the statute of limitations, and a finding be made that both injuries arose out of and occurred in the course of employment.

Specifically, the Petition claims:

that the dispute is whether the incidents occurred and whether the employer was sufficiently put on notice such that the statute of limitations should not bar the claims;

that the issue is largely one of credibility

that Mr. Kuhn's testimony made clear that the January 22, 2014 incident was reported to the employer.

**II. FACTS:**

Applicant worked as a dishwasher for Defendant. He claimed two injuries: one occurring on September 30, 2013 to the back and one occurring on January 22, 2014 to the right arm, right wrist, low back, right hip, and right shoulder.

The parties stipulated that the employer furnished some medical treatment.

Exhibit G documented that claim forms for the two injuries were produced, but this exhibit was not entered into EAMS. They are attached to Defendant's April 12, 2019 Trial Brief.

Defendant issued denial notices for both claims on May 30, 2014.

The Applications for these claims were filed on November 22, 2016. The parties did not put the Applications into evidence. Defendant's April 12, 2019 Trial Brief states that Applicant filed his Applications for both injuries on November 22, 2016. Defendant requested judicial notice of this fact. Judicial notice can be taken of the date of filing of documents with a court. EAMS confirms the November 22, 2016 filing dates.

A Status Conference was held on April 25, 2018, setting the matter for trial on October 3, 2018. A joint request to continue this trial was granted and the trial was reset to March 13, 2019.

The matter was tried on March 13, 2019, with Applicant testifying on his behalf and two witnesses testifying on behalf of the employer.

Applicant filed their trial brief on March 29, 2019. Defendant filed their trial brief on April 12, 2019.

The Findings and Order issued on June 7, 2019, finding the claims barred by Labor Code §5405 since the Applications were not filed within a year of the May 30, 2014 denials.

Applicant petitioned for reconsideration of the Order on June 26, 2019.

### **III. DISCUSSION:**

The Order found these claims barred by Labor Code §5405 since the Applications were not filed within a year of the May 30, 2014 denials. The Petition does not discuss this reason for barring the claims. It believes that since the employer was put on notice of the claims the statute of limitations should not bar the claims.

#### **Occurrence and Notice**

The Petition argues that the dispute is whether the incidents occurred and whether the employer was sufficiently put on notice such that the statute of limitations should not bar the claims.

The Order did not decide whether the two incidents occurred. It did not

get that far. The employer was notified of the two claims of injury by the Claim Forms of March 6, 2014.

Notice to the employer is also shown by the two denials of May 30, 2014.

It appears the Petition is arguing that since the employer was notified of the claims, the one year limit on the filing of the applications should not have been taken from the dates of injury.

The Order did not start the one-year limit for filing the Applications on the claimed dates of injury, but on the May 30, 2014 denials.

As shown in *McDaniel [v. Workers' Comp. Appeals Bd. (1990) 218 Cal.App.3d 1011-1016-17]*, when an employer commences benefits, the one-year statute of Labor Code §5405 is tolled and the five-year provision of Labor Code §5410 applies. However, if that employer subsequently denies further liability for the injury, the one-year provision of Labor Code §5405 again applies, commencing on the date the employee is informed of the decision to deny further benefits.

This employer had furnished some medical treatment, but then denied the claims on May 30, 2014. That gave the Applicant until May 30, 2015 to file the Applications. The Applications were not entered as exhibits, but judicial notice was requested in Defendant's trial brief. Judicial notice can be taken of the date of filing of documents with a court. The Applications were filed on November 22, 2016.

Since this was after the May 30, 2015 deadline, the Order found the claims barred. The Petition has not shown the Order was in error.

### **Credibility**

The Petition argues that the issue is largely one of credibility. The Order did not make any finding on credibility. None of the trial testimony was rejected in the Order. The Order is consistent with all the trial testimony.

### **Mr. Kuhn's Testimony**

The Petition argues that Mr. Kuhn's testimony made clear that the January 22, 2014 incident was reported to the employer.

The Petition seems to be arguing that Mr. Kuhn's testimony should have been accepted to show that the January 22, 2014 incident was reported to the employer.

The Order did not reject Mr. Kuhn's testimony. Defendant's Exhibits B

and C (the denial notices) show the employer was notified of the injuries. This shows that Mr. Kuhn's testimony was accepted in showing that the employer was notified of the January 22, 2014 incident.

**IV. RECOMMENDATION:**

Based on the foregoing, it is recommended that the Petition for Reconsideration be denied.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of June 7, 2019 is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**October 7, 2022**

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

**MIGUEL MARTINEZ  
BERRY, SMITH & BARTELL  
BRADFORD & BARTHEL  
EDD**

**DW/oo**

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