

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

**ANDREW GLOVER, *Applicant***

**vs.**

**NEW ORLEANS SAINTS;  
SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ916498 (ANA 0403355)  
Oakland District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR RECONSIDERATION  
AND DECISION AFTER RECONSIDERATION**

Applicant Andrew Glover seeks reconsideration of the July 19, 2023 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant's application for Subsequent Injuries Benefits Trust Fund (SIBTF) benefits is untimely. The WCJ found that the October 8, 2008 Compromise and Release entered in the underlying action against the employer is a finding by the Board on the issue of permanent disability and that the August 19, 2019 SIBTF application is therefore untimely.

Applicant contends that the 2008 Compromise and Release cannot be construed as a finding on the issue of permanent disability. Applicant further contends that SIBTF bears the burden of proof on the issue of timeliness and that it cannot sustain this burden.

We have not received an answer from SIBTF. We received and reviewed applicant's supplemental brief. WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964) states that supplemental petitions, pleadings, or responses shall be considered only when specifically requested or approved by the Appeals Board. We accept and review applicant's supplemental brief.

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 supplemental brief, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed

below, we grant reconsideration, rescind the July 19, 2023 Findings and Order, and return this matter to the trial level for further proceedings.

## FACTS

As the WCJ stated in her Report:

Applicant Andrew Glover, filed an Application for Subsequent Injuries Fund Benefits (“SIBTF”) on August 19, 2019, alleging a date of injury of September 2, 2001, as a professional athlete while working for the Oakland Raiders/New Orleans Saints. That matter resolved via Compromise and Release (“C&R”) on October 8, 2008. In his SIBTF petition, he alleged injury to the subsequent injury to his head, neck, upper extremities, and lower trunk.

On August 22, 2019, applicant filed his application for SIBTF benefits, 11 years after his Compromise and release in the subsequent claim was approved, and 19 years after his original end date of injury. The matter came to trial on the issue of Statute of limitations, on May 5, 2023. On July 19, 2023, the Court found that the original Compromise and Release, and its approval, constituted a finding of permanent disability for purposes of the Statute of limitations in SIBTF claims: that the applicant’s date of knowledge for purposes of SIBTF eligibility was no later than October 8, 2008; and that the filing of the application for SIBTF benefits after the date of knowledge was not made timely, as it was not a reasonable amount of time to wait to file.

Applicant, through his attorney, filed a Petition for Reconsideration of the above findings on August 14, 2023. (Report, pp. 1-2.)

## DISCUSSION

There are four Supreme Court cases that provide guidance on the issue of timeliness of a SIBTF claim. (*Subsequent Injuries Fund v. Workmens’ Comp. Appeals Bd. (Talcott)* (1970) 2 Cal.3d 56, 65 [35 Cal.Comp.Cases 80]; *Subsequent Injuries Fund v. Workmens’ Comp. Appeals Bd. (Pullum)* (1970) 2 Cal.3d 78 [35 Cal.Comp.Cases 96]; *Subsequent Injuries Fund v. Workmens’ Comp. Appeals Bd. (Woodburn)* (1970) 2 Cal.3d 81 [35 Cal.Comp.Cases 98]; *Subsequent Injuries Fund v. Workmens’ Comp. Appeals Bd. (Baca)* (1970) 2 Cal.3d 74 [35 Cal.Comp.Cases 94].) The Supreme Court in *Talcott*, the seminal case on this issue, provided:

We should, in the absence of statutory direction and to avoid an injustice, prevent the barring of an applicant's claim against the Fund before it arises. Therefore, we hold that where, prior to the expiration of five years from the date of injury, an applicant does not know and could not reasonably be deemed to know that there will be substantial likelihood he will become entitled to subsequent injuries benefits, his application against the Fund will not be barred -- even if he has applied for normal benefits against his employer - - if he files a proceeding against the Fund within a reasonable time after he learns from the board's findings on the issue of permanent disability that the Fund has probable liability.

(*Talcott, supra*, 2 Cal.3d at p. 65; emphasis added.)

We interpret the holding in *Talcott* to mean that if applicant knew or could reasonably be deemed to know that there will be a substantial likelihood of entitlement to subsequent injuries benefits before the expiration of five years from the date of injury, then the limitation period to file a SIBTF claim is five years from the date of injury. However, if applicant did not know and could not reasonably be deemed to know that there will be a substantial likelihood of entitlement to subsequent injuries benefits before the expiration of five years from the date of injury, then the limitation period to file a SIBTF claim is a reasonable time after applicant learns from the WCAB's findings on the issue of permanent disability that SIBTF has probable liability. (*Adams v. Subsequent Injuries Benefits Trust Fund* (June 22, 2020, ADJ7479135) [2020 Cal. Wrk. Comp. P.D. LEXIS 216].)<sup>1</sup>

We agree with the WCJ that the second prong of the *Talcott* analysis applies here: whether applicant filed his SIBTF claim within a reasonable time after he learned from the WCAB's findings on the issue of permanent disability that SIBTF has probable liability. (Report, p. 8.) The analysis of this second prong is twofold. First, we must determine when applicant learned from the WCAB's findings on the issue of permanent disability that SIBTF has probable liability. Second, we must determine whether applicant filed his SIBTF claim within a reasonable time from the triggering date above.

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<sup>1</sup> Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers' compensation judges. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].) A California Compensation Cases digest of a "writ denied" case is also not binding precedent. (*MacDonald v. Western Asbestos Co.* (1982) 47 Cal.Comp.Cases 365, 366 (Appeals Board en banc).) While not binding, the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc).)

The WCJ opined that the 2008 Compromise and Release constitutes a finding of permanent disability because once a Compromise and Release is approved by the WCAB, it has the same force and effect as an award made after a full hearing. (Findings and Order dated July 19, 2023, ¶ 1; Opinion on Decision, p. 5; Report, p. 9.)

We disagree. The Compromise and Release is not a finding on the issue of permanent disability. Paragraph 9 of the Compromise and Release specifically states that, “The parties wish to settle these matters to avoid the costs, hazards and delays of further litigation, and agree that a serious dispute exists as to the following issues (initial only those that apply).” (Joint Exhibit 101, Order Approving Compromise and Release and Compromise and Release, ¶ 9.) Permanent disability is initialed under paragraph 9. (*Ibid.*) A Compromise and Release is a compromise; it is not a finding of disability.

Moreover, the Appeals Board’s power to determine the adequacy of the Compromise and Release and issue an award based upon the release or compromise agreement is not a finding of permanent disability. (§ 5002; Cal. Code Regs., tit. 8, § 10700.) A finding of adequacy is not the same as a finding of permanent disability. (§§ 4660, 5002; Cal. Code Regs., tit. 8, § 10700.)

Lastly, we note that the WCJ failed to discuss applicant’s knowledge of SIBTF’s probable liability when there is no discussion of how applicant met the SIBTF eligibility thresholds found in Labor Code, section 4751 (Lab. Code, § 4751.)

Accordingly, we grant reconsideration, rescind the July 19, 2023 Findings and Order, and return this matter to the trial level for further proceedings on the issue of timeliness of applicant’s SIBTF application.

For the foregoing reasons,

**IT IS ORDERED** that applicant Andrew Glover's Petition for Reconsideration of the July 19, 2023 Findings and Order is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 19, 2023 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ NATALIE PALUGYAL, COMMISSIONER



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

**OCTOBER 13, 2023**

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

**ANDREW GLOVER  
MANGOSING LAW GROUP  
OD LEGAL, LOS ANGELES**

**LSM/oo**

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

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