

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

DEBORAH GROSS, *Applicant*

vs.

THE BOEING COMPANY; SEDGWICK, *Defendants*

**Adjudication Number: ADJ12896538
Marina Del Rey District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 16, 2022

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

**DEBORAH GROSS, IN PRO PER
FELLMAN & ASSOCIATES**

PAG/mc

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

I

INTRODUCTION

1. Applicant's Occupation: Production Control Expeditor
2. Applicant's Age: 51
3. Date of Injury: 6/24/2010 to 6/24/2011
4. Parts of Body Alleged: neck, back, hernia, ears, shoulders, left hip and nervous system/stress (psyche).
5. Manner in which injuries alleged to have occurred: Cumulative trauma
6. Identity of Petitioner: Applicant
7. Timeliness: The petition was timely filed.
8. Verification: A verification is attached.
9. Date of Findings of Fact: 7/1/2022
10. Petitioner's contentions: The Board acted without or in excess of its powers, the decision was procured by fraud, the evidence does not justify the findings of fact, petitioner discovered new evidence material to her, which could not have been found prior to the hearing using reasonable diligence and the findings of fact do not support the order or decision.

II

FACTS

Applicant, while employed during the period 6/24/2010 to 6/24/2011 as a Production Control Expeditor for The Boeing Company, claims to have sustained industrial injuries to her neck, back, hernia, ears, shoulders, left hip and nervous system/stress (psyche) arising out of and in the course of her employment.

The matter proceeded to trial on various issues including injury AOE/COE, permanent

disability, apportionment, need for further medical treatment, liability for self-procured medical treatment, statute of limitations, res judicata or laches on 3/23/2022. At the first trial setting Applicant commenced her testimony. The matter was continued to 4/26/2022, when the Applicant concluded her testimony and the matter was submitted. Applicant acted in propria persona and the employer was represented by counsel. Applicant was the only witness to testify and both parties offered exhibits into evidence.

The WCJ issued her Findings of Fact on 7/1/2022 finding that Applicant's claim was barred by the statute of limitations. Applicant filed a timely and verified Petition for Reconsideration on 7/22/2022. Defendant filed an Answer to Petition or Reconsideration on 7/26/2022. Applicant's Petition includes a WCAB form 45, a letter, an exhibit not introduced into evidence, a duplicative copy of Exhibit 3 minus the first page and another letter that includes a portion of procedural history and some case law pertaining to the statute of limitations. For the following reasons the Petition for Reconsideration should be denied.

III

DISCUSSION

Defendant's Answer solely contends that Applicant failed to produce any evidence or argument in her Petition as to why the Petition should be granted under Labor Code Section 5903. However, this position seems overly partisan, especially as Applicant is representing herself in pro pria persona in this matter. Therefore, this report will attempt to address all relevant contentions raised by the Applicant in her Petition.

The WCAB form 45 clearly indicates that Applicant should strike out the items not applicable as grounds for reconsideration. Regarding grounds #2 and #4, based on a review of the petition and the entire record, it does not appear that Applicant is claiming that the decision was procured by fraud or that Applicant has newly discovered evidence so these grounds will not be addressed as they are not raised. The remaining grounds will be addressed in the order that they are presented.

The next document is referenced as a letter of Reconsideration with the date 7/16/2022 at the top of the document. Although Applicant begins the letter by mentioning Defendant's objection to her claim is statute of limitations, the remaining portions of the document fail to address why the statute of limitations should not be a bar to applicant's claim for injuries during the period 6/24/2020 to 6/24/2011. Further, Applicant fails to provide any explanation as to

why she did not file the Application for Adjudication of Claim for the date of injury at issue until 1/13/2020, over 8 years later.

Instead, the Applicant discusses numerous topics some irrelevant to the issues submitted at trial. She discusses Defendant's unsuccessful attempt to have her claim dismissed, the problems Applicant encountered with sending medical reports to the Panel QME Dr. Anthony Fenison, her objection to the letter Defendant directed to Dr. Fenison and her attempt to get another panel with the assistance of the I&A officer, Keith Markman.

Applicant also discusses the type of physical work she did for The Boeing Company for various periods throughout her almost 30 years of employment and various forms of medical treatment that she received going back to 1990. Applicant then provides a brief history concerning various prior industrial injuries dating back to 1990. The only reference Applicant makes to some of the body parts at issue in the instant case consists of a statement that her neck, back, shoulders and hips were injured at Boeing from 1993 to 2011.

This letter when read in conjunction with the record, actually confirms that Applicant was familiar with filing workers compensation injuries during her lengthy employment with The Boeing Company and was successful in obtaining the necessary medical treatment for her previous industrial injuries.

The next document is an exhibit not offered or admitted into evidence. It appears to be page 1 of audiometric test results for the Applicant dated 8/3/1994. The document is not admitted into evidence and even if it were, it fails to support an industrial claim for hearing loss during the period 6/24/2010 to 6/24/2011.

The following document Applicant attached is a duplicate of Exhibit 3 minus page 1. It is unclear why this document was included after the complete letter was already been admitted into the record and reviewed by the WCJ.

The final document starts by discussing an Application filed by the Applicant in 1990 for an alleged injury to her neck beginning in 1989. It also indicates that numerous physicians had recommended further medical treatment for her prior industrial injury claims. Then Applicant contends that the date of injury from 6/24/2010 to 6/24/2011 was just a portion the issue to be decided but rather the need for need for continuous treatment for her injuries was the other issue to be decided. No evidence or testimony was presented at trial regarding Applicant's need for medical treatment arising from the date of injury at issue.

The Applicant then cites case-law pertaining to statute of limitations to support her

opinion that the Findings of Fact and Opinion dated 7/1/2022 is incorrect and that her claim cannot be barred. Although Applicant is to be commended for finding case law that directly pertains to the statute of limitations, the cases discussed are either factually distinguishable from the case at issue or inapplicable.

Applicant offers the case of *Plotnick v WCAB 35 CCC 13* (1970) to support her argument that defendant's statute of limitations defense should be dismissed. The Plotnick case is distinguishable in that the Judge in Plotnick found that Applicant's claim was barred by the statute of limitations but the Appeals Board overturned this finding because Mr. Plotnick presented medical reports that documented injuries to the body parts at issue caused by Applicant's work during the period 11/30/1957 to 10/26/1966. Further, in *Plotnick*, the Appeals Board noted that Applicant had filed his Application within one year of provision of benefits i.e. medical treatment and therefore his claim was not barred. Applicant has presented no such evidence in the instant case. In fact, the Applicant admitted on cross-examination that she did not have medical reports that reference the 6/24/2010 to 6/24/2010 continuous trauma claim. (See Minutes of Hearing (Further) and Summary of Evidence dated 4/26/2022 page 3 lines 10 to 12)

The next case Applicant cites is *Crossley v. Federal Express; Sedgwick 2015 Cal. Wrk. Comp. P.D. LEXIS 342*, however, that case addresses whether or not Applicant could seek medical treatment for a compensable consequence from [from] the original stipulated award that occurred more than 5 years from the original date of injury. The instant case does not allege a compensable consequence or relate to a stipulated award. The case is simply inapplicable to the case at hand.

The remaining two cases raised by Applicant are *Allar v. Fullerton School District. 2010 Cal. Wrk. Comp. P.D. LEXIS 455* and *San Juan Unified School District v. WCAB(1999) 64 Cal. Comp. Cases 1181*, also pertain to compensable consequence injuries which are not raised in the instant case and are therefore inapplicable.

Unfortunately, as Labor Code Section 5405 does apply to the instant case and the timeline was missed, the only conclusion that can be drawn based on the entire record presented is that the Applicant's claim for benefits arising from the 6/4/2010 to 6/24/2011 is barred[.]

IV
RECOMMENDATION

As the Petition for Reconsideration fails to demonstrate good cause upon which to set aside the Findings of Fact dated 7/1/2022, it is respectfully recommended that the Petition for Reconsideration be denied for lack of good cause as set forth above.

Respectfully submitted,

Date: 8/10/2022

CIRINA A. ROSE
Workers' Compensation Judge