WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GARY TAYLOR, ***Applicant***

vs.

SPACE EXPLORATION TECHNOLOGIES, dba SPACEX, permissibly self-insured, administered by CORVEL, ***Defendants***

Adjudication Number: ADJ11942492
Santa Ana 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 and Opinion on Decision, 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/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 6, 2022

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

GARY TAYLOR
LAW OFFICES OF VICTOR SARGAZY
SION & ASSOCIATES

AS/ara

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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REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

The Applicant, Gary Taylor, sustained a cumulative trauma injury to his neck and lumbar spine from 10/01/2012 to 01/11/2019 while employed as a receiving inspector for Space Exploration Technologies, Inc. (SpaceX).

The matter proceeded to trial on 06/13/2022 on the issues of injury arising out of and in the course of employment (AOE/COE), post-termination filing, the statute of limitations, and failure to timely report an industrial injury. The WCJ issued a Findings and Order on 08/04/2022, that the Applicant sustained an injury AOE/COE to the neck and back and that the statute of limitations, post-termination, and failure to timely file a claim defense did not bar the Applicant's cumulative trauma injury (Findings of Fact #3.)

Defendant and Petitioner filed a timely, verified Petition for Reconsideration on 08/29/2022. Petitioner objects to the finding that the statute of limitations and failure to timely report an industrial injury do not bar the Applicant's claim of injury. Petitioner contends that the Applicant's date of injury under Labor Code § 5412 occurred as early as 07/07/2016 when the Applicant had the requisite knowledge of the injury. The medical treatment he received and prescription for home exercises was evidence of disability. The adjudication for adjudication of claim was untimely under Labor Code § 5405. Petitioner secondly contends that the Applicant knowingly and voluntarily delayed filing a workers' compensation claim, which prejudiced Defendant.

As of 09/08/2022, there was no answer by the Applicant's attorney on file.

II. FACTS

The Applicant began his employment with Defendant on 10/01/2012. The panel QME, Dr. Phu La, reported that the Applicant sustained a cumulative trauma injury to his neck and lower back while working as a receiving inspector for the Defendant. The Applicant's duties required him to receive and inspect raw and assembled materials and to pick up, inspect, and move the materials throughout the warehouse. The weight of the materials varied from five to 200 pounds (MOH/SOE, pgs. 4 – 5).

The Applicant began to experience neck and low back pain. He received chiropractic treatment at Catalina Medical Center for approximately six months, from 07/07/2016 through 12/27/2016. The Catalina Medical Center records are largely silent concerning the cause of neck and lower back complaints. The exception is a record dated 07/07/2016, which includes a perfunctory statement that the Applicant had pain for two years that began when he "picked up heavy object (sic) at work." The remainder of the Catalina Medical Center records does not mention the cause of the

neck and low back pain other than stating that "movement" aggravated the symptoms (Catalina Medical Center records [Defense Exh. J]).

The Applicant was then treated at Torrance Memorial Medical Center. The medical records state that the Applicant's cervical radiculopathy was due to degenerative joint disease of the spine (10/15/2019 Post Op Visit, Bates stamp #43 [Defense Exh. K]). The Applicant had a "three year history of bilateral gluteal pain that radiates down his right leg. He has done chiropractic care 6 months. He has done one session per week of physical therapy for the last 10 months. 40 total sessions total." (8/30/2019 Office Visit, Bates stamp #51 [Defense Exh. K]). The records are silent regarding whether the neck and back problems are work-related.

An MRI of the cervical spine dated 11/01/2018 revealed a disc protrusion at C4-5 with severe right neural foraminal narrowing and mild neuroforaminal narrowing at C6-7 bilaterally (Torrance Memorial Medical Center, Office Visit, 08/03/2019, Bates stamp #57 [Defense Exh. K]). Applicant's doctor scheduled cervical spine surgery for 01/28/2019. However, on 01/11/2019, the Applicant and other employees were immediately notified they were part of a company layoff. The Applicant underwent the cervical discectomy on 01/28/2019, a lumbar epidural steroid injection on 09/16/2019, and a second cervical discectomy on 10/02/2019 (Torrance Memorial Medical Center records, 03/17/2020 visit, Bates stamp #10 [Defense Exh. K]).

The Applicant filed an adjudication for adjudication of claim on 02/15/2019, which Corvel denied based on the post-termination defense under Labor Code § 3600(a)(10) (Defense Exh. D).

The panel QME Dr. Phu La examined the Applicant on 03/12/2020. He initially found no substantial medical evidence to support the industrial causation of the cumulative trauma injury. Dr. La indicated he would defer to the trier of fact until further medical evidence could be made available for determination of causation (Phu La, D.C., report dated 03/12/2020, pg. 13 [Applicant's Exh. 1]). Dr. La later reviewed the Applicant's deposition testimony regarding the job duties at SpaceX, which included lifting large, heavy metal and aluminum parts on pallets from one area to another area, and frequent, prolonged sitting at the workstation on a computer with his neck in a fixed position to inspect various parts. The Applicant did repetitive bending, stooping, twisting at the waist level, crouching, and squatting. Based on the Applicant's work activities and the evaluation of the lumbar and cervical spine, Dr. La concluded that the Applicant's performance of his job duties resulted in a cumulative trauma injury to the neck and the lumbar spine (Deposition of Phu La, D.C., 07/22/2020, 8:16 [Applicant's Exh. 4]). Dr. La reviewed additional records, wrote two supplemental reports, and reiterated that the Applicant's repetitive job duties partly caused the neck and low back injuries (Phu La, D.C., report dated 12/20/2020, pg. 21 [Applicant's Exh. 3]).

III.
DISCUSSION

A. STATUTE OF LIMITATIONS

A worker compensation claim must be filed within one year from the injury or the last date that certain benefits were provided (Labor Code § 5405). The statute of limitations for a cumulative

trauma injury does not commence until the Applicant has knowledge of his workers' compensation rights and there is a compensable disability from the injury. For statute of limitations purposes, the one year is calculated per Labor Code § 5412, which states:

> "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."

KNOWLEDGE:

Whether an employee knew or should have known that his disability was industrially related is a question of fact determined by the Court. Before the Applicant filed his claim for workers' compensation in February 2019, he did not have any particular specialized training in workers' compensation. The WCJ's impression was that the Applicant's knowledge of workers' compensation was limited and incorrect. For example, the Applicant testified he thought if he filed a claim for workers' compensation, he would be required to stop working. "The applicant did not know that he could continue working if he did file a Workers' Compensation claim." (MOH/SOE 10: 19 – 20).

Further, the Applicant did not receive a medical opinion stating that his neck and lumbar spine problem was industrial until he saw the panel QME, Dr. La, in 2020. The Applicant was treated at Catalina Medical Center for six months in 2016. The Applicant testified, "The doctors at Catalina Medical Center did not comment on whether the pain and discomfort were work-related" (MOH/SOE 11: 1.5 – 2.5).

A review of the medical records substantiates the Applicant's claim. The Catalina Medical Center records are essentially silent concerning the cause of the neck and lower back complaints. The exception is the initial record dated 07/07/2016, which contains a statement that the Applicant had pain for two years that began when he "picked up heavy object at work." It is unclear if this was a single or multiple incident. The remainder of the Catalina Medical Center records do not mention the cause of the neck and low back pain other than that "movement" aggravated the Applicant's symptoms. (Catalina Medical Center records [Defense Exh. J]). Again, there is no explanation or discussion of the type of "movement" causing the aggravation.

The Applicant was also treated by Dr. O'Hara and Torrance Memorial Medical Center. The records from Torrance Memorial Medical Center do not mention an industrial injury. Dr. Phu La noted that Dr. O'Hara did not indicate anywhere in the reporting that the lumbar spine complaints were related to the Applicant's employment at SpaceX (Phu La, D.C., deposition dated 11/18/2020, pg. 41:23 to 42: 3). There is no mention in the Torrance Memorial Medical Center records that the Applicant believed his problems were work-related, or that his physicians felt the neck and low back injuries were related to Applicant's employment. The discussion about causation in the records appears in the initial report dated 11/01/2018, which states that the Applicant's neck symptoms began in early July when he woke up with stiffness and pain. The Applicant had been weightlifting, which he thought might have aggravated his symptoms. (Torrance Memorial Medical Center records, Bates stamp #84 [Defense Exh. K]).

It was not until the Applicant consulted with his attorney that he gained the requisite knowledge that his neck and low back problems might be due to a cumulative trauma injury, and not until the Applicant saw the panel QME that there was a medical opinion on causation. Before then, the Applicant was unaware that he had a right to file for workers' compensation benefits and that he had a specified period to file a claim form for benefits.

An injured worker will not be charged with knowledge that their disability is job-related without medical advice. Regarding knowledge of the injury, the Supreme Court held that "Knowledge of industrial causation does not occur until an applicant receives a medical opinion expressly stating so, even where the applicant indicated a belief that the disability is due to employment." (Freuhauf Corp. v. Workmen's Comp. Appeals Bd. (Stansbury) (1968) 68 Cal.3d 569 [33 Cal. Comp. Cases 300, 306]). It was not until the Applicant saw the panel QME, Dr. La, that he received for the first time a medical opinion indicating that the disability was job-related.

Petitioner contends that case law suggests that knowledge of work-related disability may be found even if there is no medical opinion. Petitioner cites Nielsen v. Workers' Comp. Appeals Bd. (1985) 164 Cal.App.3d 918 [210 Cal.Rptr. 843], where the employee suggested to his physicians that his work activities might have caused the injury. The Nielsen case is distinguishable because Gary Taylor testified that he did not make an immediate connection between his injury and job duties and did not tell his doctors that the problem was work-related. The Applicant testified he saw Dr. O'Hara in 2018 because "he did not know what his symptoms were related to." (MOH/SOE 11:24 to 12: 1). He testified when the doctor saw him in 2014 and 2016, he thought his problems were due to his aging (MOH/SOE 7: 3 – 5).

The Torrance Memorial Medical Center records of 11/01/2018 discuss that the Applicant's neck symptoms began when he woke up with stiffness and pain, possibly due to weightlifting (Torrance Memorial Medical Center records, Bates stamp #84 [Defense Exh. K]). The defense witness, Ray Mastropa, testified that the only explanation the Applicant gave for his neck pain was that it was due to working out and that he used to lift weights. The Applicant never told him that the neck pain was due to a work-related injury (MOH/SOE 15: 15 – 16).

Petitioner cites the case of Cucamonga Unified Sch. Dist. v. Workers Compensation Appeals Bd., 61 Cal. Comp. Cases 1384 (Cal. App. 4th Dist. December 11, 1996), although the case is not published in the official reports, and it is not citable in judicial actions or proceedings. The case is inapposite. The Applicant was lifting a heavy box when he experienced a sharp, shooting pain that immediately caused mobility and substantial discomfort. The Court remarked that "the cause and effect relationship could hardly have been more clear if it had appearance magically written on the wall."

In contrast, the etiology of Mr. Taylor's cumulative traumatic injury was not so obvious. Even the panel QME, Dr. La, had difficulty recognizing at first that the Applicant sustained a work-related cumulative trauma claim. It was not until the doctor's deposition after he reviewed the job description that he concluded the Applicant's injury was AOE/COE. Dr. Phu La made an accurate remark that in 2016 it did not come across in the Applicant's mind at the time that he might have

a cumulative trauma injury (deposition of Dr. Phu La, 11/18/2020, 42: 15 – 19 [Applicant's Exh. 5]).

DISABILITY:

To establish an injury under Labor Code § 5412, the Applicant must suffer a compensable disability. There is no evidence that the Applicant lost time from work due to his neck and low back injury. The Applicant's supervisor, Ray Mastropa, testified that he "does not believe the applicant ever missed time from work because of neck pain." (MOH/SOE, 16: 7.5 – 8). Petitioner cites the defense witness's testimony that twice the Applicant mentioned neck pain and that he might have said he had to leave early. However, no documented evidence shows that the Applicant lost time from work due to neck or low back problems. No evidence establishes he ever had any temporary or permanent work restrictions or job modifications, and there is no evidence of permanent disability.

Although Mr. Mastropa testified the applicant "mentioned" neck pain twice, he also testified that the Applicant never mentioned he was seeking treatment with any doctor for a physical complaint (MOH/SOE, 15: 9.5 – 10.5). Even if the Applicant had neck pain, that statement alone does not rise to the level of compensable permanent disability necessary to trigger Labor Code § 5412. Nor is disability triggered because the Applicant received treatment and was prescribed at-home exercises. The physicians at Catalina Medical Center and Torrance Memorial Physician Network never mentioned any temporary or permanent work restrictions or modification of job duties was necessary. There is no indication that the employer ever assigned the Applicant modified or alternative work duties.

The case of State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (2004) 119 Cal.App.4th 998 [14 Cal.Rptr.3d 793], cited by Petitioner, is distinguishable from the facts here. In that case, the Applicant received wrist splints and was placed on modified duty, which could have been evidence of disability. On the other hand, there was no evidence that the employer put the Applicant on modified duty or that the Applicant was prescribed durable medical condition equipment such as a brace. The evidence does not establish that the Applicant had knowledge or disability until he consulted an attorney and Dr. La evaluated him.

B. FAILURE TO REPORT AN INJURY

Petitioner argues that the applicant "knowingly and voluntarily delayed the filing of a workers' compensation claim for almost three years despite having the opportunity, experience, and education to do so." (Defendant's Petition for Reconsideration, 14: 17 – 19). The Applicant sought chiropractic treatment in 2016, three years before he filed the claim in 2019. However, when he first sought treatment, he did not know that his injury was due to a work-related cumulative trauma injury. The Applicant did not know about the cumulative trauma claim at that time.

C. CONCLUSIONS

Based on the evidence from the trial record, the Applicant did not have actual knowledge or evidence of disability until he obtained legal counsel. Although the Applicant was aware he had

developed physical symptoms related to his employment, he had no knowledge concerning his actual or potential rights vis-à-vis the obtainment of workers' compensation benefits until after he met with his counsel and the panel QME.

The Court must liberally construe the statute of limitations in favor of providing workers' compensation benefits to an injured worker. Labor Code § 3202 provides: "This division and Division 5 (commencing with Section 6300) shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." The Court has stated that liberal construction applies to the statute of limitations. Applying Labor Code §§ 3202, 5405, and 5412 to the present matter, the Applicant's date of injury for statute of limitations purposes is February 2019. Based upon the date of knowledge, date of filing, and the date of injury under Labor Code § 5412, the WCJ found that Defendant did not sustain its burden of proving that the statute of limitations bars the Applicant's claim or that the Applicant failed to timely report a claim.

IV.
RECOMMENDATION

Because of the foregoing, it is respectfully requested that the Petition for Reconsideration filed on behalf of SpaceX, administered by Corvel, be denied.

DATE: September 12, 2022

Richard Brennen
WORKERS' COMPENSATION JUDGE

OPINION ON DECISION

Pursuant to due notice of time and place of hearing served on all parties in interest, the above-stated cause came to trial before the undersigned. After the testimony, the parties submitted for decision. The issues for the Court's consideration are whether the applicant sustained an injury arising out of and in the course of employment and whether the 1) post-termination defense, 2) statute of limitations defense, and 3) defense for failure to timely report under Labor Code § 5400 bars the claim. This Opinion on Decision and Findings and Order now follows.

PRIMA FACIE EVIDENCE OF INJURY AOE/COE

The applicant worked for the defendant receiving raw and assembled materials. He inspected the materials using measuring tape and calipers to ensure they met the company standards. He picked up and moved the materials to other sections of the job site. Some materials were massive, such as solar panels weighing between five and 200 pounds. The applicant did a lot of work at his desk, where he inputted the results of the inspections (MOH/SOE, pgs. 4 – 5).

Due to his work activities, the applicant began to experience neck and back pain in 2014. He went to a chiropractor at Catalina Medical Center in 2016 because the pain worsened. The PQME chosen for the case was Dr. Phu La. He described the applicant's job duties thus: lifting large, heavy metal and aluminum parts on pallets from one area to another. He frequently sat at his workstation for prolonged periods working on a computer with his neck in a fixed forward, upward, or downward position to inspect various parts. The applicant performed repetitive bending, stooping, twisting at the waist, crouching, and squatting, as well as repetitive simple and firm grasping with hands to inspect material parts. The applicant's back symptoms began in 2014 due to lifting metal and aluminum aerospace parts. He reported it to his supervisor, Royce Jefferson, who advised him to seek chiropractic care at Catalina Medical Center (Dr. Phu La, PQME, pg. 4, 03/12/2020 [Applicant's Exh. 1]).

Dr. La initially opined the applicant's neck, upper extremities, and low back injury was non-industrial (Dr. Phu La, PQME, pg. 13, 03/12/2020 [Applicant's Exh. 1]). However, he changed his mind after reviewing the applicant's job duties and the records from Catalina Medical Center. He concludes, with reasonable medical probability, that there is a causal relationship between the applicant's work and the neck and back problems (deposition transcript of Dr. Phu La, 07/22/2020, 8: 10 – 15, [Applicant's Exh. 4]). In his supplemental report dated October 12, 2020, Dr. La reviewed additional medical records and indicated that his opinion that the applicant sustained a cumulative trauma injury was unchanged. (Dr. Phu La, PQME, 10/12/2020, pg. 2 [Applicant's Exh. 2]).

At his deposition, Dr. La stated the applicant sustained a cumulative trauma injury. Dr. Cohen's intake note from July 7, 2016, indicated that the applicant had been having neck problem symptoms for the last two years (deposition of Dr. Phu La, 11/18/2020, 42: 15 – 19 [Applicant's Exh. 5]). Dr. La's final report, dated December 22, 2020, says the applicant sustained a cumulative traumatic injury that resulted from his daily usual and customary duties as a Receiving Inspector (Dr. Phu La, PQME, 12/22/2020 pg. 4 [Applicant's Exh. 3]). "It is my medical opinions with reasonable medical degree of probability that there was industrial causation to Mr. Taylor's neck

and low back that developed over the course of his employment performing repetitive duties at SpaceX as a Receiving Inspector since October of 2012." (Dr. Phu La, PQME, 12/22/2020, pg. 20 [Applicant's Exh. 3]).

Dr. La's conclusion on causation appears reasonable, given that the applicant frequently lifted heavy aerospace materials and was nearly always working at his desk monitor. There is substantial medical evidence to establish injury based on the applicant's job duties, which included lifting heavy parts, working at a desk, and looking at a computer monitor for a prolonged time. Based on the testimony, as well as the medical reports and deposition testimony of Dr. La, the Court finds that the applicant sustained a cumulative trauma injury to his neck and low back arising out of and in the course of employment.

POST-TERMINATION DEFENSE

Defendant raises affirmative defenses, including the post-termination defense under Labor Code § 3600(a)(10), the statute of limitations defense under Labor Code § 5405, and the failure to report a claim under Labor Code § 5400. Defendant's denial letter of April 10, 2019, states the Defendants bases their denial on Labor Code § 3600(a)(10), which precludes compensation for injuries claimed after a notice of termination or layoff. According to the denial letter, the applicant's claim fails to demonstrate that any exception to the post-termination defense exists (Defense Exh. D).

Labor Code § 3600(a)(10) provides that the post-termination defense will not apply if the applicant can show one of the following:

> (A) The employer has notice of the injury, as provided under Chapter 2 (commencing with Section 5400), prior to the notice of termination or layoff.
> (B) The employee's medical records, existing prior to the notice of termination or layoff, contain evidence of the injury.
> (C) The date of injury, as specified in Section 5411, is subsequent to the date of the notice of termination or layoff but prior to the effective date of the termination or layoff.
> (D) The date of injury, as specified in Section 5412, is subsequent to the date of the notice of termination or layoff.

Concerning the exception in subsection A, "employer knowledge of the injury prior to the notice of termination or layoff," the evidence is equivocal regarding employer knowledge. The applicant testified that he reported the injury to his employer. On the other hand, the employer's witness, Ray Mastropa, the applicant's supervisor during the last year of employment, testified that the applicant never reported an injury. Given the conflicting testimony, the applicant did not establish the employer's knowledge of the injury.

Concerning the second exception in subsection B, "medical records, existing prior to the notice of termination or layoff, contain evidence of the injury," there are such records in the trial record. The records from Catalina Medical Center show that the applicant went to the clinic and received treatment for his lower back and neck (Defense Exh. J).

As will be discussed below, the date of the cumulative trauma injury as defined under Labor Code § 5412 did not occur until the applicant saw his attorney and went to QME Dr. La. Thus, the exception in subsection D, "the date of injury, as specified in Section 5412, is subsequent to the date of the notice of termination or layoff" also applies. The date of injury under Labor Code § 5412 occurred after the applicant's notice of termination or layoff on January 11, 2019.

The post-termination defense does not bar the applicant's claim based on the exceptions under subsections B and D of Labor Code § 3600(a)(10). The medical records demonstrate evidence of treatment before termination, and the date of injury under Labor Code § 5412 occurred after the notice of termination or layoff.

STATUTE OF LIMITATIONS

Defendant contends Labor Code § 5405 bars the claim because he filed the claim more than a year after the date of injury. Defendant offered in evidence a picture of the bulletin board from work that has a poster titled, 2018 California and Federal Employment Notices (Defendant's Exh. I). Defendant also offered in evidence a flyer announcing that employees should call the nurse hotline for a work-related injury or illness (Defense Exh. H). The SpaceX employee handbook describes on page 80 that the company has a workers' compensation insurance program and that employees are to report injuries to their manager (Defense Exh. G).

The statute of limitations for a cumulative trauma injury does not commence to run until the applicant has knowledge of his workers' compensation rights and disability from the injury. For statute of limitations purposes, the one year is calculated per Labor Code § 5412, which states:

> "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 applicant testified that when he first went to the doctor in 2014 and 2016, he thought his problems were due to his aging (MOH/SOE 7: 3 – 5). He did not know at the time that his problems were due to a cumulative trauma injury, that he had a right to file for workers' compensation benefits, or that he had to file for workers' compensation benefits within a specified time.

The applicant misunderstood the essential precepts of workers' compensation and was unaware of the nature of a cumulative trauma injury. For example, the applicant testified he was unaware that if he filed a workers' compensation claim, he could continue working at SpaceX (MOH/SOE 10: 19 – 20). Instead, he thought that once he filed a workers' compensation claim form, he would be forced to stop working and receive 66 percent of his pay (MOH/SOE 10: 23 – 24). The first time the applicant knew that he sustained a cumulative trauma injury occurred when he went to his attorney and when he saw the PQME, Dr. La. Although the applicant was treated for his neck and the back in 2016, the Court agrees with Dr. La's assessment that the applicant did not know about cumulative trauma injuries at the time. Dr. La noted that it did not come across in the applicant's mind at the time that he might have a cumulative trauma injury, which explains why he did not report an injury at the time (deposition of Dr. Phu La, 11/18/2020, 42: 15 – 19 [Applicant's Exh.

5]). The applicant went to see Dr. O'Hara in 2018 because "he did not know what his symptoms were related to." (MOH/SOE 11:24 to 12: 1). The Court finds the applicant did not have the requisite knowledge until he consulted his attorney and saw the QME, who reported the applicant sustained a cumulative trauma injury.

In addition to knowledge, to establish a cumulative trauma injury under Labor Code § 5412, there must be evidence of a disability. Dr. O'Hara did not give the applicant any work restrictions other than modifying how he looked at his screen (MOH/SOE 11: 10 – 12). The manager for supply chain engineering, Ray Mastropa, testified that the applicant never missed time from work because of pain or injury (MOH/SOE 16: 8). There is no evidence the applicant lost time from work or that he had any permanent work restrictions or disability before the employment termination. For statute of limitations purposes, the date of injury occurred when the applicant consulted his attorney, and the panel QME examined him and indicated he sustained a cumulative trauma injury.

Finally, the applicant was not charged with filing a claim under Labor Code § 5400 until he had knowledge and disability. The trial court must liberally construe the statute of limitations in favor of providing workers' compensation benefits to an injured worker, and labor Code § 3202 provides:

> "This division and Division 5 (commencing with Section 6300) shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment."

The Court has held that liberal construction applies to statute of limitations. "At the outset it must be remembered that the provisions of the workers' compensation law dealing with the limitation of time within which proceedings for compensation may be commenced, like other parts of the law, are to be liberally construed to the end that the beneficent features thereof shall not be lost to employees, and where provisions are susceptible of an interpretation either beneficial or detrimental to an injured employee, they must be construed favorably to the employee." (Citations omitted.) (Colonial Insurance Company v. Industrial Accident Commission (1945 In Banc) 27 Cal. 2d 437; 10 Cal. Comp. Cas. 321; 1945 Cal LEXIS 249.)

Applying Labor Code §§ 3202, 5405, and 5412 to the present matter, the applicant's date of injury for statute of limitations was when the applicant consulted his attorney and saw the QME. The applicant met his burden of proof to establish injury AOE/COE. The affirmative defenses of post-termination, the statute of limitations, and the not timely filing of a claim form do not bar the instant action.

All other issues are deferred.

DATE: August 4, 2022

Richard Brennen
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE