

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

SUSANNE CARROLL, Applicant

vs.

**KPMG, LLP; ZURICH NORTH AMERICA;
TRAVELERS PROPERTY & CASUALTY COMPANY, Defendants**

**Adjudication Number: ADJ2912939 (ANA 0373632)
Santa Ana District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration to further study the factual and legal issues. This is our Decision After Reconsideration.

Defendant Zurich North America (Zurich) seeks reconsideration of the April 21, 2022 Findings and Order wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained an industrial injury, Zurich's Petition for Contribution was untimely filed, and Travelers is not estopped from asserting the Labor Code section 5500.5(e) statute of limitations as a defense.¹

In essence, Zurich contends that the joint Compromise and Release that settled applicant's five workers' compensation claims with both Zurich and Travelers was also a petition for contribution.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration. In the report, the WCJ explained that: "No Petition for Contribution was ever filed with the Court by Zurich. The parties brought the matter before the Court before the Court on the issues of whether

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

or not the filing of a petition was required by Zurich and if co-defendant Travelers was estopped from asserting the statute of limitations in Labor Code section 5500.5.” (Report p. 1.) Because Zurich has not yet filed a Petition for Contribution, the WCJ’s finding that the petition is untimely is technically incorrect and his determination that Travelers is not estopped from claiming the statute of limitations defense issue premature. Therefore, we will rescind the WCJ’s Findings and Order.

Labor Code section 5500.5(e) provides in part: "At any time within one year after the appeals board has made an award for compensation benefits in connection with an occupational disease or cumulative injury, any employer held liable under the award may institute proceedings before the appeals board for the purpose of determining an apportionment of liability or right of contribution."

In order to commence proceedings on the issue of contribution, an insurer must file a petition for contribution within one year from the date of any award of benefits. (§ 5500.5(e); *General Accident Insurance Co. v. Workers' Comp. Appeals Bd. (Loterstein)* (1996) 47 Cal.App.4th 1141, 1148 [61 Cal.Comp.Cases 648] (§ 5500.5(e) applies to multiple insurers of single employer and filing for contribution not satisfied by mere joinder of another employer or carrier subsequent to approval of C&R); *Rudolph & Sletten, Inc., v. Workers' Comp. Appeals Bd. (Lyon)* (1998) 63 Cal.Comp.Cases 339 (proceedings not instituted under § 5500.5(e) by listing contribution as issue in minutes of hearing or in answer, participation with co-defendant in settlement negotiations with applicant and lien claimants, or by agreeing with defendant to assign matter to identified arbitrator).)

In this case, Zurich argues that a Compromise and Release Agreement should also be deemed a Petition for Contribution. However, Zurich was required to file a petition within one year of the Order and Award Approving the Compromise and Release. Since the Compromise and Release predates the award, it cannot be construed as a petition for contribution in accordance with Section 5500.5. As the WCJ noted in his report, Zurich has not filed a petition for contribution. The WCAB cannot determine the timeliness of a document that has not yet been filed.

Accordingly, as our decision after reconsideration, we will rescind the WCJ's Findings and Order and substitute a new Finding that Zurich has not filed a petition for contribution. Because no petition for contribution has been filed, it was premature to set the matter for trial on issues related to a petition for contribution.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the April 22, 2022 Findings and Order is **RESCINDED**, and the following is **SUBSTITUTED** in its place.

FINDING OF FACT

1. Zurich has not filed a Petition for Contribution in ADJ2912939.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 20, 2022

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

**SCHWARTZ & STEINKOHL
STOCKWELL, HARRIS, WOOLVERTON & HELPHREY
SUSANNE CARROLL**

MWH/oo/mc

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

CS