

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

GAIL MATTHEWS, *Applicant*

vs.

**SUTTER HEALTH SYSTEM OFFICE; adjusted by
SUTTER HEALTH SACRAMENTO, *Defendants***

**Adjudication Number: ADJ15099173
Sacramento District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously issued granted reconsideration in order to study the factual and legal issues in this case.¹ This is our Opinion and Decision After Reconsideration.

We have considered the allegations of the Petition for Reconsideration and the Answer 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 affirm the Findings of Fact.

Defendant contends in its Petition that the WCJ should have made a finding of a date of injury pursuant to Labor Code section 5412. However, defendant did not raise the issue at the time of trial and stipulated that applicant was employed by it during the cumulative trauma period up to August 5, 2021. It may be that defendant has conflated the definition of a cumulative trauma period, which is the period of injurious exposure, and the definition of the date of injury under section 5412. As appropriate, defendant may raise the issue of the date of injury under Labor Code section 5412 at the trial level in the first instance.

Accordingly, we affirm the Findings of Fact.

¹ Commissioner Marguerite Sweeney signed the Opinion and Order Granting Petition for Reconsideration dated October 24, 2022. As Commissioner Sweeney is no longer a member of the Appeals Board, a new panel member has been substituted in her place.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact issued by the WCJ on August 3, 2022 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 17, 2023

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

**GAIL MATTHEWS
MARCUS, REGALADO, MARCUS & PULLEY
LAW OFFICES OF TIMOTHY H. HUBER**

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
ON PETITION FOR RECONSIDERATION

I.
INTRODUCTION

1. Order issued: 8/3/22
2. Identity of Petitioner: Defendant
3. Verification: The petition is verified
4. Timeliness: The petition is timely
5. Date Petition for
Reconsideration filed: 8/24/2022
6. Petitioner alleges: The Court erred in finding a cumulative trauma ending on 8/5/2021 and not analyzing the date of injury under Labor Code 5412

Applicant alleges injury to her left upper extremity, left shoulder, left elbow, left wrist, and left thumb during a continuous trauma ending on 8/5/2021; defendant denied the injury. The sole issues presented to the Court was if the injury arose out of and in the course of employment and need for further medical treatment. Defendant did *not* deny the injury based upon statute of limitations. The parties utilized Dr. Sclafani as the PQME to resolve their issues.

As noted in the Opinion on Decision Dr. Sclafani examined the applicant and provided a report dated 12/27/2021 (Exhibit 1) Applicant gave a history of pain in her left upper extremity, elbow, hand, and wrist pain beginning in 2007. Applicant underwent carpal tunnel surgeries on 7/12/13 and 3/18/2015. An ulnar nerve decompression occurred on 8/13/2015 followed by another surgery on 11/3/2016. In 2019, applicant experienced an increase in workload as well as an increase in symptoms. Applicant's employment ended on 8/5/2021. In his reporting, Dr. Sclafani diagnosed injury to applicant's left elbow, wrist, and left thumb and opined that they were due to a cumulative trauma injury ending on 8/5/2021. He found that applicant was not yet permanent and stationary.

Defendant deposed Dr. Sclafani on 4/8/22. (Exhibit 2) He testified that a cumulative trauma was an injury that "arises out of a longitudinal history of repetitive exposures that if isolated would not cause a particular diagnosis but when amassed over a period of time will lead to gradual development of injury, impairment and disability." (Exhibit 2 p. 9 lines 1-5). He reiterated that he continued to find that "the ten-year history of repetitive administrative duties while working as a claims adjuster did contribute to the causation of her left cubital tunnel and left carpal tunnel diagnosis." (Exhibit 2 p. 11 lines 2-6) Dr. Sclafani testified that he would *preliminarily* find four separate cumulative traumas each ending on the date applicant had her surgeries. (Exhibit 2 p. 11 line 7 through p. 12 line 17). After a lengthy discussion of the timeline of applicant's condition, Dr. Sclafani testified that the only changes to his report was the "discussed relevance of multiple apportionable factors of cumulative trauma exposure" and that this would apply to apportionment of permanent disability. (Exhibit 2 p.34 lines 4-16) *He further confirmed that applicant's work*

activities through 8/5/2021 played a causative or contributory role to applicant's left upper extremity issues. (Exhibit 2 p. 34 lines 17-25).

Defendant argues that the Court erred because it did not “apply the correct legal definition of cumulative trauma injury.” (Petition for Reconsideration p. 2 lines 3-4). Specifically, Petitioner argues that Labor Code §5412 is the correct legal definition to utilize to determine causation of a cumulative trauma. This is an incorrect legal theory. A cumulative trauma is defined under Labor Code §3208.1 as a “repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment.” Here, the combined effects of applicant’s job duties played a causative or contributory role in her left upper extremity issues pursuant to Dr. Sclafani’s testimony. According to the Petition for Reconsideration, an analysis under Labor Code §5412 is essential to the definition of a cumulative trauma. Labor Code §5412 determined the date of the cumulative trauma; it is not the definition of a cumulative trauma. The date of injury under the cumulative trauma has several legal ramifications such as compensation rate, statute of limitations, and dependency status; however, it does not effect if applicant’s injury arose out of and in the course of her employment. Labor Code §5412 requires the concurrence of knowledge and disability to determine the date of the CT; defendant argues that there was no disability due to the 8/5/2021 CT. To argue that applicant did not have any disability at the time her employment ceased is nonsensical. Clearly applicant had a level of permanent disability (although yet to be determined). Dr. Sclafani testified that the work after applicant’s numerous surgeries contributed to her left upper extremity issues; thus even under defendant’s incorrect legal analysis there would be a viable cumulative trauma (assuming *arguendo* that applicant had the requisite knowledge that her injury was industrially related). Hence, Petitioner’s statement that the “alleged injury of August 5, 2021, did not cause a need for treatment or disability” is factually incorrect. (Petition for Reconsideration p. 8 lines 6-7).

Petitioner presented the case of *Plundstein v. Hendrickson Trucking* (2016 Cal. Work Comp. P.D. LEXIS 403) as argument that the court must find the date of injury for a cumulative trauma claim. In that case the issue of statute of limitations was raised. The date of injury is a necessary element for a statute of limitations analysis but that is not the case in the matter at hand.

The Court did not make a finding that there were or were not multiple cumulative traumas as there are no Applications for multiple cumulative traumas; the Court lacks jurisdiction to make such findings. Rather, the Court focused on the cumulative trauma pled. Dr. Sclafani both reported and testified that applicant’s work duties through her last day worked; there was no medical evidence to the contrary. No further analysis is necessary.

DATE: September 6, 2022

Darcy Kosta
WORKERS’ COMPENSATION
ADMINISTRATIVE LAW JUDGE