

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

**ARNOLDO GARFIO CABRERA, *Applicant***

**vs.**

**ATKORE INTERNATIONAL dba CALPIPE INDUSTRIES, INC., and  
AMERICAN HOME ASSURANCE administered by GALLAGHER BASSETT  
SERVICES, INC.; GREAT AMERICAN ALLIANCE INSURANCE COMPANY,  
administered by STRATEGIC COMP CLAIMS; STATE COMPENSATION  
INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ12431390**

**Oxnard District Office**

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

Defendants State Compensation Insurance Fund (SCIF) and Great American Alliance Insurance Company (American Alliance) each seek reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on October 5, 2023, wherein the WCJ found in pertinent part that, "There is no basis under Labor Code Section 5412 to extend the period of liability back or forward any further than the one year stipulated to and as provided in Section 5500.5" and "The amended Stipulation with Request for Award of 07/13/2020 and Amended Award of 07/17/2020 are binding upon the parties." (F&O, p. 1.)

Defendant SCIF contends that the Labor Code Section 5412 date of injury is June 24, 2019,<sup>1</sup> and that SCIF is not bound by the cumulative trauma period stipulated to by American Home Assurance Company and applicant.

Defendant American Alliance (administered by Strategic Comp Claims) contends that it was not a party to the stipulations submitted by American Home Assurance Company and applicant, so it is not bound by those stipulations; that the first time applicant was off work due to his lung condition in March 2019; and that it was American Home Assurance Company's burden

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise noted.

to prove that applicant's first disability/the section 5412 date of injury for the cumulative injury claim was in 2018.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) filed by SCIF be denied; and a separate Report recommending the Petition filed by American Alliance be denied. We did not receive an Answer from American Home Assurance Company.

We have considered the allegations in the Petitions, and the contents of the Reports. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

### **BACKGROUND**

Arnoldo Garfio Cabrera (applicant) claimed a cumulative injury to his lungs/respiratory system while employed by Atkore International during the period of his employment from November 2013, through January 2019.<sup>2</sup> The employer's workers' compensation insurance carriers during that time were: SCIF for the period from May 4, 2017, through and including July 30, 2017; American Alliance for the period from July 31, 2017, through and including September 20, 2017; and American Home Assurance for the period from September 21, 2017, through and including September 21, 2019. (See Minutes of Hearing and Summary of Evidence (MOH/SOE) September 21, 2023, p. 2.)

Applicant and American Home Assurance Company settled the injury claim by Stipulations with Request for Award which stated that applicant claimed a cumulative injury to his lungs/respiratory system during the period from May 4, 2017, through May 4, 2018; a WCJ issued an Amended Award on July 22, 2020. Applicant and American Home Assurance Company also settled an April 20, 2018 hand/finger specific injury claim in case number ADJ13389698; on July 14, 2020, a WCJ issued an Award.

On July 30, 2020, American Home Assurance Company filed a Petition for Reimbursement/Contribution seeking reimbursement and contribution from SCIF and American

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<sup>2</sup> The injury claim was actually pled as occurring during the period from May 4, 2017, through May 4, 2018; the period from November 2013, through January 2019, was stipulated to by the parties at the September 21, 2023 trial.

Alliance. The three insurance carriers proceeded to trial on September 21, 2023. The issues submitted for decision were:

1. Parts of body: American Home Assurance alleging that the cumulative trauma involved both the lungs and the hands. 2. The legal date of injury pursuant to Labor Code Section 5412. [and] 3. Whether American Home Assurance is bound by the two Stipulations with Requests for Award issued in both cases. (MOH/SOE, pp. 2 – 3.)

## DISCUSSION

Section 5702 states that:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy. (Lab. Code, § 5702)

Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) However, there is no statutory or case law that makes the parties' stipulations binding on non-party individuals or entities. Therefore, SCIF and American Alliance are correct that they are not bound by the stipulations submitted by applicant and American Home Assurance Company. In fact, to be bound by those stipulations would be a violation of their due process rights, and all parties to a workers' compensation proceeding retain the fundamental right to due process. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].)

Section 5500.5 states in pertinent part that:

[L]iability for occupational disease or cumulative injury claims filed or asserted on or after January 1, 1981, shall be limited to those employers who employed the employee during a period of one year immediately preceding either the date of injury, as determined pursuant to Section 5412, or the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury, whichever occurs first. (Lab. Code, § 5500.5.)

Pursuant to Section 5412:

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.  
(Lab. Code, § 5412.)

As noted above, at the trial the parties stipulated that applicant's period of employment for Atkore International was during the period from November 2013, through January 2019. In order to determine the section 5412 date of injury, the date that applicant first suffered disability and knew that the disability was caused by his employment, must be established. Our review of the record indicates these dates have not been adequately established. Thus, we will return this matter to the WCJ to have the record further developed, to consider and determine the section 5412 date of injury and the section 5500.5 date of injury, and in turn, to determine the parties' liability.

Accordingly, we grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that State Compensation Insurance Fund's Petition for Reconsideration of the Findings and Order issued by the WCJ on October 5, 2023, is **GRANTED**.

**IT IS FURTHER ORDERED** that Great American Alliance Insurance Company's Petition for Reconsideration of the Findings and Order issued by the WCJ on October 5, 2023, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the October 5, 2023 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



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

**December 21, 2023**

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

**ARNOLDO GARFIO CABRERA  
BERNAL & ROBBINS  
STATE COMPENSATION INSURANCE FUND  
MICHAEL SULLIVAN & ASSOCIATES**

**TLH/abs**

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