

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

ARTHUR STANFORD (Dec'd), et. al., *Applicants*

vs.

**HOUSING AUTHORITY OF THE CITY OF LOS ANGELES, permissibly self-insured,
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ19613976
Los Angeles District Office**

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

Applicant seeks reconsideration of the “Findings of Fact and Opinion on Decision” (Findings) issued on August 10, 2025, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicants’ claim of death benefits was barred by Labor Code¹ section 5406(b) because applicant failed to file a claim for death benefits within one year from the date of decedent’s death.

Applicant contends that she had a complete lack of knowledge that the death was industrially related and that defendant did not meet its burden to establish a statute of limitations.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ’s Report. Based on our review of the record and for the reasons discussed below, we will grant applicant’s petition for reconsideration and as our Decision After

¹ All future references are to the Labor Code unless noted.

Reconsideration, we will rescind the August 10, 2025 Findings and return this matter to the trial level for further proceedings.

FACTS

Per the WCJ's Report:

Retired carpenter ARTHUR STANFORD passed away at home on 01/08/2023. The death certificate listed cardiopulmonary arrest as the immediate cause of death, with contributing causes including septic shock, extended spectrum beta-lactamase bacteremia, spontaneous bacterial peritonitis, decompensated alcoholic cirrhosis, coagulopathy, intracranial hemorrhage (nontraumatic), and seizures.

The Application for death benefits was filed on 07/29/2024, and the claim was denied based on the statute of limitations. The matter proceeded to Trial, and both parties submitted trial briefs.

The undersigned WCJ issued a Findings and Order on 08/29/2025 that the Petitioner's claim is barred by the statute of limitations for dependency claims, and that there is no need for development of the record, as the operation of Labor Code §5406(b) alone is sufficient to defeat the claim, regardless of knowledge of the date of injury.

Petitioner requests reconsideration, arguing primarily that lack of knowledge of the industrial nature of the death tolls the statute.

(WCJ's Report, pp. 1-2.)

In the Report, the WCJ further found that "there is no authority allowing tolling of the requirement to file within one year of the date of death." (*Id.* at p. 4.)

DISCUSSION

I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(§ 5909.)

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on September 10, 2025, and 60 days from the date of transmission is Sunday, November 9, 2025, which by operation of law means this decision is due by Monday, November 10, 2025. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on November 10, 2025, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on September 10, 2025, and the case was transmitted to the Appeals Board on September 10, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 10, 2025.

II.

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10761.)

The running of the statute of limitations is an affirmative defense, and therefore, the burden of proof as to whether an application is barred by the statute of limitations rests with defendant. (§§ 5409, 5705; see *City of Fresno v. Workers’ Comp. Appeals Bd.* (“*Johnson*”) (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53].) The applicable statute of limitations in death cases is section 5406, which states:

(a) Except as provided in Section 5406.5, 5406.6, or 5406.7, the period within which may be commenced proceedings for the collection of the benefits provided by Article 4 (commencing with Section 4700) of Chapter 2 of Part 2 is one year from:

(1) The date of death if death occurs within one year from date of injury.

(2) The date of last furnishing of any benefits under [*3] Chapter 2 (commencing with Section 4550) of Part 2, if death occurs more than one year from the date of injury.

(3) The date of death, if death occurs more than one year after the date of injury and compensation benefits have been furnished.

(b) Proceedings shall not be commenced more than one year after the date of death, nor more than 240 weeks from the date of injury.

(§ 5406.)

“Limitations provisions in the [workers’] compensation law must be liberally construed in favor of the employee unless otherwise compelled by the language of the statute, and such enactments should not be interpreted in a manner which will result in a loss of compensation.” (*Blanchard v. Workers’ Comp. Appeals Bd.* (1975) 53 Cal.App.3d 590, 595, 40 Cal. Comp. Cases 784, 787 (internal citations omitted).)

It is well settled that where the employer has a statutory or regulatory duty to provide notice to the injured worker of a right and fails to do so, the employer is estopped from raising the statute of limitations as a bar to the claim. (*Reynolds v. Workmen’s Comp. Appeals Bd.*, (1974) 12 Cal.3d 726.)

Administrative Director Rule 9812 requires the employer to send notices to dependents in death cases. (Cal. Code Regs., tit. 8., § 9812(f) [“[T]he claims administrator **shall advise the dependent(s)** of the status of **any benefits to which they may be entitled** or which they have claimed as a result of the employee’s death.”].)

Section 5406(b) states that no death claim shall be commenced more than 240 weeks from the “date of injury.” (§ 5406(b).) “For purposes of *death* benefit claims, the date of injury may depend on the claimant’s knowledge of the industrial nature of the injury causing death.” (*Massey v. Workers’ Comp. Appeals Bd.* (1993) 5 Cal.4th 674, 678, fn. 1 [58 Cal.Comp.Cases 367], emphasis in the original, citing *Berkebile v. Workers’ Comp. Appeals Bd.* (1983) 144 Cal.App.3d 940 [48 Cal.Comp.Cases 438].) The Second District Court of Appeal held in *Berkebile* that:

In that the applicant’s right to workers’ compensation death benefits are independent and severable from the decedent’s inter vivos rights, a determination as to the decedent’s knowledge of the industrial origin of his disability is not dispositive of the statute of limitations issue. **The date of the applicant’s knowledge of the industrial nature of the decedent’s condition is the pertinent ‘date of injury’ for purposes of the death claim.**”

(*Berkebile, supra*, 144 Cal.App.3d at 945, emphasis added.)

The underlying injury claimed in this matter appears to be a cumulative injury. Date of injury for cumulative injury claims is ordinarily established under section 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.” (§ 5412.)

As used in section 5412, “disability” means either compensable temporary disability or permanent disability. (*Chavira v. Workers’ Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463 [56 Cal.Comp.Cases 631]; *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998 [69 Cal.Comp.Cases 579].) Medical treatment alone is not “disability” for purposes of determining the date of a cumulative injury pursuant to section 5412, but it may be evidence of compensable permanent disability. (*Rodarte, supra*, 119 Cal. App. 4th at p. 1005.) Likewise, modified work is not a sufficient basis for finding compensable temporary disability, but it may be indicative of a compensable permanent disability, especially if the worker is permanently precluded from returning to their usual and customary job duties. (*Id.*)

The existence of disability is a medical question beyond the bounds of ordinary knowledge, and, as such, will typically require medical evidence. (*City & County of San Francisco v. Industrial Acc. Com. (Murdock)* (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103]; *Bstandig v. Workers’ Comp. Appeals Bd.* (1977) 68 Cal. App. 3d 988 [42 Cal.Comp.Cases 114].) Knowledge requires more than an uninformed belief. Because the existence of disability typically requires medical evidence, an “applicant will not be charged with knowledge that his disability is job related without medical advice to that effect unless the nature of the disability are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability.” (*City of Fresno v. Workers’ Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 473 [50 Cal.Comp.Cases 53].)

The dates of injurious exposure under section 5500.5 and the date of injury under section 5412 **are separate analyses**. While the two dates may coincide, **they are not synonymous**. It appears that defendant may be conflating these two dates interchangeably.

It is incumbent upon defendant to produce evidence related to the date that applicant knew, or in the exercise of reasonable diligence should have known that the cause of decedent’s death was industrially related. It is not enough for defendant to show that applicant knew of decedent’s symptoms. (*Johnson, supra*, 163 Cal.App.3d at 471.)

[T]he rule that an applicant will not be charged with knowledge that his disability is job related without medical advice to that effect unless the nature of the disability and applicant’s training, intelligence and qualifications are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability.

(*Johnson, supra*, 163 Cal.App.3d at 473 (emphasis added).)

Turning to the merits of the case, the WCJ focused the decision upon the fact that applicant did not file the application within one year from the date of death. While section 5406(b) states that “[p]roceedings shall not be commenced more than one year after the date of death”, the running of such time period is tolled until defendant provides applicant with the notice required. No such notice is in evidence. Upon return, and if defendant wishes to proceed upon this argument, defendant should produce the notice provided to applicant of her right to file for death benefits.

Next, and to the extent that defendant argues the claim may be untimely based upon the date of injury, no such date has been established in the record. There is simply no medical evidence upon which a determination of section 5412 date of injury can be made. Even defendant’s own denial letter stated: “there is no substantial medical, factual or legal evidence to support that the cause of death of Arthur Stanford was due to his work related injury.” (Defendant’s Exhibit A.) We defer any determination as to the date of injury to the trial level so that a record may be created and a date of injury established.

Accordingly, we grant applicant’s petition for reconsideration and as our Decision After Reconsideration, we rescind the August 10, 2025 Findings and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that applicant’s Petition for Reconsideration of the Findings of Fact and Opinion on Decision issued on August 10, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Opinion on Decision issued on August 10, 2025, by the WCJ is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 10, 2025

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

**ELIZABETH STANFORD FOR ARTHUR STANFORD, (DEC'D)
TELLERIA, TELLERIA & LEVY, LLP
LOUIE & STETTLER**

EDL/pm

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