WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOEY ADNEY (Dec'd), et. al., *Applicants*

vs.

AMERICOLD LOGISTICS, LLC; THE HARTFORD, administered by SEDGWICK CMS, *Defendants*

Adjudication Number: ADJ8627591, ADJ14909958
Lodi District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the "Findings of Fact, Orders, and Opinion on Decision" (F&O) issued on August 8, 2025, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that decedent applicant sustained an industrial injury resulting in his death on May 22, 2021, and further found that applicants' claim was not barred by Labor Code[1] section 5406(b) because the date of injury pursuant to section 5412 was the date of death and that dependent applicants filed a claim for death benefits within one year from that date.

Defendant contends that the medical record does not establish that decedent applicant's death was industrial and that the date of injury was more than 240 weeks prior to death.

Defendant filed an amended petition for reconsideration, which we have accepted as a request for supplemental briefing. (Cal. Code Regs., tit. 8, § 10964.)

We have received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.[2]

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

[2] Commissioner Lowe was on a prior panel that issued in this matter. Commissioner Lowe no longer serves on the Appeals Board. A new panel member has been substituted in her place.

We have considered the allegations of the Petition for Reconsideration, the supplemental petition, 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 deny defendant's petition for reconsideration.

FACTS

Decedent applicant died on May 22, 2021, due to heart failure with cardiomyopathy. (Applicant's Exhibit 1, Death Certificate, June 10, 2021.) Decedent had an underlying claim of cumulative injury to multiple body parts, including his feet and hypertension, during an injurious exposure period ending on May 3, 2012. (Minutes of Hearing and Summary of Evidence (MOH/SOE), June 4, 2025, p. 2, lines 4-8.)

Qualified medical evaluator (QME) James Schmitz, M.D., evaluated applicant's death and authored two reports in evidence. (Joint Exhibits 1 and 2.) Dr. Schmitz took a history of injury, in pertinent part, as follows:

> In 2012, and as a consequence of the decedent spending prolonged time working on cold floors in a cold storage facility, she stated that he was diagnosed with neuropathy in his feet. As such, his last day of work was on May 3, 2012. At the time that he stopped working, she stated that he weighed 170 pounds. He stopped working at the age of 46.

(Joint Exhibit 1, Report of James Schmitz, M.D., October 24, 2023, p. 2.)

Dr. Schmitz found applicant's death industrial, commenting:

> I opine he suffered from hypertension since at least 2006, at which time he was given triamterene-HCTZ. However, there was some industrial aggravation of that, due to reduced physical activity and prescriptions for nonsteroidal anti-inflammatory medications.
> However, his hypertension continued to worsen and I opine this was primarily due to medication non-compliance. Just preceding the decedent's hospitalization in September 2018, he apparently had been without medications for several months.
>
> In regard to the decedent's diabetes, I opine he had pre-existing untreated diabetes. During Dr. Subotnick's November 19, 2012, report he mentioned diabetic neuropathy. Diabetic neuropathy typically develops gradually over many years in poorly/untreated diabetes. However, he had industrial aggravation, due to his reduced physical activity.

> While there is an industrial component of both his hypertension and diabetes, these conditions continued to worsen due to non-industrial medication non-compliance.
>
> * * *
>
> From the available information, which includes the nuclear cardiology scan demonstrating ischemia and the reference to coronary artery stents, I would conclude that the cause of his cardiomyopathy was coronary artery disease and that he had an ischemic cardiomyopathy.
>
> There is no question that both hypertension and diabetes can cause coronary artery disease. As Dr. Sobol, who is an experienced cardiologist previously opined on an industrial component of the applicant's hypertension and diabetes, I concur with that opinion and conclude the decedent's death was caused, in part by these two industrial conditions.

(*Id*. at pp. 23-24.)

Prior to Dr. Schmitz's reporting, defendant denied applicant's claim, stating, in pertinent part:

> Workers' Compensation benefits are being denied because the date of death (5/22/21) is more than 240 weeks from the claimed CT (Cumulative Trauma) 5/3/11 to 5/3/12 injury to internal (heart). Pursuant to Labor Code Section 5406, no such proceeding for the collection of benefits shall be commenced more than 240 weeks from the date of injury. **Moreover, there is no factual or medical documentation that the death was related to employment at Americold.**

(Defendant's Exhibit C, Denial Letter, September 13, 2021.)

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 9, 2025, and 60 days from the date of transmission is Saturday, November 8, 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 9, 2025, and the case was transmitted to the Appeals Board on September 9, 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 9, 2025.

II.

When applicant claims a physical injury, applicant has the initial burden of proving industrial causation by showing the employment was a contributing cause. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302; § 5705.) Applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. (§§ 3202.5; 3600(a).)

> The requirement of Labor Code section 3600 is twofold. On the one hand, the injury must occur in the course of the employment. This concept ordinarily refers to the time, place, and circumstances under which the injury occurs. On the other hand, the statute requires that an injury arise out of the employment. It has long been settled that for an injury to arise out of the employment it must occur by reason of a condition or incident of the employment. That is, the employment and the injury must be linked in some causal fashion.
>
> (*Clark*, 61 Cal.4th at 297 (internal citations and quotations omitted).)
>
> * * *
>
> The statutory proximate cause language [of section 3600] has been held to be less restrictive than that used in tort law, because of the statutory policy set forth in the Labor Code favoring awards of employee benefits. In general, for the purposes of the causation requirement in workers' compensation, it is sufficient if the connection between work and the injury be a contributing cause of the injury.

(*Clark*, *supra* at 298 (internal citations and quotations omitted).)

The running of the statute of limitations is an affirmative defense, and therefore, the burden of proof as to whether an application for adjudication 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 is section 5406:

> (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.)

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 injury claimed in this matter is 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 was 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 would not have been 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, defendant's own denial of this claim is the opposite of the arguments that it makes on reconsideration. In denying applicant's claim for benefits, defendant declared that "there is no factual or medical documentation that the death was related to employment at Americold." (Defendant's Exhibit 1.) Given this admission by defendant, it is unclear how defendant is able to establish any date of injury pursuant to section 5412, prior to its own denial letter. If no factual or medical documentation existed, applicant could not have the requisite knowledge to establish a date of injury under section 5412.

Accordingly, we deny defendant's petition for reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's petition for reconsideration of the Findings of Fact, Orders, and Opinion on Decision issued on August 8, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 7, 2025

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

MELISSIA BONDS
KELE BONDS
DUARTE, URSTOEGER & RUBLE, LLP
D'ANDRE LAW, LLP

EDL/mc

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