

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

GEORGE ZEBER, *Applicant*

vs.

**NEW YORK YANKEES;
TRAVELERS INDEMNITY COMPANY, *Defendants***

**Adjudication Number: ADJ10857121
Santa Ana District Office**

**OPINION AND DECISION
AFTER REMAND**

The following Opinion and Decision After Remand is issued pursuant to the Opinion issued on May 7, 2025 by the Fourth District Court of Appeal (Div. 3) (the Court), in which the Court annulled the Opinion and Decision after Remand issued by the Workers' Compensation Appeals Board on March 1, 2024 (2024 Decision), and remanded the matter to the Appeals Board for further proceedings consistent with the Court's Opinion. (See *Travelers Indem. Co. v. Workers' Comp. Appeals Bd. (Zeber)* (2025) 111 Cal.App.5th 568 [90 Cal.Comp.Cases 373].) The Court also issued an award of costs to Travelers Indemnity Company (Travelers) pursuant to California Rules of Court, Rule 8.493, subdivision (a)(1)(A). (*Id.* at p. 580.)

The 2024 Decision issued in this case following the Court's prior order vacating the Appeals Board's September 13, 2022 Opinion and Order Granting Reconsideration and Decision after Reconsideration (2022 Decision). (*Travelers Indemnity Company v. Workers' Comp. Appeals Bd. (Zeber)* (2023) 88 Cal.Comp.Cases 489, 490 [2023 Cal.Wrk.Comp. LEXIS 11].)

“Respondent Workers' Compensation Appeals Board's informal letter stated in part that ‘after further review of the record in this case, and the Decision, the Appeals Board concurs in part with petitioner, i.e., no award can issue against petitioner until the deferred insurance coverage issues are finally adjudicated. [¶] Accordingly, the Appeals Board respectfully requests that the Court annul the Decision and remand this matter to the Appeals Board to issue a corrected award.’ . . .

(*Zeber, supra*, 88 Cal.Comp.Cases at p. 490.)

The Appeals Board thereafter ordered as its decision after remand that the 2022 Decision be reinstated and affirmed except that the originally included “Award” was rescinded and the matter was returned “to the trial level for further proceedings, including but not limited to mandatory arbitration of insurance coverage...” (2024 Decision, pp. 2-3.)

Travelers sought review of the 2024 Decision contending that although Labor Code¹ section 5275, subdivision (a)(1) applies only where an applicant’s “date of injury” occurs on or after January 1, 1990, the “date of injury” in this cumulative injury case is not determined pursuant to section 5412, but rather, “the last date Zeber sustained his workplace injury, or September 1, 1978, as stipulated by the parties.” (*Zeber, supra*, 111 Cal.App.5th at p. 577.)

The Court found that “[t]he WCAB’s interpretation of section 5275, subdivision (a)(1) as being limited to cases where the date of injury occurred on or after January 1, 1990, finds support in the enacting legislation.” (*Zeber, supra*, 111 Cal.App.5th at p. 577.) **Thus, the Court concluded that “the triggering date for mandatory arbitration pursuant to section 5275, subdivision (a)(1) is January 1, 1990.”** (*Ibid.*, bold added.)

Next, the Court disagreed with Travelers’ contention regarding the “date of injury” under section 5275, subdivision (a)(1), and **held that “the ‘date of injury’ for purposes of mandatory arbitration in cases involving cumulative injury is the ‘date of injury’ set forth in section 5412.”** (*Id.* at p. 578, bold added.)

Travelers argues the “date of injury” under section 5412 should not be used for the purposes of section 5275, subdivision (a)(1) because “[t]he Legislature intended section 5412 to be used as a shield to protect injured workers from the statute of limitations for workers’ compensation claims.” Travelers, however, concedes that the date of injury under section 5412 also has been used “as a point at which to fix disability indemnity rates.” (*J. T. Thorp, Inc. v. Workers’ Comp. Appeals Bd.* (1984) 153 Cal.App.3d 327, 339 [200 Cal. Rptr. 219].) **We are not persuaded the Legislature intended to limit the use of the “date of injury,” under section 5412, to those two circumstances. Indeed, the evidence is to the contrary.** Section 3208.1, discussed above, borrows the “date of injury” from section 5412 when defining the date of a cumulative injury. Section 3208.1 is part of the definitional portion of the Labor Code governing workers’ compensation, and the Labor Code expressly provides that “the definitions hereinafter set forth in this chapter shall govern the construction and meaning of the terms and phrases used in this division.” (§ 3204.) Both sections 3208.1 and 5412, discussed above, were enacted years before the Legislature enacted section 5275. (See Stats. 1973, ch. 1024, § 1, p. 2032 [amending former § 3208.1

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

to add “determine under Section 5412”]; Stats. 1973, ch. 1024, § 3, p. 2032 [amending former § 5412 to add “or cumulative injuries”].) **The Legislature thus was aware that in the context of workers’ compensation law, “date of injury” is a term of art referring to section 5412.** (See *People v. Borynack* (2015) 238 Cal.App.4th 958, 965 [190 Cal. Rptr. 3d 54] [“When the Legislature uses a term of art, it is presumed to be aware of its established meaning and ‘a court construing that use must assume that the Legislature was aware of the ramifications of its choice of language’”].) By using “date of injury” as described in section 5275, subdivision (b), it can be inferred that the Legislature intended “date of injury” to mean the same for section 5275, subdivision (a)(1). **In sum, the “date of injury” for purposes of mandatory arbitration in cases involving cumulative injury is the “date of injury” set forth in section 5412.**

(*Zeber, supra*, 111 Cal.App.5th at pp. 577-578, bold added.)

The Court also rejected respondent Zeber’s “contention that the WCJ had authority to order the insurance coverage to arbitration even if section 5275, subdivision (a)(1) did not apply.” (*Zeber, supra*, 111 Cal.App.5th at p. 576.)

As admitted by the Appeals Board and conceded by Travelers, “the WCJ never made a finding of the ‘date of injury’ under section 5412 for the purposes of section 5275, subdivision (a)(1).” (*Zeber, supra*, 111 Cal.App.5th at p. 578.) Therefore, the Court found error in the 2024 Decision “[b]ecause the ‘date of injury’ is a factual question and a prerequisite for mandatory arbitration” and concluded that “the WCAB acted in excess of its authority to send the insurance coverage dispute to mandatory arbitration.” (*Ibid.*) The Court rejected respondent Zeber’s contention that this error was “harmless” as follows:

Under section 5412, the “date of injury” is the date of the concurrence of the disability and the worker’s knowledge “that such disability was caused by his present or prior employment.” The WCJ’s “review[.]” of the “date of injury pursuant to [section 5412],” however, focused on Zeber’s awareness that he could file a workers’ compensation claim. Knowledge that one can file a workers’ compensation claim is different from knowledge that a disability was caused by a present or prior employment. Thus, we cannot rely on the WCJ’s implied finding of a “date of injury” to support the WCAB’s order.

(*Zeber, supra*, 111 Cal.App.5th at p. 579.)

The Court rejected Traveler’s contention that the Appeals Board somehow “forfeited the right to seek remand for a factual finding because the WCAB did not raise the request until after this court issued a writ of review.” (*Zeber, supra*, 111 Cal.App.5th at p. 579.)

We find no forfeiture because in our order filed October 1, 2024, issuing a writ of review, we stated that “the parties upon further review of th[e] record may wish to file supplemental briefs on factual or legal points” and provided a date by which any supplemental letter briefs were due. The WCAB submitted its letter brief in accordance with our invitation. Additionally, we are unaware of—and Travelers does not cite—any limitation on our authority to order a factual determination when remanding a matter under section 5953.

(*Zeber, supra*, 111 Cal.App.5th at p. 579.)

Thus, the Court annulled the 2024 Decision and remanded this matter to the Appeals Board for further proceedings consistent with its opinion. (*Zeber, supra*, 111 Cal.App.5th at p. 580.) In addition, the Court awarded costs to Travelers pursuant to California Rules of Court, Rule 8.493, subdivision (a)(1)(A). (*Ibid.*)

In addition, with respect to the award of costs by the Court in favor of Travelers (Cal. Rules of Court, Rule 8.493, subd. (a)(1)(A)), we note that these proceedings arose out of a workers’ compensation insurance coverage dispute between the employer, the New York Yankees, and its alleged insurer, Travelers. (See *Zeber, supra*, 111 Cal.App.5th at p. 572-573.) Coverage disputes related to a workers’ compensation insurance policy are separate from an injured workers’ claim for benefits and *do not involve the injured worker*. (See Lab. Code, § 5275, subd. (a)(1); *Zeber, supra*, 111 Cal.App.5th at p. 576 [Appeals Board lacks authority to alter the limitations of section 5275]; and, *Truck Ins. Exchange v. Workers’ Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 400 [81 Cal.Comp.Cases 685] [workers’ compensation coverage disputes are insurance claims separate from an employee’s workers’ compensation injury claim].) Consequently, the award of costs by the Court could not have been directed against applicant Zeber,

Instead, it is apparent that the award of costs by the Court was directed against the other interested party to the coverage dispute, the New York Yankees. Therefore, the New York Yankees should pay Travelers’ costs as directed by the Court, subject to adjustment by the two parties and with jurisdiction over costs residing with the Court of Appeal in the event of a dispute.²

We note that Travelers filed a Petition for Costs in the amount of \$2,503.30, supported by a Memorandum of Costs on Appeal with attached receipts and invoices, which included:

- A \$2,429.80 cost for a “Legislative history” consulting fee from LRI History LLC;
- a \$10.50 “servicing fee” from TrueFiling to file its “Joint Appendix”;
- a \$10.50 “servicing fee” from TrueFiling to file its Response Brief;

² The Court did not award fees pursuant to section 5801 and therefore, jurisdiction does not rest with the Appeals Board.

- a \$10.50 “servicing fee” from TrueFiling to file its Request for Extension of Time;
- a \$10.50 “servicing fee” from TrueFiling to file its Reply Brief;
- a \$10.50 “servicing fee” from TrueFiling to file its Supplemental Brief;
- a \$10.50 “servicing fee” from TrueFiling to file its Letter Brief;
- a \$10.50 “servicing fee” from TrueFiling to file a letter to the Court related to oral argument.

Accordingly, it is our decision after remand to annul the 2024 Decision and return this matter to the trial level for further proceedings consistent with the Court’s opinion in *Zeber, supra*, 111 Cal.App.5th 568, including but not limited to an evidentiary hearing on the factual issue of the applicant’s “date of injury” pursuant to section 5412, so that the workers’ compensation administrative law judge may determine as a matter of law whether mandatory arbitration is triggered in this case pursuant to section 5275, subdivision (a)(1), for any “date of injury” on or after January 1, 1990.

For the foregoing reasons,

IT IS ORDERED as the Decision After Remand of the Workers' Compensation Appeals Board that the Opinion and Decision after Remand issued on March 1, 2024 by the Workers' Compensation Appeals Board is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with the Opinion issued by the Fourth District Court of Appeal (Div. 3) in this case at *Travelers Indem. Co. v. Workers' Comp. Appeals Bd. (Zeber)* (2025) 111 Cal.App.5th 568 [90 Cal.Comp.Cases 373].

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 5, 2026

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

**GEORGE ZEBER
MIX & NAMANNY
LEWIS BRISBOIS BISGAARD & SMITH, LLP
GOLDBERG SEGALLA, LLP
DIMACULANGAN & ASSOCIATES**

AJF/mc

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