WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GREG JACOBS, ***Applicant***

vs.

SAN FRANCISCO GIANTS et al; ACE AMERICAN INSURANCE/CHUBB, as administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, ***Defendants***

Adjudication Number: ADJ10024527
Van Nuys District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration.[1] This is our Opinion and Decision After Reconsideration.

Defendants the San Francisco Giants (Giants), the Los Angeles Dodgers (Dodgers), and the Seattle Mariners (Mariners), and their insurer Ace American Insurance/Chubb as administered by Sedgwick Claims Management Services, seek reconsideration of the February 26, 2019 Finding Of Fact, wherein a workers' compensation administrative law judge (WCJ) found that applicant, while employed as a professional baseball player at various locations in and out of California during the period of June 15, 1998 to September 1, 2009, by the Anaheim Angels (Angels) from June 6, 1998 to July 11, 2001, the Arizona Diamondbacks (Diamondbacks) from July 11, 2001 to December 19, 2001, the Mariners from September 18, 2002 to June 9, 2005, the Dodgers from February 8, 2008 to June 20, 2008, and the Giants from January 28, 2009 to April 4, 2009, claims injury arising out of and in the course of employment to his head, neck, low back, right shoulder and wrist, left shoulder and elbow, and left leg, knee and foot. The WCJ further found that applicant's claim is not barred by the statute of limitations.

---

[1] Commissioner Lowe, who was on the panel that issued the order granting reconsideration, no longer serves on the Appeals Board. Another panelist was assigned in her place.

Defendants contend that applicant knew that his disability was caused by his employment as a professional baseball player was when injuries ended his career in 2009, and alternatively, that applicant knew that his professional baseball employment caused his disability no later than 2011 or 2012, when applicant was represented by an attorney and settled a prior workers' compensation injury claim with the Kansas City T-Bones (T-Bones). Defendants also contend that the statute of limitations was not tolled because they had no knowledge of the claimed injury and so had no duty to provide applicant notice regarding his workers' compensation rights, and that applicant was not prejudiced by the lack of notice.

In the Petition, defendants requested permission to submit a supplemental Petition once they received and reviewed the transcript of the hearing of January 16, 2019, and they subsequently, defendants filed an Amended Petition after receipt and review of the transcript. We accept the Amended Petition for filing and have considered it. (See Cal. Code Regs., tit. 8, § 10964 (formerly § 10848).)

We have received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that reconsideration be denied.

We have considered the allegations of the Petition for Reconsideration, the Amended Petition for Reconsideration, and the Answer, and the contents of the WCJ's Report, and we have reviewed the record in this matter. For the reasons we shall explain, as our Decision After Reconsideration, we affirm the Finding of Fact.

FACTUAL AND PROCEDURAL BACKGROUND

On July 7, 2015, applicant filed an Application for Adjudication of Claim claiming injury to his neck, back, shoulders, left elbow and left leg, knee and foot, while employed as a professional baseball player for various teams in and out of California including the Giants, the Dodgers, and the Mariners from June 15, 1998 to September 1, 2009.

On April 21, 2017, applicant was examined by panel qualified medical evaluator (PQME) Tigran Garabekyan, M.D., and he issued a 233 page report dated May 20, 2017. (Ex. C.) Dr. Garabekyan reviewed and summarized non-medical records concerning applicant's claimed specific injuries, including for August 13, 2003, September 5, 2004, July 12, 2005, and August 26, 2005, and including documents from a prior workers' compensation claim filed in Kansas against

the T-Bones after he sustained injury from running into a wall on July 31 and August 15, 2009. (Ex. C, pp. 9-21, pp. 33-40 and p. 216.) Dr. Garabekyan also summarized applicant's deposition dated December 16, 2015. (Ex. C, pp. 21-25 and pp. 213-214.) As relevant herein, applicant testified that in 2015, he learned about the workers compensation claim from a friend who referred applicant to his attorney. (Ex. C, pp. 30-33 and p. 215.)

Dr. Garabekyan also reviewed and summarized numerous medical records, including records regarding treatment for symptoms of injury incurred after playing sports both as an amateur and a professional. As relevant herein, he described medical records by physicians and the T-Bones from 2005 to 2009. (Ex. C, pp. 58-64.) In an exit physical report dated September 9, 2009, Greg Folsom, M.D., indicated that applicant had back pain and right sciatica most of the season and left sciatica after colliding with an outfield wall, which sounded mostly cumulative. (Ex. C, p. 65.) Duane Pitt, M.D., reported that applicant injured his low back running into a wall on July 25 and August 15, 2009, and had back and bilateral leg pain and desired surgery. In a report dated October 30, 2009, Terry McLean, M.D., indicated as an independent medical examiner (IME) that applicant had low back pain to the left knee and right foot after running into a wall twice, and the diagnosis included permanent aggravation of preexisting lumbar spinal stenosis at L4-5 and preexisting degenerative disc disease at L3-4 through L5-S1, and that applicant is temporarily totally disabled from baseball except light duty and surgery is recommended. Dr. Pitt indicated in an operative report dated November 9, 2009 that applicant had micro lumbar laminectomy bilaterally at L4 and L5. On December 1, 2009, Dr. Pitt reported that applicant was doing well with treatment, may return to full training when he reaches level 3 core stabilization, and full competition at level 5. (Ex. C, pp. 65-77.) In addition, Dr. Garabekyan's report described injury reports by the Mariners and Dodgers from 2004 to 2008, which all appeared to refer to specific injuries. (Ex. C, pp. 186-189.)

Dr. Garabekyan's report indicated diagnoses of right thumb cyst post excision, right wrist TFCC tear post arthroscopic debridement, right shoulder labral tear post arthroscopic repair, right shoulder rotator cuff tear and repair unverifiable with medical records, left shoulder cartilage repair post arthroscopic debridement, left shoulder "throwing shoulder" pattern injury post arthroscopic repair, and right L4-L5 radiculopathy post surgical decompression. (Ex. C, p. 202.)

On January 16, 2019, applicant and defendants proceeded to trial. The sole issue to be decided by the WCJ was whether applicant's injury claim is barred by expiration of the one-year statute of limitations. (Transcript, p. 4, lines 16-18.)

Applicant testified in relevant part as follows:

He was a professional baseball player for various teams including the Mariners from 2002 to 2005, T-Bones in 2005 and 2006, Dodgers until June 20, 2008, Giants during spring training until April 4, 2009, and back to the T-Bones where his baseball career ended. (Transcript, pp. 7-12.)

At the end of the 2009 season, he had pain, pins and needle sensations, and soreness in the neck, back, shoulders, left elbow, wrists, hips, knees and ankles. He first had back symptoms while with the Dodgers and did not recall a specific incident; he was treated by the trainer and placed on the disabled list for 7 days and released. He first had neck symptoms with the Giants after colliding with a wall trying to catch a ball, and applicant was given treatment by the trainer and missed time. In 1998, he had left shoulder symptoms from pitching over time with the Angels and he received medical treatment. He developed left elbow symptoms over time with the Angels, and he was given medical attention, placed on the disabled list in 2000 and a different throwing program, and eased back into regular activities. His left wrist and ankle symptoms began with the Angels, and they provided medical treatment. His hip and knee symptoms developed gradually during his pitching career, and his right shoulder symptoms started during his professional baseball career. His right wrist symptoms began when he dove for a ball and tore his TFCC while playing for the Mariners, and they paid for right wrist surgery, and he missed time from work. (Transcript, pp. 12-44.)

He had left shoulder surgery while playing for the T-Bones, and he did not return to baseball afterwards and received workers' compensation benefits. The T-Bones General Manager provided him with an attorney's phone number and told applicant to call the attorney so the team's insurance premiums would not go up. He spoke to the attorney on the phone and exchanged emails. He did not recall a lump sum settlement for $45,000. He recalled being reimbursed for a surgery that he and his parents paid for, and the money did not cover the costs. He did not have workers' compensation claims outside of professional baseball. (Transcript, pp. 44-79.)

He played for 3 different California teams. While playing for the Giants, he collided with a wall, received first aid, ice and electrical stimulation from a trainer, and was not referred to a

doctor, given a claim form or informed about his rights to file a claim. With the Angels, he had left shoulder complaints, treatment by the trainer and surgery, and was not given a claim form or told that he could file a claim. The Dodgers placed applicant on the disabled list and did not provide a claim form or inform applicant that he could file a claim in California. The treatment by California teams was provided by trainers and not medical doctors, and applicant never heard of continuous trauma prior to this claim. He was never told that his disability was due to continuous trauma or provided with medical records. Regarding the left wrist incident with the Angels, he was treated by the trainer and not told that he could file a claim. While he was in Seattle, Houston, or Kansas City, he was not informed that he could file for California work-related disability. While he was recovering from an injury, his training was modified, and he ramped up to full activities; a baseball player needs zero restrictions. Workers' compensation paid mileage and therapy for his back, and he settled because his case had to be closed before Kansas City would release him and he could sign with the Phillies. He never met the attorney in person and his relationship with the Kansas City team was not explained. The General Manager gave the attorney's name to him so that he could get reimbursed for the surgery, and he did not ask for the referral. (Transcript, pp. 80-98.)

DISCUSSION

Labor Code[2] Section 3208.1 provides:

> "An injury may be either: (a) 'specific,' occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) 'cumulative,' occurring as 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. The date of a cumulative injury shall be the date determined under Section 5412."

Section 5412 provides:

> "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."

[2] All further reference to statute is to the Labor Code unless otherwise stated.

Section 5405 provides:

> "The period within which proceedings may be commenced for the collection of the benefits . . . is one year from any of the following . . . (a) The date of injury. (b) The expiration of any period covered by payment under Article 3 (commencing with Section 4650) of Chapter 2 of Part 2. (c) The last date on which any benefits provided in Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 were furnished."

Cumulative injury occurs when the employee's repetitive physical or mental activities at work over a period of time cause disability or the need for medical treatment. (§ 3208.1; *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (*Austin*) (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323]; *Bassett-McGregor v. Workers' Comp. Appeals Board* (*Bassett-McGregor*) (1988) 205 Cal.App.3d 1102, 1112-1115 [53 Cal.Comp.Cases 502]; *J.T. Thorp, Inc., v. Workers' Comp. Appeals Bd.* (*Butler*) (1984) 153 Cal.App.3d 327, 332-333 [49 Cal.Comp.Cases 224].) The date of injury for cumulative injury is when the employee knew or should have known that the disability was caused by employment. (§ 5412; *Bassett-McGregor*, *supra*, 205 Cal.App.3d at pp. 1109-1110; *City of Fresno v. Workers' Comp. Appeals Board* (*Johnson*) (1985) 163 Cal.App.3d 467, 469-471 [50 Cal.Comp.Cases 53].) The date of injury may be established by the date the employee received expert medical or legal advice that the disability was caused by employment. (*Bassett-McGregor*, *supra*, 205 Cal.App.3d at pp. 1109-1115; *Johnson*, *supra*, 163 Cal.App.3d at pp. 472-473.) The date of injury may also be established by showing that the employee had the training, education or qualifications to know or should know that the disability was caused by employment at the time. (*Bassett-McGregor*, *supra*, 205 Cal.App.3d at pp. 1109-1115; *Nielsen v. Workers' Comp. Appeals Bd.* (*Nielsen*) (1985) 164 Cal.App.3d 918, 927 [50 Cal.Comp.Cases 104].) Disability refers to compensable temporary disability or lost wages, or compensable permanent disability which may be shown by the need for medical treatment or modified work. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (2004) 119 Cal.App.4th 998, 1003-1006 [69 Cal.Comp.Cases 579]; *Austin*, *supra*, 16 Cal.App.4th at p. 234; *Bassett-McGregor*, *supra*, 205 Cal.App.3d at p. 1110; *Butler*, *supra*, 153 Cal.App.3d at pp. 336-343.)

The defendant employer or insurer has the burden of proof to show that the employee's claim was not timely filed within one year from the date of injury for cumulative injury, and when the employee knew or should have known that the employee's disability was caused by employment. (§§ 5405(a), 5409, 5412; *County of Riverside v. Workers' Comp. Appeals Bd.*

(*Sylves*) (2017) 10 Cal.App.5th 119, 124-125 [82 Cal.Comp.Cases 301]; *Bassett-McGregor*, *supra*, 205 Cal.App.3d at p. 1110; *Johnson*, *supra*, 163 Cal.App.3d at pp. 471, 474.) The issues of whether an employee sustained cumulative injury, the date of injury, and whether the injury claim was timely filed are all questions of fact, and the findings must be supported by substantial evidence. (*Sylves*, *supra*, 10 Cal.App.5th at pp. 123-125; *Austin*, *supra*, 16 Cal.App.4th at pp. 233-235; *Bassett-McGregor*, *supra*, 205 Cal.App.3d at pp. 1110-1111; *Johnson*, *supra*, 163 Cal.App.3d at pp. 470-474.)

Defendants contend that the date when applicant knew that his disability was caused by his professional baseball employment is when injuries ended his career in 2009, and no later than 2011 or 2012, when applicant was represented by an attorney and settled the prior injury claim with the T-Bones. Defendants contend that the claim filed by applicant on July, 2015 was filed more than one year from the date of injury, so that the claim is barred by the statute of limitations under section 5405(a).

Our review of the medical, documentary, and testimonial record demonstrates that substantial evidence supports the WCJ's finding that the section 5412 date of injury is when applicant met with his attorney on July 7, 2015, and was informed about the claimed cumulative injury caused by his professional baseball employment.

The record regarding alleged injury to applicant's right thumb does not indicate that applicant was informed about the claimed injury and compensable disability caused by his baseball employment, and there are no records during this period indicating cumulative injury, medical treatment, or temporary or permanent disability involving the right thumb. Complaints of symptoms generally do not establish knowledge of injury and compensable disability caused by employment. The back and left shoulder injuries involved single incidents and a team outside of California, which resulted in extensive treatment, surgery, and temporary and permanent disability. The reporting by physicians regarding the left shoulder injuries did not indicate that applicant had sustained cumulative injury and compensable disability until Dr. Garabekyan reported in 2017. Dr. Garabekyan's report does not address whether applicant sustained cumulative injury or temporary or permanent disability regarding his left elbow. The record regarding applicant's injuries with Mariners' teams in 2003 showed reports of separate single incidents in and out of California, and no reporting that informed applicant about cumulative injury and compensable temporary or permanent disability. Specifically, the record regarding the right wrist injury

involved a single incident and team outside of California, although some treatment was in California. Other injuries in 2004 reportedly involved single incidents and Mariners' teams outside of California and no compensable temporary or permanent disability. There was no reporting or reference to cumulative injury and compensable disability until Dr. Garabekyan reported in 2017. Applicant's injuries while with the Mariners' teams in 2005 reportedly involved single incidents outside of California. The record regarding applicant's injuries while playing for the Mariners' teams does not show that applicant was informed and knew or should know about the claimed or cumulative injury and compensable disability caused by his employment until the meeting with his attorney.

Applicant appeared over the phone and in pro per before a workers' compensation judge in Kansas City and settled the claim for $2,717.99. The right shoulder injury involved a single incident, team, and claim that were outside of California. Cumulative injury with compensable disability was not indicated until Dr. Garabekyan reported in 2017. The record regarding the right shoulder injury does not show that applicant was informed or knew or should know about the claimed injury and compensable disability caused by his baseball employment until he met with his attorney.

Applicant was subsequently employed and played baseball for minor league teams with the Phillies in 2006 and 2007, with the Dodgers from February 8 to June 20, 2008, and then with the T-Bones. The record and reporting by the teams from 2007 and 2008 indicated that applicant's injuries or complaints did not involve cumulative injury and compensable disability caused by his baseball employment.

Applicant was also employed and played baseball for the Giants from January 28, 2009, when he signed a minor league contract, to his release on April 4, 2009. There is no record documenting that applicant was injured, received treatment or was on the disabled list with the Giants. Dr. Garabekyan reported that he was unable to diagnose a neck injury caused by employment without documentation in the record.

Applicant also injured his back while playing for the T-Bones and colliding with an outfield wall in 2009. The reporting by the physicians indicated that applicant's back injury, and his left shoulder injury which we previously addressed, were caused by single incidents. The reporting did not indicate and inform applicant that his back injury and compensable disability were caused by cumulative injury due to his baseball employment until Dr. Garabekyan reported in 2017. In

addition, applicant filed a workers' compensation claim for the back and left shoulder injuries in Kansas and a $45,000.00 settlement was approved by a judge at a hearing on May 30, 2012. The documents submitted at the hearing indicated that the dates of injury were on or about July 31 and August 15, 2009, and referred to separate injuries or incidents and not cumulative injury. Although applicant was represented by a Kansas attorney at the hearing, there is no evidence that the attorney knew about or advised applicant that he could file a cumulative injury claim in California or that a cumulative injury claim could be filed in Kansas as reported by WCJ. (See *California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd.* (*Carls*) (2008) 163 Cal.App.4th 853, 861-864 [71 Cal.Comp.Cases 771].) The hearing documents also show that applicant appeared by phone, and applicant testified without rebuttal that he never met the attorney who was referred by the T-Bones general manager. The record regarding applicant's back and left shoulder injuries does not show that applicant was informed and knew or should know about the claimed or cumulative injury and compensable disability caused by his baseball employment before he met with his present attorney.

We have provided a detailed analysis of this complex record to determine the date of injury when applicant knew or should have known about the claimed injury and compensable disability caused by his employment as a professional baseball player. The record shows that applicant sustained various physical injuries when playing football in high school and professional baseball during his 11-year career with different teams. Applicant was provided medical advice and treatment for his numerous injuries by team trainers, doctors or insurers. Some of applicant's minor injuries only required first aid or minimal treatment with ice, heat, exercise or medication by the team trainer or doctor. For more serious injuries, applicant was provided additional treatment including physical therapy, diagnostic testing or surgery. Some injuries also resulted in missed time from playing baseball or temporary and/or permanent disability and receipt of workers' compensation benefits. Applicant also had health problems that may not have been caused by playing baseball and he received advice or treatment from the team trainer or doctor so he could play. Applicant did not have medical training and relied mostly on the teams, their medical providers and the system for advice and treatment. The teams were also employers and in a superior position and presumably had the experience to determine the nature and extent of applicant's injuries and disability.

The record also shows that the doctors and trainers who informed applicant about his injuries, treatment and disability from playing high school football and professional baseball reported that the causes were single incidents or specific injuries and not physically traumatic injuries over time or cumulative injury. Applicant's workers' compensation claims with the Mariners and T-Bones also indicated that the injuries, treatment and disability were caused by single incidents or specific injuries and not cumulative injury and compensable disability from playing professional baseball. Moreover, the injuries, teams and applicant's claims in pro per or with counsel were not in California where the claim for cumulative injury and compensable disability could be and was filed. Applicant had no reason to doubt the teams, employers, trainers, doctors, insurers or his counsel that only single incidents or specific injuries were involved. Applicant testified at trial that he was never told that his disability was due to continuous trauma, heard of continuous trauma prior to the current claim or provided with medical records informing otherwise, and the record supports his testimony. (*Garza*, *supra*, 3 Cal.3d at pp. 317-319.) Thus, the record establishes that applicant did not know or should know from expert medical or legal advice about the claimed or cumulative injury and compensable disability caused by his professional baseball employment until he met with his current counsel.

Accordingly, we conclude that the overall record and substantial evidence supports the WCJ's finding that the date of injury is when applicant met with his attorney on July 7, 2015, and applicant was informed and knew about the claimed injury and compensable disability caused by his employment as a professional baseball player. We also conclude that substantial evidence supports the WCJ's finding that the injury claim filed on July 7, 2015 was filed within one year of the date of injury, and the claim is not barred by the statute of limitations. Thus, the defendants did not meet their burden of proof that the injury claim was not filed within one year from the date of injury and is barred by the statute of limitations.

Defendants also contend that the WCJ applied an incorrect legal standard that medical or legal advice was required to inform applicant that he sustained cumulative injury and compensable disability from his baseball employment, which determines when applicant had such knowledge and the date of injury.

We disagree that the WCJ applied an incorrect legal standard that is inconsistent with *Bassett-McGregor* by finding that applicant knew about the claimed injury and compensable disability caused by his baseball employment when informed by his attorney on July 7, 2015,

which is the date of injury. Such expert medical or legal advice may be required, where, as here, applicant had many injuries to different parts of his body from playing high school football and professional baseball with teams in and outside California, he was informed that the injuries and any resulting compensable disability were caused by single incidents or specific injuries by the doctors, trainers, teams, insurers and workers' compensation claims in pro per and with counsel, he did not have medical training and reasonably relied upon the information provided, and he did not know or should know that injury and compensable disability were also caused by his baseball employment over a period of time. Although Dr. Folsom's report indicated that applicant's back complaints during the 2009 season sounded mostly cumulative, Dr. Folsom also reported that the complaints may have begun with the collision against an outfield wall. Dr. Folsom was apparently reporting to the T-Bones, and applicant testified at trial that he was not provided medical reports and informed about continuous trauma. Even if applicant knew or should have known as common knowledge that his orthopedic complaints in 2009 were also caused by playing professional baseball over a period of time, there is no showing that applicant knew or was informed that compensable disability also resulted. The back and left shoulder injuries with the T-Bones that resulted in compensable disability, applicant's retirement from professional baseball, and the workers' compensation claim with counsel that settled in 2012 involved single incidents or specific injuries. The back and left shoulder injuries also did not occur in California, where injury and compensable disability caused by employment over a period of time could be claimed and was filed.

In addition, there was no medical opinion that informed applicant that he had sustained cumulative injury and compensable disability from playing professional baseball over a period of time until Dr. Garabekyan's report in 2017. Dr. Garabekyan's report also indicated that specific and cumulative injuries caused applicant's back and left shoulder permanent disability, and the causes were inextricably intertwined and could not be separated. Applicant could not be expected to know or separate the various causes of compensable disability on his own considering the complicated facts and information received in the past. Expert medical or legal advice was required to inform applicant that injury and compensable disability was caused by his baseball employment over a period of time, which he received from his attorney on July 7, 2015.

Applicant in this case had many injuries with the same and different baseball teams and employers in and outside California, and was informed that the injuries, treatment, compensable

disability and workers' compensation claims involved specific injuries. The cumulative injury claim filed by applicant is not based on the same facts and compensable disability, and applicant did not know or should know about the injury and disability or that the claim could be filed in California until he was informed by his attorney on July 7, 2015. We further note that the disability indicated by the language in section 5412 is apparently referring to cumulative injuries or occupational diseases, since the date upon which the employee first suffered disability *therefrom* and knew or should have known that such disability was caused by employment determines the date of injury.[3]

We also find the facts in *Estrella* distinguishable from the facts in this case. There the WCJ reported that Estrella testified in deposition that he knew that he could have filed his cumulative trauma claim before he retired from playing professional baseball due to injury, but he waited several years because a team would not have given him a contract and the statute of limitations expired. Here applicant testified that he did not know about continuous trauma and the disability caused by his baseball employment or that he could file the claim in California until he was informed by his attorney on July 7, 2015. The record indicating that applicant had been previously informed that his injuries, disability and claims were due to specific injuries is consistent with applicant's testimony.

We conclude that the WCJ applied the correct legal standard under the facts of this case, that expert medical or legal advice was required to inform applicant that the claimed injury and compensable disability was caused by his baseball employment.

Section 5401 provides in part:

> "(a) Within one working day of receiving notice or knowledge of injury under Section 5400 or 5402, which injury results in lost time beyond the employee's work shift at the time of injury or which results in medical treatment beyond first aid, the employer shall provide, personally or by first-class mail, a claim form and a notice of potential eligibility for benefits under this division to the injured employee . . . "first aid" means any one-time treatment, and any followup visit for the purpose of observation of minor scratches, cuts, burns, splinters, or other minor industrial injury, which do not ordinarily require medical care . . . even though provided by a physician or registered professional personnel . . . (b) . . . the notice of potential eligibility for benefits . . . and the claim form shall be a

[3] § 3202; *Kaiser Foundation Hospitals Permanente Medical Group v. Workers' Comp. Appeals Bd.* (*Martin*) (1985) 39 Cal.3d 57, 60-68 [50 Cal.Comp.Cases 411]; *Johnson*, *supra*, 163 Cal.App.3d at p. 471.

> single document . . . The content shall include . . . (1) The procedure to be used to commence proceedings for the collection of compensation . . . (2) A description of the different types of workers' compensation benefits . . . (c) The completed claim form shall be filed with the employer by the injured employee . . . a claim form is deemed filed when it is personally delivered to the employer or received by the employer by first-class or certified mail . . . (d) . . . Filing of the claim form with the employer shall toll . . . the time limitations set forth in Sections 5405 and 5406 until the claim is denied by the employer or the injury becomes presumptively compensable pursuant to Section 5402."

Section 5402(a) provides:

> "Knowledge of an injury, obtained from any source, on the part of an employer, his or her managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400."

The employer's knowledge of the employee's injury caused by employment, or assertion of the injury which enables the employer to sufficiently investigate the claim, substitutes for service of the employee's written notice to the employer required by section 5400. (§ 5402(a); *Honeywell v. Workers' Comp. Appeals Bd.* (*Wagner*) (2005) 35 Cal.4th 24, 32 [70 Cal.Comp.Cases 97].) Within one working day of when the employer receives written notice or knowledge of an injury caused by employment or an injury claim, which results in lost time from work beyond the employee's shift or medical treatment beyond first aid, the employer is required to provide the employee personally or by first class mail a Workers' Compensation Claim Form or DWC 1 (Claim Form) and Notice of Potential Eligibility for benefits. (§ 5401; Cal. Code Regs., tit. 8, § 10138 et seq.; *Wagner, supra*, 35 Cal.4th at p. 32; *Carls*, *supra*, 163 Cal.App.4th at pp. 859-860.) When the employee files the Claim Form with the employer by personal delivery or first class or certified mail, the employee is entitled to certain benefits and the one-year statute of limitations period to file the claim is tolled under section 5405 until the claim is denied or the injury is presumed compensable under section 5402. (§ 5401; § 5402; *Wagner, supra*, 35 Cal.4th at pp. 32-33.)

If the employer breaches the duty to provide the Claim Form and Notice of Potential Eligibility, the statute of limitations is tolled until the employee learns of the workers'

compensation rights which include the procedure to collect compensation. (§ 5401; § 5402(a); *Wagner, supra*, 35 Cal.4th at pp. 35-37; *Martin*, *supra*, 39 Cal.3d. at pp. 60, 64-65; *Carls*, *supra*, 163 Cal.App.4th at pp. 859-860.) There is no tolling if at the time of the breach the employee has actual knowledge of the workers' compensation rights and entitlement to relevant benefits. (*Martin*, *supra*, 39 Cal.3d. at pp. 60, 64-67; *Carls*, *supra*, 163 Cal.App.4th at p. 860.) The employer has the burden to show when the employee gained actual knowledge of the workers' compensation rights. (*Martin*, *supra*, 39 Cal.3d. at p. 60, 64-67; *Carls*, *supra*, 163 Cal.App.4th at p. 860.) The employer may be precluded from asserting the employee's failure to file the Claim Form or the statute of limitations if the elements of equitable estoppel are established.[4] (*Wagner, supra*, 35 Cal.4th at pp. 36-38; *Carls*, *supra*, 163 Cal.App.4th at p. 865.)

The WCJ reported and alternatively found that the defendant knew about applicant's injury and put him on the disabled list, and that the defendant had a duty to advise applicant regarding his workers' compensation rights and failed to do so and is estopped from relying on the statute of limitations under *Reynolds*. Since the defendants challenge the WCJ's alternative findings on several grounds, we address this issue.

We disagree that the record shows that none of the defendants had knowledge about the claimed or cumulative injury and a duty to provide the Claim Form and Notice of Potential Eligibility. We also disagree that applicant knew the workers' compensation rights provided by the Claim Form and Notice of Potential Eligibility from his previously litigated claims with the T-bones. Applicant appeared in the Kansas proceedings over the phone, and he was in pro per for the first claim and counsel attended the second claim. There is no evidence and applicant denied that he received advice regarding the right to file an injury claim in California and procedures involved. Litigating the prior injury claims in Kansas did not impart actual knowledge to applicant that an injury claim exists and can be filed here and that he may be entitled to relevant benefits. We also reject the contention that applicant gained constructive knowledge from his prior injury claims that there may be claims against other baseball teams, and that the same diligence was required by applicant to timely file the injury claim against defendants. Actual and not constructive knowledge by applicant is required. Applicant also reasonably relied on and had no reason to

---

4 Generally, equitable estoppel requires showing that the party to be estopped is informed of the facts, the party intends the conduct to be acted upon or acts so that the party asserting the estoppel had a right to believe it was intended, and the asserting party is ignorant of the true facts and relies upon the conduct of the party to be estopped. (*Wagner, supra*, 35 Cal.4th at p. 37.)

doubt the teams, medical providers, insurers and prior claims regarding the nature, extent and cause of his injuries and that he had received the benefits owed. The employer also has the duty to investigate potential work injury claims and benefits that may be owed, and generally is in a better position to do so than the employee.

We conclude that substantial evidence supports the WCJ's finding that the Dodgers had knowledge regarding the claimed injury and breached the duty to provide applicant the required Claim Form and Notice of Potential Eligibility. Substantial evidence also supports the WCJ's finding that applicant did not know or should know about the worker's compensation rights pertaining to filing the claimed injury, and he was prejudiced by the breach until informed by his attorney and the claim was filed on July 7, 2015. The Dodgers did not meet the burden of proof to show that applicant had gained actual knowledge of the applicable workers' compensation rights prior to filing the injury claim on July 7, 2015. Accordingly, we agree with the WCJ's finding that there was tolling of the statute of limitations in regard to the Dodgers until the injury claim was filed on July 7, 2015. Moreover, the Mariners, whose doctors, trainers, and records documented applicant's low back pain and right-sided sciatica complaints, had notice and should have known that applicant may have sustained cumulative injury from the baseball employment and maybe entitled to benefits. We also note that the record indicates that applicant was never provided the Claim Form and Notice of Potential Eligibility for any of his numerous injuries caused by his baseball employment, including by a "California-based team" like the Dodger and Angels. Applicant's testimony is consistent that he did not know or should know about workers' compensation rights and the claimed or cumulative injury until he was informed by his attorney on July 7, 2015.

Accordingly, as our decision after reconsideration, we affirm the Finding of Fact issued on February 26, 2019.

For the foregoing reasons,

IT IS ORDERED that as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Finding Of Fact issued on February 26, 2019 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 25, 2024

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

GREG JACOBS
LAW OFFICES OF MARK SLIPOCK, P.C.
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK, LLP
DIMACULANGAN & ASSOCIATES
WOOLFORD A& SSOCIATES

AS/*ara*

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