WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JASON GOTHARD, *Applicant*

vs.

COUNTY OF SONOMA, PSI,
administered by INTERCARE, *Defendants*

Adjudication Numbers: ADJ10788304, ADJ11946779
Santa Rosa District Office

OPINION AND DECSION AFTER RECONSIDERATION

We previously granted applicant's Petition for Reconsideration on July 25, 2019 in order to further study the legal and factual issues raised therein, and to enable us to reach a just and reasoned decision. This is our Opinion and Decision after Reconsideration.

Applicant seeks reconsideration of the Joint Findings and Order (F&O) issued on May 13, 2019 by a workers' compensation administrative law judge (WCJ) which barred applicant's recovery for an alleged specific injury to his psyche sustained on February 6, 2017 (ADJ10788304), based on the good-faith personnel action defense; and, barred applicant's cumulative trauma injury to his psyche during the period ending February 6, 2017 (ADJ11946779), based on the statute of limitations (Lab. Code, § 5405). The WCJ ordered that applicant take nothing in either case.

Applicant contends, in pertinent part, that the facts in this matter are analogous to those in *Bassett-McGregor v. WCAB* (1988) 205 Cal.App.3d 1102, i.e., medical discovery established that applicant sustained one, cumulative trauma injury, and therefore, applicant's claim for a cumulative trauma injury relates back to the timely filing of the specific injury claim and is not barred by the statute of limitations.[1]

[1] Given our disposition in this matter, it is not necessary to address applicant's contentions related to the good faith personnel action defense (Lab. Code, § 3208.3(h)); nor applicant's contention that the statute of limitations for the cumulative trauma injury was tolled because defendant failed to provide applicant with a claim form for that injury despite having knowledge as of the June 12, 2017 report from Robert Mosby, M.D. (App. Exh. 17, p. 13) (see *Reynolds*

Defendant filed a "Response to Applicant's Petition for Reconsideration of Joint Findings and Order and Opinion Issued May 13, 2019" (Answer). The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration be denied.

We have reviewed the record in this case, and have considered the allegations of the Petition for Reconsideration and the Answer, and the contents of the Report. Based on our review of the record and the pleadings, it is our decision after reconsideration to rescind the F&O and return this matter to the trial level for further proceedings consistent with this decision.

FACTS

Defendant filed an application for adjudication on behalf of applicant on March 14, 2017, when applicant was not yet represented. (Application for Adjudication of Claim (Application), March 14, 2017.) Defendant plead applicant's injury as a specific injury that occurred on February 6, 2017, resulting from a feeling of being trapped in an office by two Sergeants. (*Id.*, ¶¶ 1-2.) Defendant appears to have relied on applicant's first report of injury (Def. Exh. C, Supervisor's Report of Occupational Injury/Illness/Exposure, February 13, 2017), and the DWC-1 claim form, wherein applicant identified the February 6, 2017 meeting as the injury (Def. Exh. A, DWC-1, February 21, 2017).

At the time defendant filed the Application, defendant was already in receipt of a report from treating physician Melissa Staehle, Ph.D., stating that applicant sustained a "**cumulative anxiety reaction" to his workplace caused by mandatory overtime, violent incidents with inmates, and the February 6, 2017 meeting with two of his Sergeants.** (App. Exh. 12, dated March 3, 2017, p. 6, emphasis added.)

This matter went to trial on October 8, 2018 on the following issue: "The date of injury, with the current claim of date of injury being a specific injury on February 6, 2017, and the Applicant suggesting that the evidence will show that the appropriate date of injury is cumulative trauma ending on February 6, 2017." (Minutes of Hearing and Summary of Evidence (MOH), October 8, 2018, pp. 2-3.) Additional issues included the statute of limitations. (*Ibid.*)

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v. Workmen's Comp. Appeals Bd. (1974) 12 Cal.3d 762 [39 Cal.Comp.Cases 768] and *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57 [50 Cal.Comp.Cases 411]).

On February 25, 2019, the WCJ issued an "Order of New Date of Injury, New Board Number, and Resubmission of Cases for Decision" (New Date of Injury Order), wherein the WCJ ordered a new adjudication number issued for what he referred to as "a previously unfiled date of injury, a cumulative trauma injury to the applicant's psyche through his last day worked, February 6, 2017..." (Order, signed February 22, 2019, issued February 25, 2019.)

The F&O issued on May 13, 2019 ordering that applicant take nothing in either of the specific or the cumulative trauma injury claims. (F&O, Order.) The WCJ found that while applicant did sustain a specific, psychiatric injury arising out of and in the course of his employment on February 6, 2017, the injury was "caused by a lawful, nondiscriminatory, good faith personnel action." (*Id.*, Findings of Fact nos. 4-5.)

The WCJ also found that applicant sustained a cumulative trauma injury to his psyche "arising out of and in the course of his employment for the period ending February 6, 2017," and that applicant's date of injury pursuant to Labor Code[2] section 5412 was July 3, 2017, the date of a report from qualified medical evaluator (QME) Robert D. Mosby, Ph.D. (*Id.*, Findings of Fact nos. 7-10; see App. Exh. 17, Mosby report, July 3, 2017.) Finally, the WCJ found that pursuant to section 5405, "applicant commenced benefit collection proceeding on August 9, 2018 when the issue of cumulative injury was raised at the Mandatory Settlement Conference." (*Id.*, Findings of Fact no. 12.)

The WCJ explained his findings that applicant sustained both a specific and cumulative trauma injury as follows:

> Following the meeting, Deputy Gothard was referred by his employer to Dr. Staehle, a psychologist, for "evaluation and possible treatment." *See Applicant's Exhibit 12, report of Dr. Staehle at pg. 1) **She characterized his injury as "cumulative anxiety reaction" due to stress at work.** (Id.) Doctor Staehle treated Deputy Gothard at the expense of the County of Sonoma for the period March 3, 2017 through March 31, 2017. (See Applicant's Exhibit I, deposition transcript of Dr. Staehle at pg. 12:11-16). Thereafter, the provision of medical treatment to Deputy Gothard ended. Deputy Gothard continued receiving treatment at his own expense. (Id.)
>
> Doctor Mosby evaluated Deputy Gothard as a Qualified Medical Evaluator in the specialty of psychology. He initially characterized Deputy Gothard as having sustained two injuries: a cumulative trauma due to "mandated overtime" and "incidents with inmates" and a specific injury due to "the incident with Sergeants

[2] All further references are to the Labor Code unless otherwise noted.

Jiminez and MacLeod. **(See Applicant's Exhibit 17, report of Dr. Mosby at pg. 13).** This was later revised to reflect that 55% of the applicant's injury was due to the specific incident with Sergeants Jiminez and MacLeod, 40% to the stress of overtime and 5% to incidents with inmates. (See Applicant's Exhibit 14, report of Dr. Mosby dated 5/5/2018 at page 3).

Strictly speaking, Dr. Mosby characterized all three stressors as a part of a "cumulative anxiety injury".

(F&O, Opinion on Decision, pp. 2-3, errors in the original, emphasis added.)

The WCJ further clarified his findings in the Report:

Doctor Mosby evaluated Deputy Gothard as a Qualified Medical Evaluator in the specialty of psychology. He initially characterized Deputy Gothard as having sustained two injuries: a cumulative trauma due to "mandated overtime" and "incidents with inmates" and a specific injury due to "the incident with Sergeants Jiminez and MacLeod. **(See Applicant's Exhibit 17, report of Dr. Mosby at pg. 13)**. This was later revised to reflect that 55% of the applicant's injury was due to the specific incident with Sergeants Jimenez and MacLeod, 40% to the stress of overtime and 5% to incidents with inmates. (See Applicant's Exhibit 14, report of Dr. Mosby dated 5/5/2018 at page 3).

Procedurally, this case came to trial on October 8, 2018. Testimony was taken, and the case was submitted for a decision. After reviewing the record in detail, this court determined that rather than a single injury with two causes – stress due to overtime and the meeting with sergeants Jimenez and MacLeod – there were two distinct injuries. As the case as pled alleged a specific injury on February 6, 2017, the court issued notice of intent to issue a second ADJ number with a second date of injury, cumulative trauma through February 6, 2018. Receiving no objection, ADJ1946779 issued and a Joint Findings and Order was issued for both cases." (Report, pp. 4-5, emphasis added.)

The citation relied on by the WCJ in Dr. Mosby's July 3, 2017 report states that:

Mr. Gothard was diagnosed by Dr. Staehle on 03/03/17 with Unspecified Trauma and Stressor Disorder with moderate symptoms. I believe this is an accurate diagnoses and I would add to Dr. Staehle's initial diagnosis the following: F41.0 Unspecified Anxiety Disorder; F43.0 Acute Stress Disorder; and F32.1 Major Depressive Disorder, Single Episode, Moderate Symptoms.

From both the Beck Anxiety Inventory and the MMPl-2 Mr. Gothard is suffering from anxiety especially in situations where he feels threatened in some form. In addition Mr. Gothard has a history of twice seeing physicians at Kaiser Permanente for his stress to the required overtime at the Sonoma County Jail. Individuals deal with stress in different ways and for Mr. Gothard his stress

was triggered because he did not have enough time to recover from his shifts at the Sonoma County Jail and especially it was triggered when he began working on the Mental Health Unit of the Jail. Mr. Gothard has suffered depression as a result of being out of work and the difficulty that does to one's self-esteem. This is supported by his score on the Beck Depression Inventory and his elevated score on the depression scale of the MMPl-2. (App. Exh. 17, Mosby report, July 3, 2017, p. 13, emphasis added [the rest of p. 13 is Dr. Mosby eliminating a personality disorder as a diagnosis].)

Dr. Mosby's July 3, 2017 report diagnoses a cumulative trauma injury:

> **All of these causes strongly suggest a cumulative anxiety reaction to numerous events at his workplace**. Therefore it is with reasonable medical probability that the industrial stressors combined are more than 51% responsible for his condition. **It should also be noted that Dr. Staehle, who made an initial evaluation on 03/03/17 and is also a QME qualified evaluator, made the same conclusion.** (*Id.*, p. 14, emphasis added.)

In response to a question about the February 6, 2017 meeting identified by defendant in the Application, and relied on by the WCJ to support his finding of a specific injury, Dr. Mosby states, "Clearly this is a cumulative injury and not specific to one situation." (*Id.*, p. 14., underline in the original, bold added.)

> Of the overall psychological condition, what percentage of his condition and the need for disability/medical treatment was due to the meeting/personnel action with Sergeants Jimenez and Macleod? (Please defer the "good faith" nature of that meeting to the judge/trier of fact.)
>
> In my interview with Mr. Gothard I specifically asked him this question. **Clearly this is a cumulative injury and not specific to one situation.** My question to Mr. Gothard was that there are a lot of things affecting you and your stress and anxiety and what would you say are the percentage causes of each. Mr. Gothard stated that 40% of his stress and anxiety was due to the mandated overtime, 40% was due to the incident with Sergeants Jimenez and Macleod and 20% was due to incidents with inmates and working on the mental health unit. In my interview with Mr. Gothard I believe that these are reasonable approximations to the influence of each factor. **Therefore it is with reasonable medical probability that Mr. Gothard's industrial injury is a cumulative anxiety injury** attributable to 40% because of mandated overtime, 40% to the incident with Sergeants Jimenez and Macleod and 20% to incidents with inmates and working on the mental health unit and the stress that that particular assignment entails.
>
> Please be sure to discuss what event/events/stressors caused him to go off work. and how that plays into your percentage breakdown of causes, whether from the meeting, "general stressors", or other causes.

Please see the answer above. (*Id.*, p. 14., underline in the original, bold added.)

In addition, Dr. Mosby reported applicant to be a credible patient who was frank, open, and truthful. (*Id.*, pp. 10-11; App. Exh. 16, Mosby report, February 12, 2018, p. 13.)

On March 26, 2018, and after reviewing 680 pages of Kaiser records and the depositions of Sergeants Jimenez and MacLeod, Dr. Mosby responds to the question of whether the records support his prior conclusions about causation: "The short answer is yes these records support my prior conclusions about causation." (App. Exh. 15, Mosby March 26, 2018 Report, pp. 3-4.)

Dr. Mosby then references diagnoses made in 2015 by Kaiser of "acute stress disorder primary... from working and it goes on to state that the stress is, 'not so much the job but the hours and the number of days in a row'. [*sic*]" (*Ibid.*) He also mentions another Kaiser diagnosis of: "'Stress-primary, anxiety, major depressive disorder, recurrent episode, moderate, and lymphadenitis'. [sic]," resulting in a work note for time off work. (*Ibid.*) Also in 2016, there is an August 2016 Kaiser record involving an inmate throwing urine on him, as well as another September 2016 Kaiser diagnosis of "major depressive disorder, recurrent episode, mild-primary," which appears to have resolved in October 2016. (*Ibid.*) The final Kaiser record mentioned is the February 11, 2017 record about the meeting with the Sergeants resulting in a "triage call for anxiety." (*Ibid.*)

The deposition of Dr. Staehle went forward on March 16, 2018. (App. Exh. 1, Deposition of Melissa Staehle, Ph.D., March 16, 2018.) During defendant's questioning, Dr. Staehle explained that public safety officers with post-traumatic stress disorder (PTSD) often "hit a wall" at which point they cannot function after years of stress on the job, and often attribute their injury to the last stressful experience:

> Q. **His claim is denied. And now we see all the emphasis is on cumulative stress. Do you think that there might be a personal motivator to change the basis for the claim, in order to get his claim accepted?**
>
> MS. ROSENTHAL: I'm going to object that that mischaracterizes the --
>
> BY MR. HARBAUGH:
>
> Q. Well, do you see anything in the six months in the medical history or anything in terms of his claim that indicated that it was anything other than the incident of 2/7/17?

A. **I've told you, I see lots of reasons.** I don't think these people are experts at diagnosing themselves. So at that point he hit the wall. He hit the wall, he couldn't even show up at that point. He says, well, it's because of that. But by the time he comes back, the second his wife's saying, "Did you tell her about how you've been for the last five years, how irritable you are at home, how you're yelling at the kids, calling in sick? Did you tell her about the Kaiser visit for stress over the years?"

So I think it's easy, when you file a claim right then, not to say -- to analyze the whole entire situation. **I see it all the time with public safety officers. By the time they see me with PTSD, where they can't function, they can't go back to work, it has been building years, whether it's the drinking, the – all kinds of multiple factors. So no, I think the fact he didn't mention his whole history of stress in some detail, in some analysis, is not – he's suddenly changing things to benefit himself; no. It's consistent with what I've seen.** (*Id.*, at pp. 35-36, emphasis added.)

On May 5, 2018, Dr. Mosby concluded as follows:

There is no doubt that there is a cumulative injury here...The issue with a cumulative injury is when does the injury reach the stage where the employee can no longer work due to that injury...**As Dr. Staehle stated in her deposition the incident with the two sergeants was the straw that broke the camel's back...** (App. Exh. 14, Mosby May 5, 2018 Report, p. 3, emphasis added.)

DISCUSSION

I.

The gravamen of this matter is whether or not applicant sustained two, distinct psychiatric injuries, i.e., one specific injury resulting from the February 6, 2017 meeting with two sergeants, and another, separate cumulative trauma injury resulting from other and various stressors applicant encountered while working as a prison guard working with mentally ill and symptomatic prisoners. (See Lab. Code, § 3208.1, 3208.2.) We disagree with the WCJ's findings that there were two, separate injuries to applicant's psyche.

A decision of the Workers' Compensation Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280-81 [39 Cal.Comp.Cases 310]; see *E.L. Yeager Construction v. Workers' Comp. Appeals Bd.*

(Gatten) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *McAllister v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal.2d 408, 413, 416-17, 419 [33 Cal.Comp.Cases 660].)

> Whether an injury, which can be said to have been caused either by the immediate application of force or by past repetitive trauma is to be treated as specific (i.e., "occurring as the result of one incident or exposure") or cumulative (i.e., "occurring as repetitive mentally or physically traumatic activities extending over a period of time") is an issue of fact to be resolved by the WCAB and, if supported by substantial evidence, that determination is conclusive upon review. (Lab. Code, §§ 5952, 5953; *LeVesque v. Workmen's Comp. App. Bd.,* 1 Cal.3d 627, 637 [83 Cal.Rptr. 208, 463 P.2d 432].) (*Aetna Cas. & Surety Co. v. Workmen's Comp. Appeals Bd. (Coltharp)* (1973) 35 Cal.App.3d 329, 340-341 [38 Cal.Comp.Cases 720].)

Here, and contrary to the WCJ's conclusions, we find no evidence in the record from either Dr. Mosby or Dr. Staehle that applicant sustained two, separate injuries. Rather, the *concurring* opinions of both doctors is that applicant sustained one, cumulative trauma injury resulting from various job stressors over a period of years. (See *Western Growers Ins. Co. v. Workers' Comp.Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 236-237 [58 Cal.Comp.Cases 323].) There is no statement in any of the reports from Dr. Mosby that the February 6, 2017 meeting caused a separate, specific injury, or that any of his diagnoses were separately caused just by that meeting. Dr. Mosby agrees with Dr. Staehle that the meeting was simply the "final straw" that broke applicant – not a new or distinct injury – but the culmination of a cumulative trauma stress injury.

Unfortunately, the procedural history in this case itself created the appearance that there was an issue as to the nature of applicant's injury. Defendant filed the application for adjudication on behalf of applicant on March 14, 2017, when applicant was not yet represented. Defendant identified the injury as a specific injury that occurred on February 6, 2017 as a result of feeling trapped in an office by two Sergeants on February 6, 2017. However, at the time defendant filed the Application, *it already knew* from Dr. Staehle's March 3, 2017 report that applicant sustained a "cumulative anxiety reaction" to his workplace caused by mandatory overtime, violent incidents with inmates, and the February 6, 2017 meeting. Instead of relying on Dr. Staehle's expert opinion, defendant relied on applicant's report of injury and the DWC-1 claim form, including applicant's *lay opinion* that the February 6, 2017 meeting caused his injury.

Defendant appears to have chosen to push the theory that applicant sustained a specific injury on February 6, 2017, and that his claim is barred by the good faith personnel defense.

Defendant remained faithful to its strategy while litigating this matter, despite further medical evidence to the contrary from Dr. Mosby. For instance, many of the questions posed by defendant to Dr. Mosby for his reports, and during Dr. Staehle's deposition, assumed there was a specific injury resulting from the February 6, 2017 meeting. Also in line with defendant's strategy, defendant asked Dr. Mosby to attribute percentages to the various causes of applicant's "specific" injury per *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 246 (Appeals Bd. en banc) (*Rolda*), and thus, Dr. Mosby did so. However, the fact that defendant chose this strategy does not actually transmute applicant's continuous trauma injury claim into a specific injury, or into two separate injuries.

Defendant also chose to call applicant's credibility into question when the issue of the cumulative trauma injury was raised – rather than amend the Application to conform to the evidence provided by Drs. Mosby and Staehle. (See App. Exh. 1, Deposition of Melissa Staehle, Ph.D., March 16, 2018, *supra*. ["His claim is denied. And now we see all the emphasis is on cumulative stress. Do you think that there might be a personal motivator to change the basis for the claim, in order to get his claim accepted?"].) First, Dr. Staehle testified that applicant's identification of his injury as specific to the February 6, 2017 meeting is consistent with the way public safety officers perceive psychiatric injury, i.e., they identify the last stressor – the stressor straw that broke the camel's back – as the injury, or date of injury. More importantly, it begs credulity to accuse applicant of being disingenuous when it was defendant that filed the Application, and defendant who chose to ignore Dr. Staehle's medical reporting that applicant sustained a cumulative trauma injury. Regardless, Dr. Mosby reported that applicant was a credible patient, and was frank, open, and truthful.

In sum, neither Dr. Mosby nor Dr. Staehle identified a separate, distinct psychiatric or physical injury resulting from the February 6, 2017 meeting. As stated, there is substantial evidence in the record from the *concurring* opinions of Dr. Mosby and Dr. Staehle that there is one, cumulative trauma injury to applicant's psyche resulting from workplace stress (including mandatory overtime, violent incidents with inmates, and the February 6, 2017 meeting). We note that because of the strategy employed by defendant in this matter, there has been no *Rolda* analysis related to applicant's cumulative trauma injury claim.

It is therefore our decision after reconsideration to rescind the F&O and return this matter to the trial level for further proceedings consistent with this decision.

II.

Upon return to the trial level, and given that applicant raised the issue at trial, the Application should be amended to conform to the proof as provided by Drs. Mosby and Staehle. (See MOH, Issues, p. 2, no. 1 ["Applicant suggesting that the evidence will show that the appropriate date of injury is cumulative trauma ending on February 6, 2017"].) The adjudication claim file created by the WCJ in the New Date of Injury Order, ADJ11946779, will then be moot and should be dismissed.

Labor Code section 5709 states that "No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division..." (Lab. Code, § 5709.) Necessarily, failure to comply with the rules as to details is not jurisdictional. (citation)" (*Rubio v. Workers' Comp. Appeals Bd*. (1985) 165 Cal.App.3d 196, 200-201 (Rubio), italics added; see Cal. Code Regs., tit. 8, § 10515.) "[I]nformality of pleading in proceedings before the Board is recognized and courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (citation)" (*Rubio, supra,* 165 Cal.App.3d at p. 200; see Cal. Code Regs., tit. 8, § 10397 [an application for adjudication of claim "shall not be rejected for filing" because it "contains inaccurate information..."].) "If a party is disadvantaged by the insufficiency of a pleading, the remedy is to grant that party a reasonable continuance to permit it to prepare its case or defense. (citations)" (*Rubio, supra*, 165 Cal.App.3d at p. 200-201.)[3]

Consequently, workers' compensation "[p]leadings may be amended by the Workers' Compensation Appeals Board to conform to proof." (Cal. Code Regs., tit. 8, § 10517.) An amended application that "sets forth the required detail" but is filed more than one year from an applicant's date of injury "relates back to the original timely application and preserves the jurisdiction of the Board to hear the matter." (*Rubio, supra*, 165 Cal.App.3d at p. 199-200.)

> As a general principle of pleading, an amended complaint or other pleading serving a similar purpose supersedes the original. (citation) Although the amended pleading supersedes the original as a subsisting pleading, it does not wholly nullify the fact of filing the original (*ibid*.). 'The time of filing the original is still the date of commencement of the action for purposes of the

[3] Moreover, the workers' compensation statutes of limitations must be "'liberally construed in favor of the employee...and such enactments should not be interpreted in a manner which will result in' a loss of compensation." (*Bland v. Workers' Comp. Appeals Bd*. (1970) 3 Cal.3d 324, 330 [35 Cal.Comp.Cases 513]; *Bassett-Mcgregor v. Workers' Comp. Appeals Bd*. (1988) 205 Cal.App.3d 1102, 1117 [53 Cal.Comp.Cases 502] (*Bassett-Mcgregor*).

statute of limitations (except where a wholly different case is pleaded by the amendment)." (citation)

Applicant's amended application seeking benefits on the theory of a cumulative injury to her heart does not allege a new and different cause of action. (See *Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 324, 330-331 [90 Cal.Rptr. 431, 475 P.2d 663]; *Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200 [211 Cal.Rptr. 461]; see also § 5303; *Chavez v. Workmen's Comp. Appeals Bd.* (1973) 31 Cal.App.3d 5, 14 [106 Cal.Rptr. 853]; *Beveridge v. Industrial Acc. Com.* (1959) 175 Cal.App.2d 592, 598 [346 P.2d 545].) **Our holding that an amendment substituting a claim for cumulative rather than specific injury does not constitute a new and different cause of action is limited to circumstances such as these in which the disability is the same and the injury arose from the same set of facts, and is consistent with the guiding principle that claims should be adjudicated on substance rather than formality of statement.** (See *Beveridge v. Industrial Acc. Com., supra*, at p. 598.) (*Bassett-Mcgregor, supra,* 205 Cal.App.3d at p. 1116, emphasis added.)

Thus, an amendment to the Application to substitute a claim for cumulative rather than specific injury (amendment) will not trigger the statute of limitations as long as the original application for adjudication of claim was timely filed. There is no dispute in this case that the Application was timely filed.

We note that no disadvantage should inure to defendant as a result of the amendment. Defendant *knew* that applicant sustained a cumulative trauma injury before they filed the Application pleading a specific injury. In addition, defendant received the treating reports and notes of Dr. Staehle and the QME reporting of Dr. Mosby, wherein both doctors concur that applicant sustained one, cumulative trauma injury to his psyche resulting from workplace stress (including mandatory overtime, violent incidents with inmates, and the February 6, 2017 meeting). Defendant chose to pursue a strategy contrary to the evidence, and cannot now claim to be disadvantaged by that choice. (See Civ. Code, §3521 ["He who takes the benefit must bear the burden."].)

Of course, either party may request further development of the record should it be required to provide due process or fully adjudicate the issues.[4]

[4] The Appeals Board (including the WCJ) has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) This discretionary authority must be reconciled with the discovery cut-off contained in Labor Code section 5502(d)(3),

Accordingly, as there is no substantial evidence in the record to support the WCJ's decision to treat applicant's psychiatric injury as two distinct injuries, it is our decision after reconsideration to rescind the F&O and return this matter to the trial level for further proceedings consistent with this decision.

which closes discovery at the time of the mandatory settlement conference. (See *Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396 [65 Cal.Comp.Cases 264] ("*Kuykendall*"); *San Bernardino Community Hospital v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986].) "Section 5502, subdivision (d)(3) was enacted to minimize delays and efficiently expedite case resolution by making sure parties are prepared for hearing." (*Kuykendall, supra*, 79 Cal.App.4th at 404.)

For the foregoing reasons,

IT IS ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings and Order issued on May 13, 2019 by a workers' compensation administrative law judge is **RESCINDED** and this matter **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 11, 2022

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

JASON GOTHARD
LAW OFFICE OF RICHARD J. MEECHAN
MULLEN & FILIPPI

AJF/abs

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