

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

JAMES DOUGHERTY, *Applicant*

vs.

**SACRAMENTO COUNTY SHERIFF'S DEPARTMENT, permissibly self-insured,
*Defendant***

Adjudication Number: ADJ16971609

Sacramento District Office

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact and Opinion on Decision (F&O) issued on March 23, 2023, wherein the workers' compensation administrative law judge (WCJ) found as relevant that (1) while employed on September 6, 2015 as a deputy sheriff, applicant sustained injury arising out of and occurring during the course of employment to the right eye; (2) applicant has been adequately compensated for all periods of temporary disability claimed through September 19, 2015; (3) defendant has furnished some medical treatment; and (4) applicant's claim is not barred by the statute of limitations.

Defendant contends that applicant was on notice of the statute of limitations by February 11, 2016, but "did not file the Application for Adjudication of Claim until November 21, 2022," rendering the application for adjudication herein untimely. (Petition, 4:20-21.) Defendant further contends that applicant filed the application for adjudication herein outside the statutory period following expiration of the statutory tolling period, if any.

We received an Answer from applicant.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that the Petition be denied.

We have reviewed the contents of the Petition, the Answer, and the Report. Based upon our review of the record, and for the reasons set forth below and in the Report, which we adopt and incorporate herein, we will deny the Petition.

FACTUAL BACKGROUND

On July 1, 2021, applicant filed an application for adjudication alleging that he sustained cumulative injury to his eye, including the optic nerve, during the period from May 21, 2020 through May 21, 2021 (ADJ14846298). (Application for Adjudication, July 1, 2021, ADJ14846298, pp. 1, 9.)

On November 21, 2022, applicant filed an application for adjudication alleging that he sustained specific injury to his eye, including the optic nerve, on September 7, 2022. (ADJ16971609). (Application for Adjudication, November 21, 2022, ADJ16971609, pp. 1, 9.)

On December 2, 2022, applicant filed an application for adjudication, re-alleging the claim asserted in the November 21, 2022 application but amending the date of injury of to September 6, 2015(ADJ16971609). (Application for Adjudication, December 2, 2022, ADJ16971609, pp. 1, 9.)

On January 5, 2023, the parties filed a joint pre-trial conference statement in case numbers ADJ14846298 and ADJ16971609, stipulating that “Applicant herein dismisses ADJ14846298 based on finding of QME that there was no CT injury. (Pre-Trial Conference Statement, January 5, 2023, ADJ14846298, ADJ16971609, p. 2.) The WCJ accepted the stipulation, stating in the disposition notes that applicant agreed to dismiss the cumulative injury claim and that the issue pending was the statute of limitations issue in ADJ16971609. (*Id.*, p. 1.)

On February 23, 2023, the matter proceeded to joint hearing in case numbers ADJ14846298 and ADJ16971609 at which trial was held in case number ADJ16971609 on the issue of whether applicant’s specific injury claim was barred by the applicable statute of limitations and case number ADJ14846298 was dismissed without prejudice. (Minutes of Hearing and Summary of Evidence Order to Dismiss ADJ14846298, February 23, 2023, pp. 2:3, 3:3.)

At trial, the WCJ admitted the PQME report by David A. Sami, M.D., dated February 14, 2022, and the PQME supplemental report by David A.Sami, M.D., dated May 14, 2022, into evidence. (*Id.*, p. 3:11-13.)

In the February 14, 2022 report, Dr. Sami states:

This is a 48 year old male, Police Officer for the City of Sacramento who suffered an assault by inmate on DOI 5/21/21. Applicant reports that he was forcefully punched in the face and orbit. Subsequent to this injury he developed symptomatic flashes and floaters. Subsequent evaluation indicated an operculated retinal defect which was treated by laser retinopexy on 5/28/21. I received a limited set of “excerpts” from the records of Kaiser Permanente. There were significant gaps in time in the records provided. The review of records indicates that applicant suffered

a forehead laceration, as well as traumatic iritis and traumatic posterior vitreous detachment (Right eye) as a result of assault on 9/6/15. I received no Ophthalmic records in the time span between 9/7/15 and 5/26/21. Ophthalmic examination on 9/7/15 did not document an operculated retinal defect of the right eye.

Operculated retinal holes are thought to be a result of vitreous traction. With reasonable medical probability the operculated retinal hole of the Right eye was due to sequelae of traumatic posterior vitreous detachment due to assault on 9/7/15.

My examination dated 2/14/22 was also notable for posterior subcapsular cataract of the Right eye. With reasonable medical probability the cataract was caused or aggravated by traumatic injury on 5/26/21.

(Ex. CC, PQME report by David A. Sami, M.D., February 14, 2022, p. 5 [Emphasis in original].)

In the May 14, 2022 report, Dr. Sami states:

Operculated retinal holes are thought to be a result of vitreous traction. **With reasonable medical probability the operculated retinal hole of the Right eye was due to sequelae of traumatic posterior vitreous detachment due to assault on 9/6/15.** Based on my examination dated 2/14/22 there has been a good outcome of laser retinopexy.

My examination dated 2/14/22 was also notable for posterior subcapsular cataract of the Right eye. Kaiser Examination report dated 5/28/21, notes "I+ PSC approaching visual axis." Based on this report, there has been progression of cataract in the time period between 5/28/21 and 2/14/22. Subcapsular cataracts are a recognized complication of traumatic ocular injury, especially when prior traumatic iritis is documented (as corroborated by Kaiser Permanente examination note dated 9/14/15)

With reasonable medical probability the subcapsular cataract of the Right eye was caused or aggravated by traumatic injury on 9/6/15. Kaiser Examination report dated 5/28/21, notes "I + PSC approaching visual axis." Based on this report, there has been progression of cataract in the time period between 5/28/21 and 2/14/22.

Thus applicant is Not permanent and stationary and should be re-evaluated in 1 year.

(Ex. DD, PQME supplemental report by David A. Sami, M.D., May 14, 2022, p. 8 [Emphasis in original].)

At trial, applicant testified that in 2021 he went to an optometrist two months after he experienced a change in his vision which made him think he needed glasses and had experienced flashes in his right eye and eye pain. The optometrist told him that he had a hole in his retina and that this was an urgent condition for which surgery was needed—and one week later he received

surgical treatment from Kaiser. (Minutes of Hearing and Summary of Evidence Order to Dismiss ADJ14846298, February 23, 2023, p. 5:3-6.)

DISCUSSION

We turn first to defendant's contention that applicant was on notice of the statute of limitations by February 11, 2016, but "did not file the Application for Adjudication of Claim until November 21, 2022," rendering the application for adjudication herein untimely.

Preliminarily we note that the record reveals that applicant filed an application for adjudication alleging that he sustained cumulative injury to his eye, including the optic nerve, on July 1, 2021. (Application for Adjudication, July 1, 2021, ADJ14846298.) Because the July 1, 2021 application was filed more than one year before the November 21, 2022 application on which the Petition relies, it is necessary to examine whether or not it may be operative for the purpose of determining the statute of limitations issue herein—and we will address that issue below.

As to defendant's argument that applicant was on notice of the statute of limitations by February 11, 2016, we agree with the WCJ that defendant failed to prove its statute of limitations defense. (Report, pp. 5-7.) More particularly, the documentary evidence fails to show that defendant put applicant on notice that he could be denied benefits for his injury in the event he did not file an application for adjudication within the period afforded by the statute of limitations. Consequently, the statute of limitations was tolled until applicant received requisite notice.

Accordingly, we discern no merit in defendant's argument that applicant was on notice of the statute of limitations by February 11, 2016 and failed to file an application for adjudication within the statutory period.

We turn next to defendant's argument that applicant filed the application for adjudication herein outside the statutory period following expiration of the tolling period. Specifically, defendant argues that applicant received notice of the statute of limitations either in May 2021, when an adjuster verbally advised him that the statutory period had expired, or on July 1, 2021, when applicant executed the fee disclosure statement relating to his cumulative injury claim; and that the application for adjudication herein was not filed within one year of either of those dates.

Here, as stated above, the record reveals that applicant filed an application for adjudication alleging cumulative injury to the eye on July 1, 2021 (ADJ14846298), the very date applicant executed the fee disclosure statement relating to his cumulative injury claim and less than two months after the May 2021 date on which defendant admits applicant was verbally put on notice

of the statute of limitations. (Application for Adjudication, July 1, 2021, ADJ14846298.) It follows that the July 1, 2021 application was filed within one year following expiration of the tolling period; and, as such, the issue of whether the July 1, 2021 application is the operative pleading for determination of the statute of limitations issue may be dispositive of the Petition.

Labor Code section 5709¹ provides 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..." (§ 5709.) Failure to comply with the rules as to details is not jurisdictional. (*Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200–201; 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, § 10617(a)(2) [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." (*Rubio, supra*, 165 Cal.App.3d at p. 200–201.)

Hence, workers' compensation "[p]leadings shall be deemed amended to conform to the stipulations and statement of issues agreed to by the parties on the record . . . [and] 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.)

For example, in *Bassett-Mcgregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal.App.3d 1102, 1116 [53 Cal.Comp.Cases 502], an advertising manager suffered a heart attack during work, consulted an attorney and timely filed a specific injury claim for the heart. Approximately two years after suffering the heart attack, the applicant filed a cumulative injury claim. Although the Appeals Board found that the applicant did not sustain specific injury and that her cumulative injury claim was barred by the one-year statute of limitations, the Court of Appeal held that the cumulative injury was not time-barred because it related back as an amendment to the specific injury claim, reasoning as follows:

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

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 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.)

The pleadings record here is that on January 5, 2023 the parties filed a joint pre-trial conference statement in case numbers ADJ14846298 and ADJ16971609, stipulating that “Applicant herein dismisses ADJ14846298 based on finding of QME that there was no CT injury.” (Pre-Trial Conference Statement, January 5, 2023, ADJ14846298, ADJ16971609, p. 2.) The WCJ accepted the stipulation, stating that applicant agreed to dismiss the cumulative injury claim and that the issue pending was the statute of limitations issue in ADJ16971609. (*Id.*, p. 1.) Thereafter, the matter proceeded to joint hearing at which the WCJ ordered the dismissal of case number ADJ1484629 without prejudice and trial of the statute of limitations issue was held in case number ADJ16971609. (Minutes of Hearing and Summary of Evidence Order to Dismiss ADJ14846298, February 23, 2023, pp. 2:3, 3:3.)

The record also shows that the parties’ stipulation that applicant did not sustain cumulative injury to the right eye was based Dr. Sami’s May 14, 2021 report opining that applicant’s operculated retinal hole of the eye resulted from the traumatic posterior vitreous detachment sustained in the September 6, 2015 assault and the subcapsular cataract of the right eye was caused or aggravated by the traumatic injury of that same date, an opinion that effectively ruled out the theory that applicant’s eye injury resulted from cumulative trauma during the period preceding the

May 21, 2021 assault injury and the May 28, 2021 laser retinopexy treatment. (Ex. DD, PQME supplemental report by David A. Sami, M.D., May 14, 2022, p. 8; Ex. CC, PQME report by David A. Sami, M.D., February 14, 2022, p. 5; Minutes of Hearing and Summary of Evidence Order to Dismiss ADJ14846298, February 23, 2023, p. 5:3-6.)

By accepting the parties' stipulation, dismissing the cumulative injury claim, and proceeding on the specific injury claim, the WCJ effectively deemed the pleadings amended to conform to the medical evidence, thereby substituting the specific injury claim for the cumulative trauma claim. This substitution did not prejudice defendant, however, because the specific injury claim places at issue the same questions of disability and the same set of facts as to how the injury occurred as the cumulative injury claim. Additionally, inasmuch as the specific injury claim was filed before dismissal of the cumulative injury claim, defendant was subject to the jurisdiction of the WCAB at all times following the July 1, 2021 filing.

Under this pleadings record, the specific injury claim set forth in the December 2, 2022 application for adjudication relates back to the July 1, 2021 application for adjudication for the purpose determining the statute of limitations issue. (*Rubio, supra*, 165 Cal.App.3d at p. 200 (stating that the "statute of limitations will not bar amendment of an application where the original application was timely and the amendment does not present a different legal theory or set of facts constituting a separate cause of action.")) Consequently, the application for adjudication herein is not barred by the statute of limitations.

Accordingly, we are unable to discern merit to the argument that applicant filed the application for adjudication herein outside the statutory period following expiration of the tolling period.

Accordingly, we will deny the Petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact and Opinion on Decision issued on March 23, 2023 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 5, 2023

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

**JAMES DOUGHERTY
MASTAGNI HOLSTEDT
TWOHY, DARNEILLE & FRYE**

SRO/cs

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

1. Applicant's Occupation: Deputy Sheriff
Applicant's Age: 41
Date of Injury: September 6, 2015
Parts of Body Injured: (alleging) right eye
Mechanism of Injury: Punched in right eye
2. Identity of Petitioner: County of Sacramento ("Defendant")
Timeliness: Yes
Verification: Yes
3. Decision Date: March 23, 2023, Findings of Fact issued. Defendant
Contends it successfully asserted a statute of
limitations defense.
4. Defendant's Contentions: Defendant contends that by Order, Decision or
Award, made and filed by the Workers'
Compensation Judge, the Appeals Board acted
without or in excess of its powers; the evidence
does not justify the Finding of Fact; and that the
Findings of Fact to do no support the Order,
Decision or Award.

FACTS

1. On September 6, 2015, applicant suffered an accepted industrial injury to right eye.
(MOH at p. 2:12-13.)
2. Applicant testified credibly that contemporaneous industrial treaters in 2015 informed
him to return to care if his symptoms returned; and they did, six years later. (*Id.* at p.
4:23-24.) Between date of injury and date of trial, applicant's constant symptom has been
blurry vision. (*Id.* at pp. 4:25; 6:23.)
3. Indemnity benefits were provided to applicant through September 19, 2015. (*Id.* at
p.2:22-23.)
4. Medical benefits were provided to applicant. (*Id.* at p. 2:22-23.)

5. The last day of in-person treatment was September 14, 2015. (Exhibit AA.) On that day, applicant's condition was improving as he took medication four times per day. (*Id.* at p. 1.) Applicant's iritis was resolved and his OD, PVD OD were stable. (*Id.* at p. 2.) Applicant was given RD (Retinal Tear/Detachment) precautions and discharged from care with ongoing medication FML (Fluorometholone). (*Id.*) Applicant was to follow-up as needed. (*Id.*)
6. On September 14, 2015, applicant was not declared MMI. On September 14, 2015, applicant's condition was changing, medications were ongoing and applicant was given specific instructions about potential changes in his condition.
7. On September 17, 2015, applicant was sent information about ongoing Labor Code section 4850 benefits. (Exhibit FF.) Attached to this document was a "Facts for Injured Workers" document which states:

Statute of Limitations is the period within which an employee must commence proceedings for the collection of benefits. There are several statutes of limitations in workers' compensation. They are covered under Labor Code Sections 5405, 5406, 5406.5, 5406.6, 5408. In summary, an injured employee has one year from any of the following: the date of injury, the last date disability payments were made or due, or the last date that any benefit was provided, to commence proceedings before the Workers' Compensation Appeals Board (WCAB). In order to commence proceedings an employee must file an Application for Adjudication of Claim with the WCAB and the employer. (*Id.* at p. 4.)
8. Applicant's last consultative treatment was on September 18, 2015. (Exhibit AA.) On September 18, 2015, applicant had the following ongoing symptoms: Blurred vision, blackout areas, shooting pain, white flashes and spots. (*Id.* at p. 1.) The ocular symptoms were only 50% healed. (*Id.*) Applicant wanted time off work to continue healing (*Id.*)
9. On September 18, 2015, applicant's industrial treater instructed him to watch for increasing floaters and increasing or dark curtains or shadows. (*Id.* at p. 2.)
10. On September 18, 2015, applicant was not declared MMI. On September 18, 2015, applicant's condition was changing and applicant was given specific instructions

about potential changes in his condition.

11. On October 28, 2015, defendant employer sent applicant a correspondence indicating it appeared he had recovered from his work injury and if he did not contact claims within 30 days asserting the contrary, his claim file would be closed. (Exhibit II.)
12. Applicant testified credibly, when he received Exhibit II, he called the defendant employer. (MOH at p. 5:24-25.) Applicant disagreed with the correspondence, and he did not want his file closed. (*Id.* at p. 6:1.)
13. On December 17, 2015, defendant employer sent applicant a correspondence indicating that it appeared he had recovered from his work injury and if he did not contact claims within 30 days asserting the contrary, his claim file would be closed. (Exhibit JJ.)
14. On January 5, 2016, defendant employer issued a Notice Regarding Permanent Disability Benefits Monitor for Disability Status. (Exhibit KK.) Applicant was advised it was too soon to tell if he had any permanent disability for his injury. (*Id.* at p. 1.) Claims indicated it would check with his doctor until his condition was permanent and stationary. (*Id.*) At that time, the doctor would determine whether applicant had any permanent disability or need for future medical care. (*Id.*) Claims expected to have this information by April 5, 2016. (*Id.*)
15. On January 8, 2016, defendant employer sent applicant a correspondence indicating that it appeared he had recovered from his work injury and if he did not contact claims within 30 days asserting the contrary, his claim file would be closed. (Exhibit LL.)
16. On February 11, 2016, a Notice Regarding Permanent Disability Benefits Denial issued. (Exhibit MM.) The notices stated, since applicant had returned to work on September 21, 2015, and he had not sought care since September 14, 2015, (sic) claims was assuming applicant had recovered from his injury and no permanent disability are due. (*Id.* at p. 1.) Claims indicated that it was not getting any DEU rating and informed applicant he could request a QME. (*Id.* at p. 2.)
17. On May 14, 2022, QME David A. Sarni, MD, determined applicant suffered an industrial injury on September 6, 2015, including but not limited to operculated retinal holes and posterior subscapular cataract a result of vitreous traction. (Exhibit DD at p. 9.)

DISCUSSION

Defendant asserted a statute of limitation defense to applicant's application for adjudication of claim. (EAMS Doc ID 43990589.) Applicant asserted the statute of limitations is tolled because his ocular condition never resolved and he was monitoring it in anticipation of returning to care if and when it worsened. If defendant employer fails to give adequate notice, the one-year statute of limitations is tolled until the employee has such notice. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd* (1985) 39 Cal.3d 57 [50 Cal. Comp. Cases 411]; *Reynolds v. Workmen's Comp. Appeals Bd.*, (1974) 12 Cal. 3d 726, 730 [39 Cal.Comp.Cases 726]; *Galloway v. Workers' Comp. Appeals Bd.*, (1998) 63 Cal.App.4th 880 [63 Cal.Comp.Cases 532].)

As above, defendant put multiple correspondences sent to applicant into evidence. However, defendant relies upon Exhibit FF and Exhibit MM as the basis of its statute of limitations defense. (Petition for Reconsideration at p. 2:9-23.)

In a recent case, more than 19 years after the date of injury, the Board found that the statute of limitations was not applicable because there was no evidence that the applicant was given notice that her medical treatment benefits would be limited or denied until after she filed the application. *Doney v. Burbank Housing Development Corp.*, 2022 Cal. Wrk. Comp. P.D. LEXIS 44. In *Doney*, for purposes of valid notice, Labor Code § 5405 and AD Rule 9812(d), were considered.

The statute of limitations is an affirmative defense and defendant, as the party asserting the defense, has the burden of proof. (Labor Code § 5705.) The limitations period for which a claim must be filed is the later of (1) one year from the date of injury, (2) one year from the last provision of disability payments per Labor Code § 4650 et. seq., or (3) one year from the last provision of medical benefits.

In reviewing notices and correspondence that defendant sent to applicant, just once, in Exhibit FF on September 17, 2015, was applicant provided information about the one-year statute of limitations to file a claim.

However, Exhibit FF is about Labor Code § 4850 benefits, not medical benefits. On September 17, 2015, when Exhibit FF was sent to applicant, his medical treatment was ongoing- he had additional industrial treatment on September 19, 2015. Concerning notice about losing medical benefits, Exhibit FF fails because applicant's treatment was ongoing and he was not

notified that his medical treatment benefits would be limited or denied until after he filed an application for adjudication of claim.

On February 11, 2016, a Notice Regarding Permanent Disability Benefits Denial issued. (Exhibit MM.) The notice stated, since applicant had returned to work on September 21, 2015, and he had not sought care since September 14, 2015, (*sic*) claims assumed applicant had recovered from his injury and no permanent disability was due. (*Id.* at p. 1.) Claims indicated that it was not getting any DEU rating and informed applicant he could request a QME. (*Id.* at p. 2.) This notice did not advise applicant that his medical treatment benefits would be limited or denied until after he filed an application.

Additionally, per Exhibit KK, Notice Regarding Permanent Disability Benefits Monitor for Disability Status, defendant employer indicated it would be checking in with applicant's doctor until he became permanent and stationary. (*Id.* at p. 1.) Applicant's treater was to determine whether he had any permanent disability or need for future medical care. (*Id.*) Defendant expected to have this information from the applicant's doctor by April 5, 2016, then it would notify applicant. (*Id.*) This date identified by defendant employer and noticed to applicant, April 5, 2016, is several weeks after Exhibit MM issued.

Administrative Director Rule 9812 requires the employer to send notices regarding whether there exists a need for future medical care and whether indemnity payments are terminated. (Cal. Code Regs., tit. 8., § 9812(e)(2).) Applicant received his last Labor Code § 4850 benefit on September 19, 2015. (MOH/SOE at p. 2:22-23.) On October 5, 2015, defendant employer sent applicant a correspondence indicating that his Labor Code § 4850 benefits were ending. (Exhibit HH at p. 1.) On February 11, 2016, a Notice Regarding Permanent Disability Benefits Denial issued. (Exhibit MM.) Again, neither of these notices were about future medical treatment nor advised applicant that his medical treatment benefits would be limited or denied until after he filed an application.

Hence, defendant did not meet its burden of proof. Applicant was not properly noticed about the statute of limitations. Therefore, the statute of limitations is tolled.

CONCLUSION

For the foregoing reasons, I recommend that defendant's March 23, 2023, Petition for Reconsideration be denied.

DATE: April 13, 2023

Sarah L. Lopez

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE