

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

CARLOS M. GONZALES, *Applicant*

vs.

**STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS AND
REHABILITATION, LEGALLY UNINSURED, ADMINISTERED BY STATE
COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ13356237
Salinas District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 30, 2022

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

**CARLOS GONZALES
SPRENKLE, GEORGARIOU & DILLES
STATE COMPENSATION INSURANCE FUND**

SAR/abs

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

I

INTRODUCTION

Defendant State of California has filed a timely, verified Petition for Reconsideration from the Amended Findings and Award of 4/15/2022, raising the usual statutory grounds. Defendant contends that the claim for cumulative injury to the wrists and hands is barred by the Statute of Limitations and that because it is barred, the order for additional QME panels requested by Applicant was erroneous. Defendant does not argue that the additional panels are unnecessary if the claim is compensable. Nor does Defendant address the issues and findings relative to the other body parts claimed by Applicant.

II

STATEMENT OF MATERIAL FACTS

Defendant/Petitioner has denied Applicant's claim for cumulative trauma to his bilateral wrists and hands and other body parts, based on Applicant's employment as a correctional officer during a period of exposure ending 7/10/12. (MOH/SOE, 1/26/22, p. 2)

At trial, Applicant credibly testified that QME Dr. Whitelaw's history (report dated 11/18/20, Ex. A-17) was correct: that he had longstanding, chronic strain/sprain in both wrists from turning keys in his job as a correctional officer. However, he was never taken off work for this, did not see a doctor for these problems, and no doctor told him before Dr. Whitelaw that he injured his hands due to his work. He did file a claim for cumulative trauma to his hands and wrists caused by his work through his last day on the job, 7/10/12, and the symptoms, including loss of grip strength in his right hand and loss of sensation, continued to that time. In addition, he told Dr. Whitelaw that after he stopped working, he began using neoprene supports for his wrists and hands. He believed this began in 2014 or 2015 and were needed due to his work injury. He did understand as of 7/10/12, that the job duties were causing the symptoms in his hands and wrists.

III

DISCUSSION

For events at work to constitute a compensable injury, they must cause either disability or need for treatment. [*Livitsanos v. Superior Court* (1992) 57 CCC 355] Mere pain that does not cause an incapacity to earn is not an “injury” under the Labor Code. *Marsh v. IAC* (1933) 217 Cal. 338. In the present case, there is no evidence that Applicant’s hand and wrist problems resulted in lost time from work or need for medical treatment. Applicant’s intermittent use of a wrist support was not prescribed by a physician. The medical reason for retirement was a knee condition (Whitelaw report, Op. Cit., p. 2; transcript, applicant’s deposition, Ex. D-8, p. 15).

Defendant argues that Applicant’s claim for cumulative trauma to his hands and wrists is barred by the Statute of Limitations (Labor Code Section 5405), because he suffered disability that he knew, or should of known, was caused by his work, more than a year before he filed his Application for Adjudication of Claim. Defendant apparently does not contest the necessity for the additional QME panels, in the event its statute defense is rejected.

Since this is a cumulative trauma claim, the Application is timely, if it was filed within a year of the date of injury under Labor Code Section 5412, which provides that the “date of injury” is the date upon which the worker first suffered disability and either knew, or with reasonable diligence should have known, that the disability was caused by the work. Defendant relies on Applicant’s admission that he knew the work was bothering his hands long before the critical one year; and from his later, post-retirement use of neoprene supports, also more than one year before he filed his Application. It argues that the use of wrist supports was a ratable disability.

Whether the pain during work or the use of neoprene supports was a “disability” is a subject that requires the expertise of a physician. The medical expertise for determining disability and its cause first came from Dr. Whitelaw, as far as the evidence shows. Likewise, the necessary knowledge that the hand/wrist disability was caused by work generally requires a physician’s opinion that the disability was caused by the work, unless the evidence demonstrates that the employee had sufficient qualifications or experience in these matters, such that he knew, or should have known, that he had disability caused by his work. [*City of Fresno v. WCAB (Johnson)* (1985) 50 CCC 53] Unquestionably, Applicant knew the work activity was bothering his hands, beyond the one year. What is lacking from Defendant’s case is proof that Applicant (a) knew the symptoms

or use of wrist supports constituted a “disability”, and (b) knew that the disability was caused by cumulative injury from his work activities; before Dr. Whitelaw so informed him.

In the Amended Findings and Award, Defendant’s statute of limitations defense was rejected and the requested additional QME panels were ordered.

IV

RECOMMENDATION

I recommend that the Petition for Reconsideration be Denied.

Respectfully submitted,

MICHAEL H. YOUNG
Workers’ Compensation
Administrative Law Judge