

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

COURTNEY HILTON, *Applicant*

vs.

**TORRANCE UNIFIED SCHOOL DISTRICT, permissibly self-insured by
SEDGWICK, previously administered by KEENAN & ASSOCIATES, *Defendants***

Adjudication Number: ADJ10305680

Los Angeles 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.¹

I.

We note that 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." (Lab. Code, § 5412.)² Whether an employee knew or should have known his disability was industrially caused is a question of fact. (*City of Fresno v. Workers' Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53] (*Johnson*); *Nielsen v. Workers' Comp. Appeals Bd.* (1985) 164 Cal.App.3d 918, 927 [50 Cal.Comp.Cases 104]; *Chambers v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 556, 559 [33 Cal.Comp.Cases 722].) "The number and nature of the injuries suffered are questions of fact for the WCJ or the

¹ Commissioner Lowe, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panel member has been assigned in her place.

² All further references are to the Labor Code.

WCAB.” (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323].)

The relevant statute of limitations for filing a workers' compensation claim is one year from the date of injury. (Lab. Code, § 5405(a).) Pursuant to section 5410, an injured worker who has previously received workers' compensation benefits either voluntarily paid by the employer or pursuant to an award is entitled to claim benefits for “new and further disability” within five years of the date of injury. (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, 925 [72 Cal.Comp.Cases 778].) If a petition to reopen is filed within the five-year period, the Board has jurisdiction to decide the matter beyond the five-year period. (*Id.*)

California case law has applied section 5410 to cases involving new and further disability to the original body part (*Sarabi v. Workers' Comp. Appeals Bd.*, *supra*, 151 Cal.App.4th at pp. 922–923, 926–927) or injury to a new body part which is alleged as a compensable consequence of the original injury. (*Southern California Rapid Transit Dist., Inc. v. Workers' Comp. Appeals Bd. (Weitzman)* (1979) 23 Cal.3d 158, 165-166 [44 Cal.Comp.Cases 107]; *Liberty Mutual Ins. Co. v. Industrial Accident Com. (Walden)* (1964) 231 Cal.App.2d 501, 504-505 [29 Cal.Comp.Cases 293].) However, irrespective of whether the Appeals Board's continuing jurisdiction is invoked because of new and further injury to an original body part or injury to a new body part as a compensable consequence of the original injury, the new and further disability must be a result or an effect of the prior compensable injury. (*Applied Materials v. Workers' Comp. Appeals Bd.* (2021) 64 Cal.App.5th 1042, 1080 [86 Cal.Comp.Cases 331]; *Sarabi*, *supra*, 151 Cal.App.4th at p. 926; *Weitzman*, *supra*, 23 Cal.3d at pp. 164-166.)

Applying these principles to the current matter, applicant did not file her petition to reopen within five years of the date of injury. The issue we face on appeal is only whether applicant timely filed her petition to reopen and not if she claimed a new industrial injury. Therefore, we will not disturb the WCJ's decision that applicant's petition to reopen was untimely.

II.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on August 6, 2024, and 60 days from the date of transmission is Saturday, October 5, 2024. The next business day that is 60 days from the date of transmission is Monday, October 7, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on October 7, 2024, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on August 6, 2024, and the case was transmitted to the Appeals Board on August 6, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of

³ WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 6, 2024.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 4, 2024

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

**COURTNEY HILTON, IN PRO PER
HAYFORD, FELCHLIN, VALENCIA & McWHORTER, LLP**

JMR/mc

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION
(FILED BY APPLICANT, IN PROPRIA PERSONA, ON JULY 24, 2024)

INTRODUCTION

Applicant, in pro per, filed a timely Petition for Reconsideration under penalty of perjury on July 24, 2024 challenging the Findings and Order (F&O). by the undersigned that issued on July 1, 2024 (dated June 28, 2024). in the above-referenced matter. In the Petition, Applicant asserts that the undersigned failed to consider the "claimant's cumulative claim and pertinent amendments to her application ... filed with the Appeals Board on 7/2/2019 to include discovery of injury to additional body parts, previously concealed from her" and that the "amendment should be the date by which any statutory rule of five years from date of injury would be applied." Applicant further alleges: that she was "still employed on January 7, 2016, and continued to have occupational exposure until the year 2022"; that at Trial the undersigned "refused to consider the applicant's amendments in 2019 and the facts around potential workers' compensation fraud, whereby her heart injuries were not disclosed to her until 2018"; that the Applicant's "understanding of the law [that the statute of limitations would be applied based upon the date the Application was amended] when she requested to temporarily dismiss her claim without prejudice, as she knew additional discovery about the nature of her injury was needed"; that the Minutes of Hearing and Summary of Evidence "were not verbatim and testimony and comments of the applicant and the attorney were falsified by the court"; and, that the undersigned "failed to consider the claimant's pro per status and the inaction of her attorney's [*sic.*] during adjudication of the claim."

No Answer to the Petition has been received in EAMS as of the execution of this Report.

STATEMENT OF RELEVANT FACTS

Courtney Hilton (hereinafter "Applicant"). was a School Psychologist at the time of her alleged CT injury during the period of December 7, 2011 through January 7, 2016. The Application for Adjudication of Claim was received in EAMS on February 16, 2016 (dated February 12, 2016).

The Application was Amended by Applicant on multiple occasions: received by the Los Angeles District Office of the Workers' Compensation Appeals Board (hereinafter "LAO"). on February 1, 2017 wherein the end of the CT was amended to reflect March 30, 2016 (EAMS ID# 62722047); 3 copies of the same Amendment received by LAO on July 2, 2019 wherein the end date of the CT was amended to reflect May 20, 2019 (EAMS ID#s 70732945, 70729082, 70729078); unsigned Amended Application received October 5, 2023 wherein the CT alleges to begin on April 26, 2023 without an ending date (EAMS ID# 48483835); unsigned Amended Application received October 6, 2023 to reflect a start date of April 26, 2012 without an ending date (EAMS ID# 48504282); Amended Application reflecting CT start date of April 20, 2012 without a specific end date noting "ongoing" signed by the Applicant and received in EAMS on November 1, 2023 (EAMS ID# 48894781).

On July 4, 2020, Applicant executed a request for dismissal of her case and requested no further contact which was received in EAMS on July 27, 2020. (EAMS ID# 33219866). In response, WCJ [T] tolman issued a Notice of Intention to Dismiss dated August 11, 2020 and served on all parties on August 17, 2020. No Objection or responsive filings were received and as such WJC Tolman issued an Order Dismissing case without prejudice dated September 29, 2020 and served on October 5, 2020.

The next activity on this matter after the Order Dismissing was a Notice of Representation for Defendant by Hayford Felchlin, including other documents relating thereto, received in EAMS on August 28, 2023. (EAMS ID# 47916265- 47916267).

Applicant then efiled a Petition to Reopen, Declaration of Readiness to Proceed, and three Amended Applications received in EAMS on October 4, 2023, October 5, 2023, October 6, 2023h, and November 1, 2023. (EAMS ID#s: 48463461, 48463865, 48464099, 48483835, 48504282, 48894781). Defendant filed an answer to the Petition to Reopen on November 3, 2023 asserting that the Petition is untimely. (EAMS ID# 48935407).

The matter came on calendar for Priority Conference before WCJ Pusavat on January 3, 2024 and ultimately proceeded on the record at Trial before the undersigned on April 3, 2024 and submitted on that date after Applicant offered testimony. (MOH/SOE EAMS ID# 77847153). The Minutes of Hearing and Summary of Evidence were served by the WCAB on April 15, 2024. (*Id.*).

No Objection to the Summary of Evidence as being inaccurately summarized by the undersigned WCJ has been filed by any party.

The Findings & Order and Opinion on Decision issued by the undersigned WCJ and served on all parties on July 1, 2024. (EAMS ID# 78116577). This WCJ opined that the Petition to Reopen was not timely filed as Applicant's last date of physical work for the employer was in 2016 and as such, a Petition to Reopen first filed in 2023 is not timely made after voluntary dismissal in 2020 at Applicant's own request.

Applicant timely filed her Petition for Reconsideration on July 24, 2024. (EAMS ID# 53017867).

DISCUSSION

RECONSIDERATION OR REMOVAL

Is Applicant's Petition filed on July 24, 2024 a Petition for Reconsideration or a Petition for Removal? Removal is an extraordinary remedy that may be requested to challenge interim and non-final orders issued by a workers' compensation judge. (Cortez v. Workers' Compensation Appeals Board (2006) 136 Cal. App. 4th 596, 600, fn 5;

Kleeman v. Workers' Compensation Appeals Board (2005) 127 Cal. App. 4th 274, 281, fn 2.). The petitioning party must demonstrate that substantial prejudice or irreparable harm will result if removal is not granted (8 CCR 10955(a)) and that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. A Petition for Reconsideration on the other hand is the appropriate mechanism to challenge a final order, decision, or award. (Labor Code Section 5900). An order that resolves or disposes of the substantive rights and liabilities of those involved in a case is a final order. (*See* Maranian v. Workers' Compensation Appeals Board (2000). 81 Cal. App. 4th 1068; Safeway Stores, Inc. v. Workers' Compensation Appeals Board (Pointer) (1980) 104 Cal. App. 3d 528.)

The instant Petition involves Applicant's objection to this WCJ's Findings & Order and Opinion on Decision finding her Petition to Reopen was not timely filed. The Findings & Order is a final order resolving substantive rights and liabilities and therefore Reconsideration is the proper mechanism to challenge this Court's Findings & Order and Opinion on Decision.

STATUTE OF LIMITATIONS PER LABOR CODE § 5410

Labor Code section 5410 states:

Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Section 5407.

(Lab. Code, § 5410.)

Applicant voluntarily requested the dismissal of her case as per Petition efiled with the WCAB in July, 2020. A Notice of Intention issued. Applicant did not Object to the Notice of Intention. A Dismissal without Prejudice issued and was served by the WCAB on October 5, 2020. Applicant did not Object to the Dismissal.

Applicant first sought to again litigate her workers' compensation case in 2023 with the filing of her Petition to Reopen after the Order Dismissing in 2020. Applicant last actually worked for the employer in 2016. Applicant alleges that her employment has never ended with Torrance Unified School District.

Applicant believes that the 5 year statute of limitations set forth by Labor Code sec 5410 is calculated based upon the end date of the cumulative trauma as set forth in the Application for Adjudication of Claim or any subsequent Amendments thereto. She also is of the position that as her employment has never ended that her cumulative trauma claim continues to run and as such the 5 year statute of limitations has not yet begun.

Applicant is incorrect as to the application of Labor Code sec 5410 in this matter. At the latest, Applicant's cumulative trauma runs through her last date of industrial exposure pursuant to Labor Code section 5500.5 (which was in April, 2016) or through to the date that she had concurrence of knowledge and disability pursuant to Labor Code section 5412 (which is evidenced by her February 13, 2016 Declaration of Readiness to Proceed wherein Applicant asserts entitlement to medical treatment and temporary disability with reasoning contained therein). (EAMS ID# 59423861). Based thereon, the 5 year statute of limitations set forth by 5410 is calculated from 2016 as both Labor Code 5500.5 and Labor Code 5412 would result in an end date of the CT in 2016. 2023 is more than 5 years after 2016.

Applicant argues that her filed Amendments to the Application would affect the calculation of the 5 year limitations. They do not. Applicant testified that she has not physically appeared for work after April, 2016 though she asserts that her employment with the school district continues through to today.

Applicant had an unsupported understanding that the statute of limitations is calculated based upon the Amended Applications. To date Applicant has not provided the Court with any legal basis for her understanding – neither at Trial nor within her Petition for Reconsideration. Her understanding is not legally correct.

Applicant asserts that the Summary of Evidence is inaccurate. Applicant did not Object to the Summary of Evidence when served. Applicant did not specify within her Petition for Reconsideration what inaccuracies are contained within the Summary of Evidence. Applicant merely offers an unsupported allegation.

Applicant asserts that the Court failed to consider Applicant's pro per status. Applicant is correct in this assertion: the law is not applied any differently dependent upon whether an Applicant is represented or not. The Labor Code is the Labor Code and is applied in the same manner notwithstanding whether via counsel or in pro per. If Applicant believes that she received "faulty legal representation" she has legal recourse outside the WCAB and same is not relevant to the questions before the Court. Applicant was not represented at the WCAB at the time she requested voluntary dismissal of her case in 2020. Applicant has not been represented at the WCAB thereafter including at the time of filing the Petition to Reopen in 2023 nor at the time of Trial in 2024.

Based on the above, it is this Court's recommendation that Applicant's Petition for Reconsideration be denied as the arguments alleged therein are unsupported and without merit.

RECOMMENDATION

For the reasons stated above, it is respectfully recommended that the Petition for Reconsideration filed by Applicant be ordered denied.

Dated: 8/6/2024

HON. ELISHA LANDMAN
Workers' Compensation Judge