

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

EDWARD SANTOS, *Applicant*

vs.

**DEPARTMENT OF GENERAL SERVICES, legally uninsured,
adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants***

Adjudication Number: ADJ12772997

Sacramento District Office

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration of the Findings of Fact (Findings) issued on January 13, 2021, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues.¹ This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that applicant sustained an industrial injury to his neck, and claimed to have sustained industrial injury to his low back, psyche, and internal body systems on November 3, 2008. The WCJ further found that applicant's claim was barred by the statute of limitations.

Applicant contends, in pertinent part, that the WCJ erred because the statute of limitations may run from the last provision of benefits under Labor Code section 5405(c) and that although evidence was not provided, it is undisputed that defendant has continued to provide benefits to applicant in this matter.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

¹ Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board and a new panel member was appointed in her place.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration we will amend the January 13, 2021 Findings to add that applicant was employed by defendant Department of General Services (Finding 1) and to defer the issue of the statute of limitations (Finding 2), and otherwise affirm the Findings.

FACTS

While employed by defendant, applicant sustained an industrial injury to his neck and claimed injury to other body parts, when he was involved in a motor vehicle accident on November 3, 2008. (Minutes of Hearing, November 2, 2020 (MOH) p. 2; Exhibit 8, Vehicle Accident Report, November 3, 2008.) Applicant completed a claim form. (Exhibit 6, DWC Claim Form.) He was evaluated by a workers' compensation doctor on November 4, 2008. (Exhibit 4, Natomas Occupational Health, November 4, 2008.)

According to his Petition, he alleges that thereafter he sought treatment through his private health insurance. Subsequently, applicant sought benefits for his workers' compensation claim. State Fund initially delayed benefits while investigating whether the current complaints related back to the industrial injury (Joint Exhibit 2), but issued a denial letter on March 22, 2013. (Joint Exhibit 3.)

Applicant filed an Application for Adjudication (Application) on November 27, 2019.

In his Petition, applicant alleges that he continued to treat thereafter through his private medical insurance through his Cal-PERS disability retirement, which applicant alleges is employer-funded. However, there is no evidence in the record that establishes this allegation.

In its Answer, defendant alleges that applicant was employed by the Department of General Services (DGS) until 2013, and that thereafter applicant's medical insurance was provided through Cal-PERS, and that "State Compensation Insurance Fund, the adjusting agent and attorney of record does not represent Cal-PERS in this matter." (Answer, p. 2.) It does not dispute that applicant continued to receive medical treatment, but it contends that the last day that benefits were provided by the employer DGS was in 2013.

DISCUSSION

I.

Only the Appeals Board is statutorily authorized to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.)² The Appeals Board must conduct de novo review as to the merits of the petition and review the entire proceedings in the case. (Lab. Code, §§ 5906, 5908; see Lab. Code, §§ 5301, 5315, 5701, 5911.) Once a final decision by the Appeals Board on the merits of the petition issues, the parties may seek review under Labor Code section 5950, but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951.)

Former Labor Code section 5909 provided that a petition was denied by operation of law if the Appeals Board did not “act on” the petition within 60 days of the petition’s filing with the ‘appeals board’ and not within 60 days of its filing at a DWC district office. A petition for reconsideration is initially filed at a DWC district office so that the WCJ may review the petition in the first instance and determine whether their decision is legally correct and based on substantial evidence. Then the WCJ determines whether to timely rescind their decision, or to prepare a report on the petition and transmit the case to the Appeals Board to act on the petition. (Cal. Code Regs., tit. 8, §§ 10961, 10962.)³ Once the Appeals Board receives the case file, it also receives the petition in the case file, and the Appeals Board can then “act” on the petition.

If the case file is never sent to the Appeals Board, the Appeals Board does not receive the petition contained in the case file. On rare occasions, due to an administrative error by the district office, a case is not sent to the Appeals Board before the lapse of the 60-day period. On other rare

² The use of the term ‘appeals board’ throughout the Labor Code refers to the Appeals Board and not a DWC district office. (See e.g., Lab. Code, §§ 110, et. seq. (Specifically, § 110 (a) provides: “‘Appeals board’ means the Workers’ Compensation Appeals Board. The title of a member of the board is ‘commissioner.’”).) Section 111 clearly spells out that the Appeals Board and DWC are two different entities.

³ Petitions for reconsideration are required to be filed at the district office and are not directly filed with the Appeals Board. (Cal. Code Regs., tit. 8, § 10995(b); see Cal. Code Regs., tit. 8, § 10205(l) [defining a “district office” as a “trial level workers’ compensation court.”].) Although the Appeals Board and the DWC district office are separate entities, they do not maintain separate case files; instead, there is only *one case file*, and it is maintained at the trial level by DWC. (Cal. Code Regs., tit. 8, § 10205.4.)

When a petition for reconsideration is filed, the petition is automatically routed electronically through the Electronic Adjudication Management System (EAMS) to the WCJ to review the petition. Thereafter, the entire case file, *including the petition for reconsideration*, is then electronically transmitted, i.e., sent, from the DWC district office to the Appeals Board for review.

occasions, the case file may be transmitted, but may not be received and processed by the Appeals Board within the 60-day period, due to an administrative error or other similar occurrence. When the Appeals Board does not review the petition within 60 days due to irregularities outside the petitioner's control, and the 60-day period lapses through no fault of the petitioner, the Appeals Board must then consider whether circumstances exist to allow an equitable remedy, such as equitable tolling.

It is well-settled that the Appeals Board has broad equitable powers. (*Kaiser Foundation Hospitals v. Workers' Compensation Appeals Board* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] citing *Bankers Indem. Ins. Co. v. Indus. Acc. Com.* (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719]; see *Truck Ins. Exchange v. Workers' Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd. (Lutz)* (2013) 218 Cal.App.4th 258, 268 [78 Cal.Comp.Cases 758]; *Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96].) It is an issue of fact whether an equitable doctrine such as laches applies. (*Kwok, supra* 2 Cal.App.5th at p. 402.) The doctrine of equitable tolling applies to workers' compensation cases, and the analysis turns on the factual determination of whether an opposing party received notice and will suffer prejudice if equitable tolling is permitted. (*Elkins v. Derby* (1974) 12 Cal.3d 410, 412 [39 Cal.Comp.Cases 624].) As explained above, only the Appeals Board is empowered to make this factual determination.⁴

In *ShIPLEY v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], the Appeals Board denied applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of Labor Code section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant's petition was tolled during the period that the file was misplaced, especially in light of the fact that the Appeals Board had repeatedly assured the petitioner that it would rule on the merits of the petition. (*Id.*, at p. 1108.)

⁴ Labor Code section 5952 sets forth the scope of appellate review, and states that: "Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence." (Lab. Code, § 5952; see Lab. Code, § 5953.)

Like the Court in *Shipley*, “we are not convinced that the burden of the system’s inadequacies should fall on [a party].” (*Ibid.*) The touchstone of the workers’ compensation system is our constitutional mandate to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.” (Cal. Const., art. XIV, § 4.) “Substantial justice” is not a euphemism for inadequate justice. Instead, it is an exhortation that the workers’ compensation system must focus on the *substance* of justice, rather than on the arcana or minutiae of its administration. (See Lab. Code, § 4709 [“No informality in any proceeding . . . shall invalidate any order, decision, award, or rule made and filed as specified in this division.”].)

With that goal in mind, all parties to a workers’ compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) If a timely filed petition is never considered by the Appeals Board because it is “deemed denied” due to an administrative irregularity not within the control of the parties, the petitioning party is deprived of their right to a decision on the merits of the petition. (Lab. Code, §5908.5; see *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754-755 [33 Cal.Comp.Cases 350]; *LeVesque, supra* 1 Cal.3d 627, 635.) Just as significantly, the parties’ ability to seek meaningful appellate review is compromised, raising issues of due process. (Lab. Code, §§ 5901, 5950, 5952; see *Evans, supra*, 68 Cal.2d 753.)

Substantial justice is not compatible with such a result. A litigant should not be deprived of their due process rights based upon the administrative errors of a third party, for which they bear no blame and over whom they have no control. This is doubly true when the Appeals Board’s action in granting a petition for reconsideration has indicated to the parties that we will exercise jurisdiction and issue a final decision on the merits of the petition, and when, as a result of that representation, the petitioner has forgone any attempt to seek judicial review of the “deemed denial.” Having induced a petitioner not to seek review by granting the petition, it would be the height of injustice to then leave the petitioner with no remedy.

In this case, the WCJ issued the Findings on January 13, 2021, and applicant filed a timely Petition on January 18, 2021. According to EAMS, the case file was transmitted to the Appeals Board on February 1, 2021. However, for reasons that are not entirely clear from the record, the Appeals Board did not actually receive notice of and review the Petition until May 17, 2021.

Accordingly, the Appeals Board failed to act on the Petition within 60 days, through no fault of the parties. The Appeals Board granted the Petition on May 17, 2021, the same day it became aware of it. In so doing so, we sent a clear signal to the parties of our intention to exercise jurisdiction and issue a final decision after reconsideration. Neither party expressed any opposition to this course of action, and it appears clear from the fact that neither party sought judicial review of our grant of reconsideration that both parties have acted in reliance on our grant.

Under the circumstances, the requirements for equitable tolling have been satisfied in this case. Accordingly, our time to act on applicant's Petition was equitably tolled until 60 days after May 17, 2021. Because we granted the petition on May 17, 2021, our grant of reconsideration was timely, and we may issue a decision after reconsideration addressing the merits of the petition.

II.

The statute of limitations is an affirmative defense and defendant, as the party asserting the defense, has the burden of proof. (Lab. Code⁵, § 5705.) Under section 5405, the limitations period for which a claim must be filed is the later of (a) one year from the date of injury, (b) one year from the last provision of disability payments per Labor Code sections 4650 et. seq., or (c) one year from the last provision of medical benefits.

“Limitations provisions in the [workers'] compensation law must be liberally construed in favor of the employee unless otherwise compelled by the language of the statute, and such enactments should not be interpreted in a manner which will result in a loss of compensation.” (*Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal.App.3d 590, 595, 40 Cal. Comp. Cases 784, 787 (internal citations omitted).)

Labor Code section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” The WCJ's opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35

⁵ All future references are to the Labor Code unless noted.

Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

Here, and reviewing the parties' pleadings, the parties appear to agree that applicant continued to treat for his injury through private medical insurance, however, the parties appear to dispute the issue of whether applicant's treatment was provided by the employer. According to applicant's Petition, his medical insurance was provided through Cal-PERS disability retirement. According to defendant's Answer, applicant's employer was DGS, and after his retirement from DGS in 2013, his medical treatment was paid by his insurance through Cal-PERS as part of his retirement benefits, and thus, benefits were not provided by applicant's employer. Yet, there is simply no evidence by applicant or by defendant with respect to this legal issue.

Thus, we cannot decide this issue as the parties have neither stipulated to the facts necessary to address the dispute, nor provided evidence in the record. Therefore, pursuant to *Hamilton, supra*, the matter must be returned to the trial level, so that the WCJ may decide the issue in the first instance. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal. Comp. Cases 584].)

Accordingly, as our Decision After Reconsideration we will amend the January 13, 2021 Findings to add that applicant was employed by DGS on November 3, 2008 (Finding 1) and to defer the issue of the statute of limitations (Finding 2), and otherwise affirm the Findings.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact issued on January 13, 2021, is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant sustained an industrial injury to his neck and claims to have sustained injury to his low back, psych, internal and body systems while employed by the Department of General Services on November 3, 2008.
2. The issue of whether applicant's claim is barred by the statute of limitations is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

JOSEPH V. CAPURRO, COMMISSIONER
CONCURRING, NOT SIGNING

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.

**EDWARD SANTOS
MASTAGNI HOLSTEDT, A.P.C.
STATE COPENSATION INSURANCE FUND, LEGAL**

EDL/mc



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