

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

**BRAD PEIRCE (Deceased),
SHERRY HAYES-PEIRCE, *Applicant***

vs.

**STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS AND
REHABILITATION; STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ14726665
Salinas District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of the “Findings of Fact, Award, Orders and Opinion on Decision” (F&A) issued on July 15, 2025, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant’s¹ claim of death benefits is not barred by the statute of limitations contained in Labor Code² section 5406(b).

Defendant contends that the WCJ erred because the date of injury in this matter, from which the death claim is based, occurred on February 22, 2012, and thus, applicant’s claim of benefits is precluded by section 5406.

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

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ’s Report.³ Based upon our preliminary review of the record, we will grant the Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further

¹ For ease of reading, we use the term applicant interchangeably in this opinion to refer to the decedent applicant and the claimants who have filed for death benefits.

² All future references are to the Labor Code unless noted.

³ Commissioner Razo was on the panel that issued a previous decision. He was unable to participate, and a new panelist was appointed in his place.

review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to section 5950 et seq.

FACTS

This matter was previously decided on reconsideration, wherein the Appeals Board found that applicant's death industrial, but otherwise returned the matter to the trial level to determine whether the death claim was barred by the statute of limitations. (Opinion and Decision After Reconsideration, February 28, 2025.)

Thereafter the matter was resubmitted, in pertinent part, on the issues of the statute of limitations under section 5406(b) and the date of injury pursuant to section 5412. (Minutes of Hearing, June 5, 2025, p. 2, lines 22-25.)

The WCJ summarized the medical evidence in the Report, as follows:

The Agreed Medical Evaluator in this case is Jonathan Ng, M.D. Dr. Ng issued numerous reports both before and after Mr. Peirce's death on March 10, 2021 (JOINT EX'S. J-1 through J-24 and DEFT'S EX'S. D-1 and D-2. Dr. Ng was deposed twice (JOINT EX'S. J-25 and J-26).

In his report dated September 7, 2012, Dr. Ng re-evaluated Mr. Peirce on September 6, 2012, and diagnosed him with Narrow complex tachycardia and provided for 8% WPI "*at this time before ablation*" and offered a P&S date of 9/6/12, with a notation, "*see above discussion.*" (p. 17) Dr. Ng also provided a diagnosis of hypertension with 5% WPI and a permanent and stationary date of 9/6/12. (pp. 23-24) (DEFT'S EX. D-1).

For the cumulative trauma claim through February 22, 2022, Defendant PETITIONER paid permanent disability benefits beginning 11/7/02, for the period 9/6/12 through 12/3/14, and then again on 1/23/20 for the period 12/5/14 – 5/22/18. (DEFT'S EX. D-4).

In his report dated May 4, 2021, Dr. Ng reviewed records relating to Mr. Peirce's death and opined on page 44 that Mr. Peirce's hypertension and coronary atherosclerosis had rendered him more difficult to be resuscitated once he went into cardiac pulmonary arrest. Dr. Ng requested certain information including the opportunity to speak with Mrs. Hayes- Peirce as well as Mr. Peirce's treating cardiologist, Dr. Kosar. (JOINT EX. J-6).

These requests were authorized, and Dr. Ng spoke with both Mrs. Hayes-Peirce and Dr. Kosar (separately) on May 28, 2021, before authoring a report dated May 29,

2021, with his final conclusions regarding the claim for death benefits. (JOINT EX. J-5).

In that May 29, 2021, report, pages 41-42, Dr. Ng ultimately concluded (as testified to at his deposition on May 27, 2021, JOINT EX. J-26), that the industrial conditions of hypertensive cardiac disease and coronary atherosclerosis were contributing factors to Mr. Peirce's death in that the hypertensive cardiac disease and coronary atherosclerosis rendered him more difficult to be resuscitated once he went into cardiopulmonary arrest. (JOINT EX. J-5). This opinion was confirmed in Dr. Ng's later reports.

On page 24 of that May 29, 2021, report, Dr. Ng opined that for the coronary atherosclerosis there was 3% WPI, with no prior temporary disability and a permanent and stationary date of January 19, 2018. (Joint Exhibit J-5). Dr. Ng's earlier January 19, 2018, report was the first time Dr. Ng assigned any impairment or disability relating to coronary atherosclerosis. (Joint Exhibit J-20).

On pages 21-22 of Dr. Ng's May 29, 2021, report, Dr. Ng confirmed a permanent and stationary date of February 23, 2017, for the hypertensive condition. (JOINT EX. J-5). The rating of 29% WPI for hypertensive heart disease was first assigned in Dr. Ng's report dated February 24, 2017, based on an updated echocardiogram revealing 2 out of 3 criteria of left ventricular hypertrophy and a reevaluation on February 23, 2017. (JOINT EX. J-24).

Mrs. Hayes-Peirce testified that Dr. Ng's report dated May 4, 2021 (JOINT EX. J-6) was the first time she received a medical report from a doctor explaining the relationship between the work injury and Mr. Peirce's death. She further testified that she had reviewed the earlier January 19, 2018, report with Mr. Peirce where Dr. Ng has assigned impairment for his coronary atherosclerosis for the first time. (JOINT EX. J-20) (SOE @ p. 5).

(WCJ's Report, pp. 4-5.)

DISCUSSION

I.

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.

(§ 5909.)

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 18, 2025, and 60 days from the date of transmission is Friday, October 17, 2025. This decision is issued by or on October 17, 2025, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on August 18, 2025,⁴ and the case was transmitted to the Appeals Board on August 18, 2025. 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 the Report in compliance with section

⁴ There appears to be a typographical error at the bottom of the report indicating service may have occurred on August 1, 2025. This appears impossible as the Report itself is dated August 18, 2025, and the Petition for Reconsideration was first filed on August 8, 2025. We have treated this notation as a typographical error and deem it corrected to reflect that the Report was served on August 18, 2025, which conforms to fact.

5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 18, 2025.

II.

Section 5406(b) governs the commencement of claims for death benefits and it states: “Proceedings shall not be commenced more than one year after the date of death, nor more than 240 weeks from the date of injury.”

The injury claimed in this matter is a cumulative injury. Date of injury for cumulative injury claims is ordinarily established under section 5412, which states: “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.” (§ 5412.)

As used in section 5412, “disability” means either compensable temporary disability or permanent disability. (*Chavira v. Workers’ Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463 [56 Cal.Comp.Cases 631]; *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998 [69 Cal.Comp.Cases 579].) Medical treatment alone is not “disability” for purposes of determining the date of a cumulative injury pursuant to section 5412, but it may be evidence of compensable permanent disability. (*Rodarte, supra*, 119 Cal.App.4th at p. 1005.) Likewise, modified work is not a sufficient basis for finding compensable temporary disability, but it may be indicative of a compensable permanent disability, especially if the worker is permanently precluded from returning to their usual and customary job duties. (*Id.*)

The existence of disability is a medical question beyond the bounds of ordinary knowledge, and, as such, will typically require medical evidence. (*City & County of San Francisco v. Industrial Acc. Com. (Murdock)* (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103]; *Bstandig v. Workers’ Comp. Appeals Bd.* (1977) 68 Cal. App. 3d 988 [42 Cal.Comp.Cases 114].) Knowledge requires more than an uninformed belief. Because the existence of disability typically requires medical evidence, an “applicant will not be charged with knowledge that his disability is job related without medical advice to that effect unless the nature of the disability are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability.” (*City of Fresno v. Workers’ Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 473 [50 Cal.Comp.Cases 53].)

The dates of injurious exposure under section 5500.5 and the date of injury under section 5412 **are separate analyses**. While the two dates may coincide, **they are not synonymous**. It appears that defendant may be conflating these two dates interchangeably.

As noted by the WCJ in the Report:

In *Austin*, the Court of Appeal recognized that "*one exposure may result in two distinct injuries*." *Western Growers Insurance Co. v. WCAB (Austin)* (1993) 58 CCC 323, 326. That certainty was reflected in the case of *Chevron U.S.A., Inc. v. WCAB* [cite]. In that case, an employee was exposed to asbestos and suffered compensable disability from asbestosis in 1976. More than 10 years later, in 1987, the employee first manifested disability as a result of mesothelioma. Because the medical evidence established that asbestosis and mesothelioma were separate and distinct pathological disease processes, the court found different dates of injury under LC 5412 for each condition. *Chevron U.S.A., Inc. v. WCAB (Steele)* (1990) 55 CCC 107.

Similarly, in *General Dynamics Corp. v. WCAB (Anderson)*, an applicant settled a claim in 1991 by way of compromise and release for injuries to her "lungs, respiratory system, cardiovascular system, cardiopulmonary system, psyche, [and] various other part of body as documented" as a "*direct result of her industrial exposure to noxious and toxic type fumes, specifically ammonia*" from 1979 to 1988. Five years after her settlement and eight years after she last worked for the employer, the applicant filed a new claim for a pulmonary disability from exposure to asbestos, dust and noxious fumes. The employer argued that the C&R barred the subsequent claim. Relying on *Steele*, the court found that more than one compensable injury can result from exposure to asbestos and remanded for further proceedings to determine whether the subsequent claim was barred because the effects of the asbestosis were evident at the time of the settlement. *General Dynamics Corp. v. WCAB (Anderson)* (1999) 64 CCC 515. See also *Uniroyal Goodrich Tire Co. v. WCAB (Hurt, Crowders)* (1990) 55 CCC 259 (writ denied).

Since then, the appeals board has used that concept to hold that the settlement of cumulative trauma injury does not bar a claim for a related but distinct injury arising from the same period of employment.

(WCJ's Report, p. 8.)

The WCJ stated:

However, similar to *Anderson, supra*, applicant developed a new compensable condition in the form of hypertensive heart disease years after the finding of industrial hypertension. Specifically, the hypertensive heart disease found by Dr. Ng in his report of February 24, 2017, based on an updated echocardiogram. (JOINT EX. J-5). In his May 29, 2021 report, pages 41-42, Dr. Ng ultimately concluded (as testified to at his deposition on May 27, 2021, JOINT EX. J-26), that the industrial conditions of hypertensive cardiac disease and coronary atherosclerosis were contributing factors to Mr. Peirce's death in that the hypertensive cardiac disease and coronary atherosclerosis rendered him more difficult to be resuscitated once he went into cardiopulmonary arrest. (JOINT EX. J-5). This opinion was confirmed in Dr. Ng's later reports.

(WCJ's Report, p. 10.)

Notwithstanding the WCJ's observations above, the WCJ did not make any finding of fact as to any date of injury in this case. It would appear that the appropriate disposition may be to vacate the July 15, 2025 F&A and return this matter for another trial. However, taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

We observe that before returning this matter to the trial level, it would appear that given the long and complex history of this case, the parties may benefit from mediation of this dispute with an Appeals Board mediator. Mediation is voluntary. If the parties do not wish mediation, or should the parties proceed to mediation, but fail to resolve their dispute, an opinion and decision after reconsideration will issue thereafter.

III.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. I.A.C.*

(*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. I.A.C. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See §§ 5907, 5908, 5908.5; see also *Gonzales v. I.A.C.* (1958) 50 Cal.2d 360, 364.) “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”; see generally § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a “threshold” issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].)

Section 5901 states in relevant part that:

No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ...

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

IV.

Accordingly, we grant the Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. *While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov.*

Accordingly, we grant defendant's petition for reconsideration.

IT IS ORDERED defendant's Petition for Reconsideration of the Findings of Fact, Award, Orders and Opinion on Decision issued on July 15, 2025, by the workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 17, 2025

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

**SHERRY HAYES-PEIRCE
DILLES LAW GROUP
STATE COMPENSATION INSURANCE FUND**

EDL/cs

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