WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DARLENE GIST, *Applicant*

vs.

COUNTY OF LOS ANGELES; permissibly self-insured, administered by SEDGWICK, *Defendants*

Adjudication Numbers: ADJ10065606, ADJ11140372, ADJ15674888
Long Beach District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant filed a Petition for Reconsideration (Petition) of the Joint Findings and Award and Order (FA&O) issued August 12, 2025, wherein the workers' compensation administrative law judge (WCJ) found in part that applicant while employed by defendant sustained injury to multiple body parts, with permanent disability inextricably intertwined of 64% in ADJ10065606 and ADJ15674888, separate 14% permanent disability in ADJ11140372, and end dates for cumulative injury of April 23, 2009, in ADJ15674888, and March 12, 2018, in ADJ11140372.[1]

The Petition asserts the WCJ should have found psychiatric disability in both ADJ10065606 and ADJ15674888, and that applicant's injuries were catastrophic such that 76% permanent disability should be awarded in ADJ10065606 and ADJ15674888.

Defendant filed an Answer which asserts the Petition is untimely and otherwise recommends its dismissal.

The WCJ's Report and Recommendation (Report) recommends the Petition be denied.

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[1] Although the caption of the FA&O lists the employer as "County of Los Angeles; Department of Public Social Services," we use simply "County of Los Angeles" as employer consistent with the parties' stipulations contained in the Minutes of Hearing and Summary of Evidence dated March 15, 2022, and as adopted by the Minutes of Hearing dated May 19, 2025.

We have considered the allegations of the Petition, the Answer and the contents of the Report of the WCJ with respect thereto.

After our review of the record and for the reasons discussed below, we will grant reconsideration, rescind the FA&O and return the case to the WCJ for the parties to develop the record consistent with this decision.

I.

Former Labor Code section 5909[2] 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. (Former 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.

(Lab. Code, § 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 September 22, 2025, and 60 days from the date of transmission is Friday, November 21, 2025. This decision issued by or on November 21, 2025, so that we have timely acted on the Petition as required by section 5909(a).

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

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 shall be notice of transmission.

According to the proof of service, the Report was served on September 22, 2025, and the case was transmitted to the Appeals Board on September 22, 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 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 22, 2025.

II.

In the Answer, defendant asserts the Petition is untimely because applicant's attorney was served via email, and therefore "the extra five days for mailing per CCR § 10605 does not apply." Further, "even allowing for an additional five days for mailing, Applicant's Petition for Reconsideration would still be late by two days." (Answer, page 3, lines 4-8.)

Defendant is mistaken.

A party has 20 days after the service of any final order, decision, or award to seek reconsideration by filing a petition with the district office having venue. (LC § 5903; Cal. Code Regs., tit. 8, § 10904(a).) The time to act is extended depending on the method of service:

> When any document is served by mail, fax, *e-mail or any method other than personal service*, the period of time for exercising or performing any right or duty to act or respond shall be extended by:
>
> (1) Five calendar days from the date of service, if the place of address and the place of mailing of the party, attorney or other agent of record being served is within California.

(Cal. Code Regs., tit. 8, § 10605(a)(1), emphasis added.) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.)

Here, according to the proof of service and amended proof of service, the FA&O was served via both mail and email depending on the party on August 12, 2025.[3] As service was made by "method other than personal service," the time to act is extended by five days from the date of service. Therefore, a Petition must be filed within 25 days of August 12, 2025, or by September 6, 2025. September 6, 2025, was a Saturday and therefore the time limit is extended to the next business day, which was Monday, September 8, 2025.

The Petition was filed on Monday, September 8, 2025. The Petition is timely.

III.

There are forty-seven discrete exhibits submitted over two separate trials together with the limited testimony of the applicant during the first trial.[4] Although the entire record has been considered, due to its size we do not digest it here and instead refer to the record only to the extent it is necessary to understand our decision.

The Application for Adjudication of Claim in ADJ10065606 for the specific injury of July 29, 2015, was filed over a decade ago on August 10, 2025. Applicant's cases have been actively litigated, including the Board denying removal of a discovery order. Over time cases were added and dismissed, with the parties finally completing and signing a Pre-Trial Conference Statement (PTCS) filed January 24, 2022, in the three cases at issue here.

Trial was held before Judge Siqueiros on March 15, 2022, with Joint Findings and Award and Order issuing June 17, 2022. Defendant sought reconsideration and in the resulting report the WCJ recommended reconsideration be granted to allow further discovery. On August 23, 2022, we issued an Opinion and Order Granting Petition for Reconsideration to allow sufficient opportunity to further study the factual and legal issues in the cases. On September 27, 2023, we issued our Opinion and Decision After Reconsideration adopting the WCJ's report, rescinding the WCJ's decision, and returning the cases to the WCJ for further proceedings and decision.

WCJ Siqueiros retired by the time these cases returned to the trial level. The cases were assigned to a new WCJ who conducted further proceedings including a second trial on May 19, 2025, ultimately resulting in the FA&O subject to reconsideration here.

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[3] It appears an amended proof of service was issued to properly include all three case numbers as the first proof only listed one.

[4] Although there are forty-eight identified exhibits, only forty-seven are discrete because Joint Exhibit 38, Lawrence M. Richman, M.D., Inc., December 14, 2024, is duplicated as Joint Exhibit 39.

At the May 19, 2025, trial the WCJ memorialized that the "issues and stipulations are as stated in the Minutes of Hearing and Summary of Evidence of March 15, 2022," and added five additional issues to apply to all three cases: "1. Whether there is a separate CT injury from 2015 to 2018, per the findings of AME Dr. Nathan. 2. Whether there is a CT injury ending in 2009 rather than 2012, per the findings of AME Dr. Newton. 3. Whether Defendant is entitled to credit for benefits paid under ADJ8149230, which was previously dismissed by the WCAB. 4. Whether the reporting of AME Dr. Miller is substantial evidence on the issue of whether three dates of injury were inextricably intertwined. 5. Whether the reporting of AME Dr. Lipper is substantial evidence on the dates of CT injury." (Minutes of Hearing, May 19, 2025, page 2, lines 1-14.)

To meaningfully present the relevant procedural history of each case, the following partial summary of stipulations, issues and findings, are presented individually by case number.

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ADJ10065606

The March 15, 2022, Minutes of Hearing, provides that in ADJ10065606 applicant sustained a specific injury on July 29, 2015, to the head, neck, cervical spine, left hip, right ear, and memory loss. (Minutes of Hearing and Summary of Evidence, March 15, 2022, page 2, lines 20-23.) The accepted body parts mirror those listed in the signed PTCS filed January 24, 2022. Issue 9.B. of the Minutes is listed as "[w]hether defendant will be allowed to withdraw from the stipulations or not, and if so, what should be the correct award with regard to this case number." The WCJ clarified the "defendant is claiming that there should only be a stipulation of injury to the cervical spine; and with regard to the head, it should read as an agreement of injury to only post-traumatic head syndrome and headaches." (Minutes of Hearing and Summary of Evidence, March 15, 2022, page 3, lines 17-19, lines 21-24.)

In the August 12, 2025, FA&O the WCJ found a specific July 29, 2025, injury to the head, neck, cervical spine, left hip, right ear, memory loss, and psyche in ADJ10065606. (FA&O, page 1, finding 1.)

ADJ15674888

The March 15, 2022, Minutes of Hearing, provide that in ADJ15674888 through the cumulative period ending June 6, 2012, applicant claims injury to right elbow, right hand, left elbow, left hand, cervical, lumbar, psyche, internal, fibromyalgia, respiratory, asthma, ENT, pulmonary, sleep, teeth, and eye. (Minutes of Hearing and Summary of Evidence, March 15, 2022,

page 5, lines 9-13.) Included in the Minutes under issue 10 is: "A. Date of injury per Labor Code Section 5412 with applicant claiming 6-6-2012 and defendant claiming 11-15-2017. B. Labor Code Sections 4663, 3208.3, and 46601(c)." (Minutes of Hearing and Summary of Evidence, March 15, 2022, page 6, lines 8-11.)

In the August 12, 2025, FA&O the WCJ found a cumulative injury from 1988 through April 23, 2009, with injury to the cervical spine, lumbar spine, both elbows, both hands, respiratory system, headaches, dental, gastrointestinal system, cognitive impairment, and sleep, but no injury was found to the eyes and fibromyalgia, in ADJ15674888. (FA&O, page 1, finding 2.)

ADJ11140372

The March 15, 2022, Minutes of Hearing, provide that in ADJ11140372 through the cumulative period ending November 15, 2017, applicant sustained injury to dental, both elbows, cervical spine, and lumbar spine, and claims injury to respiratory system, asthma, allergies, eyes, head, including headaches, gastritis, fatigue, IBS, hands, wrists, fingers, knees, nose, throat, brain, including sleep disorder, psyche and fibromyalgia. (Minutes of Hearing and Summary of Evidence, March 15, 2022, page 4, lines 3-9.) Included under issue 10 in this case is: "A. Date of injury per Labor Code Section 5412 with applicant claiming 6-6-2012 and defendant claiming 11-15-2017." (Minutes of Hearing and Summary of Evidence, March 15, 2022, page 5, lines 4-5.)

In the August 12, 2025, FA&O the WCJ found a cumulative injury from 2015 through March 12, 2018, to the psyche but no injury to respiratory system, asthma, allergies, eyes, head (headaches), gastritis, fatigue, IBS, hands, wrists, fingers, feet, knees, teeth, nose, throat, or brain (sleep disorder), in ADJ11140372. (FA&O, page 2, finding 3.)

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The WCJ discussed determining the date of injury for the cumulative claims in the FA&O, Opinion on Decision. "*Neither of the parties took steps to obtain further medical evidence in any area, including the areas identified by WCJ Siqueiros*. Based on the areas of concern that he had identified and review of the multiple AME reports in the file, the current WCJ issued interrogatories to five of the AMEs after they were reviewed and approved by the parties. Those were: Orthopedic AME Dr. Newton, Internal AME Dr. Lipper, Dental AME Dr. Miller, psychiatric AME Dr. Nathan and Neurology AME Dr. Richman. After these doctors provided supplemental reports in response to the interrogatories, Defendant requested further comment from each of them after they reviewed the supplemental reports from each of the other AMEs. Those ten reports were

admitted into evidence." (FA&O, Opinion on Decision, page 1, emphasis added.) The WCJ considered the opinions of the five listed physicians to arrive at the cumulative injury dates. (FA&O, Opinion on Decision, pages 3-5.)

IV.

Although these cases raise a multitude of issues including whether the disability is inextricably intertwined, apportionment pursuant to section 4663, psychiatric injury pursuant to section 3208.3, and compensable psychiatric injury pursuant to section 4660.1(c), none of these issues may be properly addressed without the necessary finding of injury date or dates for the cumulative cases. There is a lack of substantial evidence concerning the dates of injury pursuant to sections 5500.5 and 5412 that requires rescission of the FA&O.

We note 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. Industrial Acc. Com.* (*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. Industrial Acc. Com.* (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].)

A cumulative injury is defined as one "occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment," and the date of a cumulative injury shall be the date determined under section 5412. (Lab. Code, § 3208.1.)

Employer liability, however, is limited to those employers who employed the employee during the one year "immediately preceding either the date of injury, as determined pursuant to Section 5412, or the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury, whichever occurs first." (Lab. Code § 5500.5(a).)

Section 5412 states: "The date of injury in cases of occupational diseases or cumulative injuries is the 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.) Thus, the date of injury per section 5412 is a specific day and may or may not be the same day as the end date of industrial exposure and liability established by section 5500.5.

Either compensable temporary disability or permanent disability is required to satisfy section 5412, and medical treatment alone is not disability, but it may be evidence of compensable permanent disability. (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (2004) 119 Cal.App.4th 998, 1005-1006 [69 Cal.Comp.Cases 579].)

The section 5412 date of injury establishes which substantive laws apply. This is important because many Labor Code sections are only operative if the date of injury falls after their enactment or before they sunset. For example, section 4660.1(c)(1) only bars an increase in the employee's permanent impairment rating for a psychiatric injury that is a compensable consequence of a physical injury occurring on or after January 1, 2013. If this bar is triggered, the employee may receive an increased impairment rating for a compensable consequence psychiatric injury only if the injury falls under one of the statutory exceptions outlined in section 4660.1(c)(2). (*Wilson v. State Cal Fire* (2019) 84 Cal.Comp.Cases 393, 403 (Appeals Board en banc).)

Here, the WCJ's findings as to the cumulative dates of injury do not address the requirements of section 5412 and, separately, are not supported by substantial evidence, such that the record must be developed.

A.

A decision must be based on admitted evidence in the record and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16].) Where the issue in dispute is a medical one, expert medical evidence is ordinarily needed to resolve the issue. (*Insurance Co. of North America v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 905, 912 [46 Cal.Comp.Cases 913]; *Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].)

Medical evidence that industrial injury was reasonably probable, although not certain, constitutes substantial evidence for finding injury AOE/COE. (*McAllister v. Workers' Comp. Appeals Bd*. (1968) 69 Cal.2d 408, 417 [33 Cal.Comp.Cases 660].) Although the factual issue of the occurrence of the alleged incident is a determination for the WCJ, the issue of injury is a medical determination, which requires expert medical opinion. As the Court of Appeal explained: "Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is

essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence. Expert testimony is necessary where the truth is occult and can be found only by resorting to the sciences." (*Peter Kiewit Sons*, *supra*, page 838.)

"Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].

It is noteworthy that of the medical experts who provided opinions relied on by the WCJ, one physician last evaluated the applicant almost a decade ago (Exhibit J2, Larence M. Richman, M.D., Inc., September 19, 2016, [Incorrectly dated September 6, 2016, in the March 15, 2022, Minutes of Hearing, Summary of Evidence]), three physicians last evaluated the applicant more than seven years ago (Exhibit J7, Myron L. Nathan, M.D., October 1, 2018; Exhibit J10, Arthur E. Lipper, M.D., October 10, 2018; and Exhibit J11, Peter M. Newman, M.D., November 13, 2018), and the fifth medical expert, dentist Miller, last evaluated the applicant more than five years ago (Exhibit J24, Jeffrey T. Miller, D.D.S., July 24, 2020).

It is difficult to find such medical opinions substantial when they are based on evaluations of the applicant that are becoming opaque with the mists of time. This difficulty is further attenuated by the more recent supplemental reports of the neurology and psychiatric experts. "I am agreeable to re-evaluating the claimant to be certain there is no contribution of Dilantin's multiple side effects as described with respect to the patient's industrial claim. I believe it would also be useful after evaluating the claimant that I have a brief telephone call with the patient's treating physician for seizures who has been prescribing Dilantin to the patient." (Joint Exhibit 35, Larence M. Richman, M.D., Inc., July 22, 2024, page 2.) "In addition, since I have not examined the applicant in over six years, the parties may want to consider having the applicant reexamined." (Joint Exhibit 37, Myron L. Nathan, M.D., December 5, 2024, page 9.)

Independent of the remote evaluations, for the cumulative injuries the medical experts fail to properly address how the section 5412 cumulative date of injury "is the date upon which the employee first suffered disability therefrom." (Lab. Code § 5412.) Further, they do not discuss

how either compensable temporary disability or permanent disability is caused by the injury, as medical treatment alone is not disability. (*Rodarte*, *supra*, pages 1005-1006.)

In analyzing the section 5412 dates of injury the WCJ starts with the opinions of Dr. Newton in his July 18, 2024, supplemental report. "He found that this CT period ended when she was taken off work on 4/23/09 by Dr. Ridgill as she was off work for several years after that and, when she returned to work, it was with restrictions that minimized the chance of further injury. He found that there was a single CT period that ended 4/23/09, based on these factors and the medical records (Ex. J34 p. 2-3)." (FA&O, Opinion on Decision, page 3.)

Unfortunately, Dr. Newton's recent opinions appear to be based on an incorrect legal assumption. Originally, Dr. Newton found "applicant sustained a continuous trauma injury to her cervical and lumbar spine as a result of her work when she was first evaluated by Dr. Domaracki on 06/06/12 who gave her work restrictions in October 2012." (Exhibit J11, Peter M. Newton, M.D., November 13, 2018, page 35.) Dr. Newton then stated "[i]t is reasonable that the applicant's right and left wrist condition is caused by the continuous trauma of her work through 06/06/12." (Exhibit J21, Peter M. Newton, M.D., March 11, 2020, page 3.) During deposition on January 29, 2020, however, the following exchange occurred:

> MS. MONTGOMERY [Defense Counsel]: So, Leon, we just have one C.T. and a specific injury really because there's kind of duplications on the C.T. Right?
>
> MR. KLEYMAN [Applicant's Counsel]: I believe that's the case, Counsel.
>
> MS. MONTGOMERY: Okay. So I don't think we need any clarification. It's just -- Doctor, it's just the C.T. that either ends in the year 2010 or 2009 based upon how the parties figure it out. Would that be accurate?
>
> THE WITNESS: Yes. I guess I incorrectly put 2012. So it should be 2009.
>
> BY MR. KLEYMAN: Q Doctor, let me ask you this question: The end date of the cumulative trauma, would you defer that to the trier of fact under 5412? Is that a fair question to ask from you?
>
> A Yes.

(Exhibit J19, Deposition of Peter M. Newton, M.D., page 17, lines 12-25, page 18, lines 1-3.)

From the deposition forward, it appears Dr. Newton deferred to the parties' apparent agreement of one cumulative injury ending in 2009. ("These records do not cause me to change my opinion as noted in the 11/13/18 report and the 03/11/20 Supplemental Report." (Exhibit J31,

Peter M. Newton, M.D., June 15, 2021, page 2.); "*Based on the information provided to me*, there is a single cumulative trauma period beginning with this applicant's first day of work for the County of Los Angeles on 04/10/80 and ending 04/23/09 when she was taken off work by Dr. Edward Ridgill. When she returned to work, she worked with significant restrictions which did not cause further injury through a subsequent CT." (Joint Exhibit 34, Peter M. Newton, M.D., July 18, 2024, page 3, emphasis added.); "The additional records do not cause me to change my opinion as documented in my prior reports." (Joint Exhibit 42, Peter M. Newton, M.D., February 27, 2025, page 4.))

Unlike at Dr. Newton's deposition, the parties now clearly dispute both the number of cumulative injuries and dates of cumulative injury. We are unable to discern from the record where Dr. Newton meaningfully and independently considered such issues beyond the agreement presented to him by the parties of a binary choice of date between "2009" or "2010". This may be because "[*n*]*either of the parties took steps to obtain further medical evidence in any area*" when given the opportunity to do so. (FA&O, Opinion on Decision, page 1, emphasis added.)

"The number and nature of the injuries suffered are questions of fact for the WCJ or the WCAB." (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (*Austin*), (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323].) While the Appeals Board decides the issue of whether a cumulative injury exists, substantial medical evidence, however, must support the finding of industrial injury. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 (Appeals Board en banc).) "Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions." (*Escobedo*, *supra* at 621.)

"For example, if an employee becomes disabled, is off work and then returns to work only to again become disabled, there is a question of fact as to whether the new disability is due to the old injury or whether it is due to a new and separate injury." (*Western Growers*, *supra* at 234.) Where a period of disability interrupted a period of employment trauma, two separate injuries may be found. (*Aetna Cas. & Sur. Co. v. WCAB* (*Coltharp*), (1970) 35 Cal.App.3d 329, 342-343, [38 Cal.Comp.Cases 720].)

On this record we are unable to find Dr. Newton's opinions substantial for purposes of analyzing the section 5412 date of injury. It is unclear from Dr. Newton when the claimed injuries did or did not cause disability nor how many cumulative injuries may have occurred.

The WCJ next relied on Dr. Lipper to find applicant's respiratory injuries were the result of cumulative injury through April 23, 2009, because "per the records referenced by Dr. Newton, the applicant was not physically at her work location for several years after she was taken off work on 4/23/09, the CT exposure discussed by Dr. Lipper would also reasonably end on 4/23/09; this is consistent with Dr. Lipper's discussion *though he does not give an express end date* (Jt. Ex. 33 p. 2-3)." (FA&O, Opinion on Decision, page 4, emphasis added.) The WCJ's leap from noting the absence of medical opinion to providing a lay opinion is problematic especially where, as here, "[e]xpert testimony is necessary where the truth is occult and can be found only by resorting to the sciences." (*Peter Kiewit Sons*, *supra* at page 838.)

The WCJ also states "[a]s to the applicant's gastrointestinal problems, Dr. Lipper found that they were consequences of her orthopedic and psychological injuries, so there is no separate CT period related to those complaints." (FA&O, Opinion on Decision, page 4.)

Dr. Lipper originally states "[w]ith regard to her upper GI tract and lower GI tract, and based on my current understanding of this case, these too would be construed as AOE/COE." "With regard to Ms. Gist's respiratory diathesis, this appears to be, at least in part, industrial in nature." (Exhibit J10, Arthur E. Lipper, M.D., October 10, 2018, page 7.) The closest Dr. Lipper comes to providing relevant opinions is in his discussion of apportionment in the March 6, 2020, supplemental report. "With regard to Ms. Gist's asthma, *this has been previously accepted as industrial in nature to the best of my knowledge*." "With regard to Ms. Gist's upper GI tract and lower GI tract, the use of medication such as nonsteroidal anti-inflammatory agents as well as narcotic pain medication has been necessitated by her specific *as well as multiple cumulative trauma injuries*." (Exhibit J20, Arthur E. Lipper, M.D., March 6, 2020, pages 3-4, emphasis added.)

The remainder of supplemental reports from Dr. Lipper do not meaningfully discuss causation or the dates of the cumulative injuries. (Exhibit J12, Arthur E. Lipper, M.D., January 18, 2019; Exhibit J15, Arthur E. Lipper, M.D., July 19, 2019; Exhibit J16, Arthur E. Lipper, M.D., July 31, 2019; Exhibit J27, Arthur E. Lipper, M.D., April 3, 2021; Joint Exhibit 33, Athur E. Lipper, M.D., July 9, 2024; and Joint Exhibit 40, Athur E. Lipper, M.D., December 18, 2024.)

Dr. Lipper has not provided opinions necessary for an analysis of injury under section 5412. The WCJ may not use lay opinion to cure such inadequacies.

Both dentist Dr. Miller and psychiatrist Dr. Nathan suffer from a similar deficiency of conclusory and vague findings that do not appropriately address causation sufficient for a section 5412 injury date analysis.

For causation, dentist Dr. Miller provides, ""[a]ll the industrial injuries" and their dates have already been established by the claims and other AME/QME reports. The dental injuries are secondary to the numerous orthopedic injuries, respiratory infections, and stress that are *made up of cumulative trauma injuries and a specific injury*." (Joint Exhibit 36, Jeffrey T. Miller, D.D.S., September 3, 2024, page 3, emphasis added.)

While Dr. Nathan states "In regard to the issue of causation and apportionment of the applicant's permanent level of disability, the applicant's permanent level of disability has been caused by her personality functioning, physical disability, the personnel actions and the lack of personnel actions stemming from her interpersonal difficulties with two specific co-workers, 10% of the applicant's permanent disability has been caused as a result of the personality traits which is secondary to nonindustrial causation. 65% of the applicant's permanent disability has been caused as a result of her permanent physical industrial injury/injuries and disability which are inextricably intertwined and deferred to the trier of fact. This does not include her hearing or dental problems only her industrial neurologic and orthopedic disability." (Exhibit J7, Myron L. Nathan, M.D., October 1, 2018, pages 53-54.)

Further detracting from Dr. Nathan's opinions being substantial evidence is the clear historical error on which his opinions are based. In response to the WCJ's interrogatories Dr. Nathan states: "The cases that remain active, according to the information you forwarded to me, are the applicant's specific injury of July 29, 2015, and the continuous trauma from August 14, 2014 to November 15, 2017. You have indicated there was a third period of continuous trauma that remains active from 1998 to June 6, 2012. *I presume that you are referring to the applicant's claim that was previously resolved and there was a Petition to Reopen*." (Joint Exhibit 32, Myron L. Nathan, M.D., July 6, 2024, page 2.) Dr. Nathan's presumption is incorrect.

Records are digested by Dr. Nathan in his October 1, 2018, report which includes the following two entries:

> 25. **12/26/95. Workers' Compensation Appeals Board, State of California.** Darlene Hardy-Gist vs County of Los Angeles/DPSS; Helmans Management Services. Stipulations with Request for Award. Date of Injury: 1) 4/10/80 - 12/13/89. 2) 2/29/90 - 10/18/90. 3) 10/18/90 - 9/13/93. The injury caused permanent

> disability of 31%. Less prior award of 20%, $9,870.00. There is need for medical treatment to cure or relieve from the effects of said injury, Pursuant to the AME, Dr. Wixen, Dated December 26, 1995.

And,

> 29. **5/18/98**. **State of California**. Stipulations with Request for Award. Sustained injury arriving out of and in the course of employment psyche. The injury caused permanent disability of 31%. There is per Dr. Wixen need for medical treatment to cure or relieve from the effects of said injury.

(Exhibit J7, Myron L. Nathan, M.D., October 1, 2018, pages 6 and 16, emphasis in original.)

It appears the claim for which there was a Petition to Reopen has been resolved and is no longer active. This is because entry 25 indicates the 31% disability was "[l]ess prior award of 20%." Further neither of the minutes presently at issue list a petition to reopen as being at issue. From these facts we discern the petition to reopen was resolved and is no longer active. Dr. Nathan has reached his opinions based on the incorrect history that there is a pending petition to reopen. As such his opinions are not substantial evidence and the record will need to be developed in this regard.

Additionally, it appears Dr. Nathan has provided opinion based on an incorrect legal theory. For example, Dr. Nathan states: "The applicant's prior permanent disability did resolve and since her permanent disability was determined by utilizing a Work Function Impairment Form, it would not be appropriate to apportion the applicant's current permanent level of disability due to her prior work-related injuries." (Exhibit J7, Myron L. Nathan, M.D., October 1, 2018, page 54.)

We know of no authority precluding apportionment of psychiatric disability simply because of the method used to evaluate the prior disability. Indeed, section 4663 was enacted specifically to have physician's apportion disability by requiring a doctor address "what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, *including prior industrial injuries*." (Lab Code § 4663(c), emphasis added.)

To the extent Dr. Nathan may be invoking medical rehabilitation to defeat apportionment by stating "applicant's prior permanent disability did resolve," such argument may no longer be available. (See Lab. Code §4664, and *Kopping v WCAB* (2006) 142 CA4th 1099, 1115 [71 Cal.Comp.Cases 1229], where the court found "what section 4664(b) does is simply prevent a claimant from defeating an employer's showing of apportionment by proving medical

rehabilitation from a prior permanent disability for which he or she received permanent disability benefits.")

Dr. Nathan's opinions are not substantial evidence.

Doctor Richman only addressed causation in terms of apportionment of disability for the specific injury and therefore his opinions are not relevant to the cumulative injury dates. (Exhibit J8, Larence M. Richman, M.D., Inc., October 8, 2018, page 18.)

Here, there is no substantial medical evidence upon which to make section 5412 date of injury determination. As finding the date of cumulative injury is foundational to any further findings, the medical evidence must be developed before addressing any other issues raised.

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. (*Kuykendall, supra*, page 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, 142 (Appeals Board en banc).)

The parties are to obtain updated expert medical opinion addressing the relevant workers' compensation issues. This should be done by returning to the current evaluators, and preferably after re-evaluating the applicant, to specifically addressing section 5412 disability. It is incumbent on the parties to participate in the discovery process to help establish substantial evidence. Without substantial evidence the WCJ may need to resort to appointing regular physician(s) pursuant to section 5701.

B.

Nowhere in the FA&O and Opinion on Decision nor the Report does the WCJ discuss the second part of a section 5412 analysis which requires a finding of when applicant "either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by [her] present or prior employment." (Lab. Code § 5412.)

To determine the date of applicant's cumulative injury, there must exist a concurrence of disability and knowledge that it was caused by employment. Knowledge requires more than an uninformed belief. "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].) "[A]n 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 and applicant's training, intelligence and qualifications are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability." (*Johnson*, *supra*, page 473.)

At the first trial applicant testified she started working for the County of Los Angeles on April 10, 1998, and she is still employed there. She transferred from one department program to another throughout her career. She was transferred to the Hawthorne Medi-Cal Application Center in about October of 2014, and prior to that she had been off work continuously for four years. (Minutes of Hearing and Summary of Evidence, March 15, 2022, page 9, lines 10-11, 14-18, page 10, lines 5-6.)

This testimony does not appear to assist in determining when applicant knew or should have known her disability was industrially caused.

Absent additional development, at this juncture the most likely date(s) of knowledge would be when an Application for Adjudication of Claim was filed for each respective cumulative injury claim. It is abundantly clear that the record, both medical and testimonial, should be developed on the date of knowledge aspect of a section 5412 analysis as well.

C.

The parties stipulated to a specific July 29, 2015, injury to the head, neck, cervical spine, left hip, right ear, and memory loss in the PTCS for ADJ10065606, which stipulation was adopted by each trial judge in the first and second sets of Minutes of Hearing. (PTCS, filed January 24, 2022, PDF page 2; Minutes of Hearing and Summary of Evidence, March 15, 2022, page 2, lines 20-23; Minutes of Hearing, May 19, 2025, page 2, lines 1-3.)

Despite defendant raising as issue whether "defendant will be allowed to withdraw from the stipulations or not, and if so, what should be the correct award with regard to this case number," the WCJ found injury and body parts consistent with the PTCS stipulation without expressly

addressing or discussing defendant's objection. (Minutes of Hearing and Summary of Evidence, March 15, 2022, page 3, lines 17-19; FA&O, Opinion on Decision, August 12, 2025, page 1, finding 1.)

Similarly, in ADJ11140372 the parties stipulated to cumulative injury to dental, both elbows, cervical spine, and lumbar spine. The cumulative end date was listed as November 15, 2017, but the minutes noted the section 5412 date was at issue. (Minutes of Hearing and Summary of Evidence, March 15, 2022, page 4, lines 3-7, page 5, lines 6-7.) In the FA&O, the WCJ found the injury date was March 12, 2018, resulting in injury to the psyche, but specifically *found no injury to the stipulated body parts of dental, both elbows, cervical spine, and lumbar spine*. (FA&O, page 2, fining 3.) The WCJ does not discuss the parties' stipulation to injured body parts nor why it was not followed.

Stipulations further the public policies of settling disputes and expediting trials. (Lab. Code, §5702; *County of Sacramento v. Workers' Comp. Appeals Bd.*, (*Weatherall*) (2000) 77 Cal. App. 4th 1114, 1119 [65 Cal.Comp.Cases 1].) While stipulations are permissible in workers' compensation cases and are treated as evidence in the nature of an admission, they are not binding on the WCJ or the WCAB. (*Turner Gas Co. v. Workmen's Comp. Appeals Bd.* (1975) 47 Cal.App.3d 286, 290-291 [40 Cal.Comp.Cases 253]; see also *Draper v. Workers' Comp. Appeals Bd.* (1983) 147 Cal.App.3d 502, 508, fn. 4 [48 Cal.Comp.Cases 748], (Workers' Compensation Appeals Board does not exceed its authority in making a finding contrary to a stipulation), and *Robinson v. Workers' Comp. Appeals Bd.*, (1987) 194 Cal. App. 3d 784, 790 [52 Cal.Comp.Cases 419] (stipulations which arise in workers' compensation cases are not necessarily binding on the WCAB).)

Here the parties entered into two separate stipulations. The WCJ, however, issued contrary findings without discussing why the WCJ did so. While the trial minutes reflect defendant's challenge to the first stipulation as an issue, the WCJ also did not address that issue. When a WCJ makes a finding contrary to a stipulation the WCJ must still provide a record supporting why the stipulation should not be followed as furthering the public policies of settling disputes and expediting trials

We observe that "[i]t is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton v. Lockheed Corporation*

(2001) 66 Cal.Comp.Cases 473, 475 (Appeals Board en banc).) 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*, page 475.)

The parties are encouraged to use stipulations when appropriate. Well-crafted stipulations may obviate the need for discovery and streamline litigation. The use of stipulations can reduce demands on the court's time and resources.

Here the parties deferred the issues of earnings and temporary disability in all three cases. It seems earnings information for a county employee, would be readily available such that the parties could stipulate to earnings, even if the date of injury remains undetermined in two of the claims. In addition, if possible, a stipulation by the parties to periods of temporary disability would assist in identifying section 5412 injury dates, number of cumulative injuries, reduce the need for additional discovery, and possibly aid the medical experts to identify periods of cumulative injury resulting in disability. A stipulation as to the amounts and reasons benefits were paid under ADJ8149230 for which defendant seeks credit would also help the WCJ in making and documenting a decision on allowing or denying such credit.

In the future, should the WCJ decide stipulations are not binding, the WCJ must refer to the evidence supporting such decision in the opinion on decision, and clearly designating the evidence that forms the basis for such decision.

V.

In the two Minutes of Hearing for these cases the defendant is uniformly referred to as the County of Los Angeles. (Minutes of Hearing and Summary of Evidence, March 15, 2022; Minutes of Hearing, May 19, 2025.) Defendant is also referred to as the County of Los Angeles in defendant's Answer.

By contrast, in applicant's Petition, the FA&O, and the WCJ's report defendant is listed as "Los Angeles County – Department of Public Services." No explanation is provided for this discrepancy and as a result we are unsure if defendant is properly named.

Under WCAB Rule 10390 (Cal. Code Regs., tit. 8, §10390), all parties must provide their full legal name on all pleadings and at any appearance, including the names of the employer, insurance company and any third-party administrator. (See *Coldiron v. Compuware Corp.* (2002)

67 Cal.Comp.Cases 289 (Appeals Bd. en banc) [defendant attorneys must disclose proper legal names for the employer, insurance company and any third-party administrator and failure to do so may subject the offending party to sanctions]; and see *Jillian DiFusco v. Hands On Spa* (2025) 90 Cal.Comp.Cases 1007, (Appeals Bd. en banc) [WCAB Rule 10390 does not supersede the *Coldiron* decisions. Defendants must comply with WCAB Rule 10390 and the disclosure requirements in *Coldiron I* and *II*, regardless of whether there is a third-party administrator].)

In any further proceedings the proper employer should be confirmed.

VI.

Following our independent review of the record occasioned by applicant's Petition, we are persuaded that additional discovery is necessary to create a substantial record upon which findings may be based. The parties are encouraged to consider using additional stipulations. Should the WCJ decide not to follow a stipulation, the WCJ must refer to the evidence supporting such decision in the opinion on decision and clearly designate the supporting evidence. Finally, the proper name of defendant and any third-party administrator should be confirmed in any further proceedings.

We express no opinion as to the ultimate resolution of any issue in this matter.

Accordingly, we grant applicant's Petition for Reconsideration, rescind the August 12, 2025, FA&O, and return the case to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the August 12, 2025, Joint Findings and Award and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the August 12, 2025, Joint Findings and Award and Order is **RESCINDED**, and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 21, 2025

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

DARLENE GIST
HINDEN & BRESLAVSKY
ZGRABLICH & MONTGOMERY

PS/oo

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