

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

HADRIAN LARA, *Applicant*

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, et. al., *Defendants*

**Adjudication Number: ADJ7937623
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.¹

Applicant seeks reconsideration of the “Findings of Fact and Order to Take Nothing on SIBTF Petition” (F&O) issued on August 16, 2021, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant failed to meet the burden of proving a pre-existing permanent partial disability and ordered that applicant take nothing on his claim of benefits from the Subsequent Injuries Benefits Trust Fund (SIBTF).

Applicant argues that the finding of non-industrial apportionment of his hypertension established that applicant sustained a pre-existing disability for purposes of SIBTF.

We have received an answer from SIBTF.

The WCJ filed a Report recommending that the Petition for Reconsideration be denied.

We have considered the allegations in the Petition for Reconsideration, the Answer, the contents of the Report, and we have reviewed the record. Based upon our review of the record, as our Decision After Reconsideration, we will affirm the August 16, 2021 F&O.

¹ Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been substituted in her place.

FACTS

Per the WCJ's Report:

Applicant, Hadrian Lara . . . filed a petition for benefits from the Subsequent Injury Benefits Trust Fund (SIBTF). Applicant's subsequent injury herein, pursuant to L.C. §4751, is a continuous trauma injury he sustained while working for the County of Los Angeles as a survey mapping technician.

Applicant began working for the County on 6/1/85. According to the history contained in the submitted medical reporting, applicant received his education in the Philippines, moved the United States in 1984, and commenced his employment with the County of Los Angeles a short time later. He had no other employment in the United States through his last day of work in February 2011.

On 2/23/11, applicant stopped working for the County. According to the history contained in the submitted medical reporting, including summary of applicant's prior deposition testimony, he had worked his usual and customary job duties without restriction, until stressors associated with his supervisor resulted in his being taken off work. Applicant denied prior orthopedic problems before he started work for the employer.

A summary of applicant's treating orthopedist (Dr. Philip Sobol), reporting chronicles a claimed gradual onset of orthopedic symptoms, that were unreported, commencing in approximately 2002 for his neck shoulders, back and headaches. His elbows and wrists purportedly gradually becoming symptomatic in May 2003, and his right ankle in 2007. No treatment or time loss due to his work related symptoms were noted during the last ten years of his employment. Applicant worked his usual and customary position until going off work related to stress.

In 2013, following applicant going off work, diagnostic testing revealed a non-cancerous brain tumor, suspected to be a meningioma. Radiation treatment was completed on a non-industrial basis.

Applicant's underlying injury claim against the County was resolved by way of Stipulations with Request for Award dated 4/3/18 with an amended award to clarify commutation of attorney fees issuing on 4/12/18. Relevant findings associated with the stipulated award are that applicant sustained injury to his cervical spine, lumbar spine, bilateral shoulders wrists and hands, psyche, arousal/sleep, hypertension/cardiovascular, and digestive tract (GERD, IBS, and acid peptic disease) that resulted in permanent disability of 89% after apportionment, with permanent disability indemnity benefits commencing on 9/26/12. The only apportionment allowed in the stipulated rating strings contained in the settlement document related solely to hypertension/cardiovascular.

Applicant subsequently filed a timely petition claiming entitlement to benefits from the Subsequent Injury Benefits Trust Fund (SIBTF). SIBTF denied applicant's claim contending in part that there was no substantial evidence to support a finding that applicant had any prior labor disabling impairment before the subsequent injury herein.

The undersigned found that applicant failed to meet his burden of proof pursuant to L.C. §3202.5 in proving by a preponderance of the evidence that he qualified for SIBTF benefits. It is from this finding that applicant has petitioned for reconsideration.

(WCJ's Report, pp. 1-3.)

Applicant was seen by panel qualified medical evaluator L.V. Alonso, M.D., who opined on the causation of applicant's hypertension as follows:

With reasonable medical probability, this patient's pre-existent hypertension was aggravated after the February 2011 incident, should be apportioned **70% to nonindustrial factors** of pre-existent hypertension and natural progression, and **30% to aggravation by industrial factors** of job related emotional stressors, stress reaction, and use of NSAID's.

(WCAB Exhibit 13, Report of L.V. Alonso, M.D., April 23, 2012, p. 24 (emphasis in original).)

DISCUSSION

As explained in our en banc decision in *Todd*:

SIBTF is a state fund that provides benefits to employees with preexisting permanent disability who sustain subsequent industrial disability. The purpose of the statute is to encourage the employment of the disabled as part of a "complete system of [workers'] compensation contemplated by our Constitution." (*Subsequent Injuries Fund of the State of California v. Industrial Acci. Com. (Patterson)* (1952) 39 Cal. 2d 83 [244 P.2d 889, 17 Cal. Comp. Cases 142]; *Ferguson v. Industrial Acci. Com.* (1958) 50 Cal. 2d 469, 475 [326 P.2d 145]; *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 619 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Board en banc).)

SIBTF is codified in section 4751, which provides:

If an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, he shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article; provided, that either (a) the previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of total, or (b) the permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of total. (§ 4751.)

The preexisting disability may be congenital, developmental, pathological, or due to either an industrial or nonindustrial accident. (*Escobedo, supra*, 70 Cal. Comp. Cases at p. 619.) It must be “independently capable of supporting an award” of permanent disability, “as distinguished from [a] condition rendered disabling only as the result of ‘lighting up’ by the second injury.” (*Ferguson, supra*, 50 Cal. 2d at p. 477.)

Furthermore, there is no specific statute of limitations with respect to the filing of an application against SIBTF; an application against the fund will not be barred “where, prior to the expiration of five years from the date of injury, an applicant does not know and could not reasonably be deemed to know that there will be substantial likelihood he will become entitled to subsequent injuries benefits, [] if he files a proceeding against the Fund within a reasonable time after he learns from the board's findings on the issue of permanent disability that the Fund has probable liability.” (*Subsequent Injuries Fund v. Workmens' Comp. Appeals Bd. (Talcott)* (1970) 2 Cal. 3d 56, 65 [84 Cal. Rptr. 140, 465 P.2d 28, 35 Cal. Comp. Cases 80].)

In a claim for SIBTF benefits, an employee must establish that a disability preexisted the industrial injury. (§ 4751.) Evidence of a preexisting disability may include prior stipulated awards of permanent disability or medical evidence. In order to be entitled to benefits under section 4751, an employee must prove the following elements:

- (1) a preexisting permanent partial disability;

(2) a subsequent compensable injury resulting in additional permanent partial disability:

(a) if the previous permanent partial disability affected a hand, an arm, a foot, a leg, or an eye, the subsequent permanent disability must affect the opposite and corresponding member, and this subsequent permanent disability must equal to 5% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee; or

(b) the subsequent permanent disability must equal to 35% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or the age of the employee;

(3) the combined preexisting and subsequent permanent partial disability is greater than the subsequent permanent partial disability alone; and

(4) the combined preexisting and subsequent permanent partial disability is equal to 70% or more. (§ 4751.)

Once the threshold requirements are met, section 4751 specifically provides that applicant “shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury” (§ 4751; emphasis added.) “[E]ntitlement to SIBTF benefits begins at the time the applicant becomes entitled to permanent disability payments.” (*Baker v. Workers’ Comp. Appeals Bd. (Guerrero)* (2017) 13 Cal. App. 5th 1040, 1050 [220 Cal. Rptr. 3d 761, 82 Cal. Comp. Cases 825].)

(*Todd v. Subsequent Injuries Benefits Trust Fund*, (2020) 85 Cal. Comp. Cases 576, 580-582 (Appeals Board en banc).)

The question to resolve in this matter is whether applicant was permanently partially disabled at the time he sustained the subsequent industrial injury. Applicant argues that his hypertension constituted a pre-existing permanent partial disability because it was apportioned as being 70% non-industrial. The Appeals Board addressed the interplay between apportionment and establishment of an SIBTF claim in its en banc decision in *Escobedo*:

Applicant asserts that because SB 899 did not amend section 4751, relating to benefits payable by the Subsequent Injuries Benefits Trust Fund (“SIF”), this reflects a legislative intent that pathology is not one of the “other factors” upon which apportionment to non-industrial causes can be based. In essence, applicant asserts that if apportionment based on pathology were allowed, this

would cause a flood of SIF benefit claims to be filed under section 4751. This is because, in applicant's view, apportionment to pathology would decrease the percentage of disability for which the employer is responsible, while the overall level of disability would remain unchanged, leaving the SIF responsible for the difference. We disagree.

The SIF is a state fund that, under limited statutorily specified conditions, provides benefits to employees with preexisting permanent disability who sustain subsequent industrial injuries resulting in additional permanent disability. (Citation.) The purpose of the SIF is both to encourage disabled persons to seek employment and to encourage employers to hire them. (Citations.)

Under section 4751, the employee's preexisting disability may be industrial or nonindustrial in origin. (Citation.) Thus, the preexisting disability may arise from any source - congenital, developmental, pathological, or traumatic.

Nevertheless, to qualify for SIF benefits, the injured employee must meet the requirements of section 4751. (Citation.) And the chief requirement for SIF benefits is that the condition must have been "labor disabling" prior to the occurrence of the subsequent industrial injury. (Citations.) Accordingly, if an applicant's non-industrial pathology causes apportionable permanent disability under section 4663 or 4664(a), then SIF benefits will not be payable under section 4751 **unless the applicant demonstrates that the pathology was causing permanent disability prior to the subsequent industrial injury.** Although this may mean that, in some cases, an injured employee will not get either permanent disability benefits or SIF benefits for the apportioned disability, this is not a major change from pre-SB 899 law, which held that an injured employee was not entitled to SIF benefits based on an asymptomatic disease process that was not labor disabling prior to the industrial injury.

(*Escobedo*, *supra* 70 Cal. Comp. Cases at pp. 618-619 (emphasis added).)

As we discussed in *Escobedo*, the issue of apportionment is not to be confused with the issue of proving a pre-existing disability. This is precisely what applicant has done here. Applicant essentially argues that because hypertension was apportioned as 70% non-industrial, we must presume it pre-existed the industrial cumulative injury. However, no such presumption exists in the statute. Under section 4663, apportionment assigns causation of disability as it *presently* exists. The fact that a portion of a present disability is deemed non-industrial does not automatically conclude that such disability pre-existed the industrial injury. We certainly understand that apportionment may indicate the *possibility* of pre-existing disability, but that must be evaluated and opined upon by a doctor to support an award of SIBTF benefits.

Accordingly, as our Decision After Reconsideration, we affirm the August 16, 2021 F&O.
For the foregoing reasons,

IT IS ORDERED as our Decision After Reconsideration that the August 16, 2021 Findings of Fact and Order to Take Nothing on SIBTF Petition is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 27, 2025

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

**HADRIAN LARA
LAW OFFICES OF DENNIS J. HERSHEWE
OFFICE OF THE DIRECTOR-LEGAL UNIT (LOS ANGELES)**

EDL/mc

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