WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ROBERT PRICE, *Applicant*

vs.

COUNTY OF SACRAMENTO administered by
COUNTY OF SACRAMENTO WORK COMP, *Defendants*

Adjudication Numbers: ADJ11008409; ADJ18719305 (MF)
Sacramento District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the Finding of Fact, Award, Order (F&A) issued on September 24, 2025 by the workers' compensation administrative law judge (WCJ), which found in pertinent part that applicant's cumulative injury claim is not barred by the statute of limitations and that during the period ending in December 7, 2018, applicant sustained injury arising out of and occurring during the course of employment (AOE/COE) to the right foot/ankle, left foot/ankle, lumbar spine, right hip and left hip.

Defendant contends that the applicant's claim is barred by the statute of limitations under Labor Code[1] section 5401(a) because on October 13, 2020, agreed medical evaluator (AME) Patrick McGahan, M.D., determined a cumulative injury occurred almost two years after the applicant retired from defendant employer and no qualifying event had occurred, neither lost time from work nor treatment beyond first aid, thereby alleviating it from providing a claim form. Further, defendant contends that applicant's claim is barred by the statute of limitations under section 5405(a) because he had actual knowledge of the cumulative trauma injury on October 13, 2020, when Dr. McGahan first determined a cumulative injury occurred or when Dr. McGahan was deposed on May 26, 2021, but applicant failed to file an application for adjudication within one year of the initial report or the AME's confirming deposition testimony.

[1] All further references are to the Labor Code unless otherwise noted.

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

We have considered the allegations of the Petition for Reconsideration, the Answer and the contents of the Report of the WCJ with respect thereto. Based on our review of the record and for the reasons discussed below, we will grant reconsideration solely to amend the date of cumulative injury to October 13, 2020 pursuant to section 5412 (Findings of Fact 8 and 9) and to find that applicant's age on the date of injury was 59 (Finding of Fact 5). We otherwise affirm the F&A.

I.

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

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

Here, according to Events, the case was transmitted to the Appeals Board on October 17, 2025 and 60 days from the date of transmission is December 16, 2025. This decision was issued by or on December 16, 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.

Here, according to the proof of service for the Report and Recommendation by the WCJ, the Report was served on October 17, 2025, and the case was transmitted to the Appeals Board on October 17, 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 October 17, 2025.

II.

BACKGROUND

On October 13, 2020, Dr. McGahan, AME on ADJ11008409, issued an initial evaluative report that found applicant also had a cumulative injury as follows:

> …His 32 years of work with Sacramento County obviously contributed to the impairment of his lumbar spine and bilateral hips. I would reccomend [*sic*] that his cumulative trauma industrial injury be considered an aggravation of preexisting disease of his lumbar spine and bilateral hips….With respect to his lumbar spine and bilateral hips, I would recommend that these be considered cumulative trauma industrial injuries. I would recommend the date of injury be considered December 7, 2018, which is his last day of work which contributed to his impairment.

(Exhibit 3, at p. 55.)

On February 12, 2023, Dr. McGahan also indicated applicant's feet were also injured on a cumulative basis. (Exhibit 4, at p. 12.)

On August 5, 2025, the matters proceeded to trial on multiple issues including AOE/COE in ADJ18719305. (MOH/SOE, at p. 3:18-19.) The parties stipulated that through the period ending

December 7, 2018, the applicant claimed industrial injury to his right hip, left hip, right ankle, left ankle, low back, left foot and right foot. (*Id.* at p. 3:11-13.)

The WCJ's Report states as follows:

> Applicant sustained cumulative trauma exposure through Applicant's last day of employment on December 7, 2018.
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> In a report dated October 13, 2020, Dr. Partrick McGahan found that applicant had sustained a cumulative trauma injury through Applicant's last day of employment in conjunction with Applicant's specific injury in ADJ11008409.
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> Dr. McGahan's report was issued almost two (2) years after Mr. Price retired from the County in December 2018.
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> The County had notice of a potential claim of cumulative trauma injury when it received Dr. McGahan's report.
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> To this date, the County has never provided Applicant with a claim form for the alleged cumulative trauma injury.
>
> The application for adjudication of claim was filed on January 10, 2024, which was more than one year from the date of injury.
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> Enforcing the statute of limitations is crucial for maintaining the fairness and efficiency of the legal system. The statute of limitations sets a time limit for bringing legal action against someone for a particular claim. When this time limit expires, the defendant is protected from having a claim made against it. This protects a party from having to defend against a claim allegedly having occurred in the past, when evidence may have been lost or memories may have faded. Additionally, enforcing the statute of limitations helps to ensure that cases are resolved in a timely manner, preventing legal disputes from dragging on indefinitely and causing undue stress and expense for all parties involved. By enforcing the statute of limitations, the legal system can strike a balance between protecting individuals from unjust legal action and ensuring that justice is served efficiently and fairly.
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> If an employee believes an injury may be work related, the employee must give the employer notice of the injury. This notice ensures that the employer has an opportunity to investigate the claimed injury. In this case, Defendant has raised an affirmative defense of the Statute of Limitations.
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> As a rule, where a claimant asserts exemptions, exceptions, or other matters which will avoid the statute of limitations, the burden is on the claimant to produce sufficient evidence to prove such avoidance or equitable tolling. Thus,

to establish an equitable tolling, an injured worker has the initial burden of proof to establish that defendant had knowledge of applicant's injury sufficient to trigger its duty of notification. If applicant succeeds, the burden of proof shifts back to defendant to establish that applicant had actual knowledge of his potential right to workers' compensation benefits more than one year prior to the filing of the application.

The defendant has the burden of proof establishing a bar to an applicant's claim of injury, based on the statute of limitations. Defendant's burden is to show when the statute of limitations began to run, starting from any of the three points designated in Labor Code, Section 5405. The three starting points designated in Labor Code, Section 5405 are as follows:

1. The date of injury (Labor Code, Section 5405(a))

2. The date of the last payment of disability indemnity (Lab. Code, § 5405 (b))

3. The last date on which medical treatment benefits were furnished (Lab. Code, § 5405(c).)

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The statute of limitations may be tolled when a defendant breaches its duty to notify an injured worker of his or her workers' compensation rights. Specifically, an employer is required to provide a claim form to an employee within one day of notice or knowledge of an alleged work injury. (See Labor Code, Section 5401(a).)

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The employer's duty was summarized by the Supreme Court as follows:

> "When the employer receives either written notice or knowledge of an injury that has caused lost work time or required medical treatment, the employer is to provide the employee, within one working day, with a workers' compensation claim form and notice of potential eligibility for benefits."

See (*Honeywell v. Workers' Comp. Appeals Bd. (Wagner)* (2005) 35 Cal.4th 24, 32 [70 Cal.Comp.Cases 97] (*Honeywell*).)

Where there is a breach of an employer's duty to notify an employee that there may be an entitlement to benefits under the workers' compensation system, the remedy is a tolling of the statute of limitations if the employee, without that tolling, is prejudiced by that breach. In the context of establishing an applicant's knowledge, prejudice means ignorance, and ignorance is presumed until the

employee is given the requisite notice or otherwise gains actual knowledge that the employee may be entitled to workers' compensation benefits.

A defendant cannot prove actual knowledge of the potential eligibility for a particular injury by showing an injured worker's general awareness of the existence of the workers' compensation system or by past experience with a workers' compensation claim.

In this matter Defendant asserts that the cumulative trauma claim (ADJ18719305) is barred by Labor Code §5405, as the application was not filed until January 10, 2024, more than five years after applicant's retirement on December 7, 2018.

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However, the statute of limitations may be tolled where the employer fails to fulfill its obligations under Labor Code §§5401–5402. Specifically, an employer who has knowledge of an injury must provide the employee with a claim form and notice of potential eligibility for benefits. Failure to do so may prevent the statute from running until the claim form is issued. (See SCIF v. WCAB (Rodarte) (2004) 119 Cal.App.4th 998, 1004–1005.)

In this matter, Defendant had actual knowledge of the cumulative trauma claim at least as early as October 2020, when the Agreed Medical Examiner, Dr. Patrick McGahan, reported that applicant sustained cumulative trauma to the feet/ankles, hips, and lumbar spine. Defendant's counsel also questioned Dr. McGahan at deposition extensively in 2021 regarding the cumulative trauma claim.

Despite this knowledge, defendant never issued a claim form or notice of potential eligibility, as required by LC §5401(a).

Defendant's analysis would be correct if this injury was simply a "first aid" claim. However, it was not. The credible testimony was that Applicant would self-modify his activities. He would try to do less lifting because it bothered his back. He indicated during his last year of employment, he was self-modifying duties because of back pain. He would take time off because of that pain. In addition, Applicant testified that in 2016 he fell because his back was hurting.

(See MOH/SOE, Page 6, Lines 8-12)

Contrary to the position taken by Defendant, this was not simply a "first-aid" claim. The Applicant missed actual time from work. While Applicant was not paid workers' compensation benefits, he should have been.

(Report, at pp. 1-5.)

III.

In addition to the analysis set forth in the WCJ's Report above, we observe the following.

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.

Section 5412 states that:

> The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.

(Lab. Code, § 5412.)

There are factual scenarios where an injured worker's last date of exposure resulting in a cumulative injury is before the date the worker first suffered disability and knew that the disability was caused by their employment, that is, before the section 5412 date of injury is established. Additionally, a worker's section 5412 date of injury could also be before the last date of the exposure causing the injury. The section 5412 date of injury is a statutory construct, rather than a determination of the fundamental issue of whether a worker has, in fact, suffered an industrial injury.

> [T]he 'date of injury' in latent disease cases 'must refer to a period of time rather than to a point in time.' (Citation.) The employee is, in fact, being injured prior to the manifestation of disability...[T]he purpose of section 5412 was to prevent a premature commencement of the statute of limitations, so that it would not expire before the employee was reasonably aware of his or her injury.

(*J. T. Thorp v. Workers' Comp. Appeals Bd.* (*Butler*) (1984) 153 Cal.App.3d 327, 340-341 [49 Cal.Comp.Cases 224].)

Also, the Fourth District Court of Appeal has explained:

> Moreover, "[t]he burden of proving that the employee knew or should have known rests with the employer. This burden is not sustained merely by a showing that the employee knew he had some symptoms." (*City of Fresno v.*

> *Workers' Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53]; see *id*. at p. 473 ["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 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."].)

(*County of Riverside v. Workers' Comp. Appeals Bd.* (*Sylves*) (2017) 10 Cal.App.5th 119, 124-125 [82 Cal.Comp.Cases 301].)

Based on our review, we agree with the WCJ that the record contains substantial medical evidence that applicant sustained a cumulative injury AOE/COE to his right foot/ankle, left foot/ankle, lumbar spine, right hip and left hip. However, October 13, 2020, when both parties had knowledge that there was substantial medical evidence of cumulative injury, is the proper date of injury pursuant to section 5412, and whether the statute of limitations had elapsed pursuant to section 5405(a) is based on that date of injury. Defendant is mistaken where it contends that only applicant had knowledge on that date. Applicant proved defendant had knowledge of his injury based on the reporting of Dr. McGahan addressed to both parties as early as October 13, 2020 or as late as May 26, 2021, when defendant deposed Dr. McGahan, either event being sufficient to trigger defendant's duty of notification, thereby tolling the statute of limitations. (See Exhibits 3 and 9.) There is no evidence in the record that defendant met its duty of notification to applicant. Thus, we also agree with the WCJ that defendant did not meet its burden, and applicant's injury claim is not barred by the statute of limitations defense.

Furthermore, in cases involving cumulative trauma injuries, the date of injury pursuant to section 5412 "also sets the date for the measurement of compensation payable, and all other incidents of the [worker's] right[s]." (*Argonaut Mining Co. v. I.A.C.* (1951) 104 Cal.App.2d 27, 31 [1951 Cal. App. LEXIS 1564]; see *Chevron U.S.A. v. Workers' Comp. Appeals Bd.* (*Steele*) (1990) 219 Cal.App.3d 1265, 1270-1271 [55 Cal.Comp.Cases 107] [applicable permanent disability indemnity amount and rate provided in section 4453 is based on the date of injury].) Thus, we will also amend the F&A to reflect that applicant was 59 years old on the date of injury of October 13, 2020. We note that this change from the WCJ's finding that applicant was 57 years old on the day of injury does not change the calculation of the rating of applicant's permanent disability.

Accordingly, we grant the Petition for Reconsideration to amend the date of cumulative injury to October 13, 2020 pursuant to section 5412 (Findings of Fact 8 and 9) and to find that applicant's age on the date of injury was 59 (Finding of Fact 5). We otherwise affirm the F&A.

For the foregoing reasons,

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

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Finding and Award of September 24, 2025, is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

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5. At the time of the October 13, 2020 cumulative trauma injury, applicant was 59 years old.

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8. Pursuant to Labor Code section 5412, the date of injury for applicant's cumulative injury is October 13, 2020, and the claim is not barred by the statute of limitations.

9. During the period ending in October 13, 2020, applicant sustained cumulative injury arising out of and occurring during the course of employment to the right foot/ankle, left foot/ankle, lumbar spine, right hip and left hip.

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WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 9, 2025

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

ROBERT PRICE
MASTAGNI HOLSTEDT
COLEMAN CHAVEZ & ASSOCIATES

SL/abs

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