

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

ALEXANDRA METCALFE, *Applicant*

vs.

**TULARE NURSING REHAB CENTER;
CYPRESS INSURANCE COMPANY, BERKSHIRE HATHAWAY HOMESTATE
COMPANIES; INSURANCE COMPANY OF THE WEST, *Defendants***

**Adjudication Number: ADJ13553712
Fresno District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Defendant Insurance Company of the West (ICW) seeks reconsideration of the May 13, 2026 Findings of Fact and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a certified nursing assistant, sustained industrial injury to her bilateral wrists, bilateral hands, bilateral shoulders, and upper extremities. The WCJ found that the reporting of the Qualified Medical Evaluator (QME) constituted substantial medical evidence, and that the date of injury was March 6, 2020.

ICW contends that applicant's date of injury was October 8, 2021.

We have received an Answer from co-defendant Cypress Insurance Company, administered by Berkshire Hathaway Homestate Companies (Cypress). The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and substitute a new Findings of Fact that defers the issue of the date of injury under Labor Code section 5412. We make no other substantive changes to the Findings of Facts.

FACTS

Applicant claimed injury to her bilateral wrists, bilateral hands, bilateral shoulders, upper extremities, and lower extremities while employed as a certified nursing assistant by defendant Tulare Nursing Rehab Center, also known as Caber Enterprises, from January 10, 2019 to January 10, 2020. As relevant to these proceedings, the employer was insured for workers' compensation claims by ICW from January 1, 2019 to December 31, 2019, and by Cypress from January 1, 2020 to January 1, 2022. (Minutes of Hearing (Minutes), dated April 21, 2026, at p. 2:4.)

Applicant began working for defendant on September 17, 2019. (Minutes, at p. 2:11.)

On January 3, 2020, applicant sought chiropractic treatment for pain in her cervical, thoracic and lumbar spine, noting an onset "while cleaning around her house." (Ex. 5, Records of Jones Chiropractic, various dates, p. 1.) Applicant continued to seek chiropractic treatment for her spinal complaints through March 20, 2020, at which time applicant's symptoms were noted to be improving. (*Id.* at p. 17.)

On March 6, 2020, applicant sought medical treatment with nurse practitioner Lisa Brown, FNP, for complaints of right wrist pain with occasional numbness. (Ex. PP, Records of Jaisimaran Sidhu, M.D., various dates, at p. 2; Ex. FF, Report of Ron Goldstein, M.D., dated August 26, 2022, at p. 15.) Applicant was noted to have been experiencing "some right wrist and hand pain for 1-2 months off and on, occasionally goes down entire arm, has been seeing chiropractic for adjustment and he wonders if a pinched nerve in neck." (*Ibid.*) Applicant was diagnosed with pain in the right wrist and cervical radiculopathy, with an additional notation of "suspect strain, has been working as CNA lifting, etc." (*Id.* at p. 3.) In a follow-up evaluation on April 24, 2020, applicant was noted to be wearing a brace "which she has been instructed to wear through the day and night." (*Id.* at p. 1.) Applicant was also noted to be on "light duty at work due to her symptoms." (*Ibid.*)

On May 4, 2020, Ramu Thiagarajan, M.D., evaluated applicant for ongoing bilateral wrist and forearm pain and numbness. (Ex. FF, Report of Ron Goldstein, M.D., dated August 26, 2022, at p. 17.) Applicant's EMG/NCV studies were noted to be positive for bilateral carpal tunnel syndrome, and the physician advised applicant to wear wrist splints in both hands. The physician also noted that if her symptoms did not improve in three months, she might require surgical intervention. (*Id.* at p. 18.)

On May 18, 2020, Nurse Practitioner Brown reevaluated applicant, and noted that applicant “is doing light duty at work, which will continue until surgery to be done in next 3 months ... [applicant] attributes her symptoms to her work as a CNA.” (Ex. FF, Report of Ron Goldstein, M.D., dated August 26, 2022, at p. 18.)

On August 10, 2020, applicant completed a DWC-1 claim form alleging injury in the form of pain and weakness in both wrists, arms, and shoulders. (Ex. CC, DWC-1 Claim Form, dated August 10, 2020.) Thereafter, the parties to the case in chief selected Ron Goldstein, M.D., as the orthopedic QME.

On May 7, 2021, QME Dr. Goldstein evaluated applicant and entered diagnoses of bilateral carpal tunnel syndrome and bilateral De Quervain’s disease. (Ex. DD, Report of Ron Goldstein, M.D., dated May 7, 2021, at p. 17.) The QME attributed causation to applicant’s industrial exposures based on applicant’s reported history and the QME’s clinical evaluation. (*Ibid.*)

On October 8, 2021, Dr. Goldstein reevaluated applicant who continued to work “modified duties, part time, for the original employer.” (Ex. EE, Report of Ron Goldstein, M.D., dated October 8, 2021, at p. 16.) Applicant’s employer was noted to be “short staffed,” with the applicant “forced to help move heavy patients through all types of movements.” (*Id.* at p. 17.) Following a clinical evaluation, Dr. Goldstein declared applicant to have reached maximum medical improvement, but deferred assessment of permanent impairment pending receipt of medical records. (*Ibid.*)

On April 8, 2024, the applicant and Cypress resolved the case in chief by way of Compromise and Release.

On April 16, 2024, Cypress petitioned to join ICW as a party defendant.

On June 27, 2024, Cypress filed a petition seeking contribution from ICW alleging a “legal CT period” of September 17, 2019 to January 10, 2020.

On April 21, 2026, Cypress and ICW proceeded to trial and framed for decision the issues of injury arising out of and in the course of employment (AOE/COE), with ICW contending “there is no substantial medical evidence of a cumulative trauma injury.” (Minutes, at p. 2:16.) ICW further framed for decision its contention that “Labor Code Section 5412 precludes a finding of a cumulative trauma from the period of January 10, 2019, through January 10, 2020.” (*Id.* at p. 2:18.) Neither party offered witness testimony, and the WCJ ordered the matter submitted on the documentary record.

On May 13, 2026, the WCJ issued her F&O, determining that the medical reporting of QME Dr. Goldstein was competent evidence to support a finding of injury AOE/COE. The WCJ found that the date of injury pursuant to Labor Code¹ section 5412 was March 6, 2020. In her Opinion on Decision, the WCJ reasoned that “applicant first complained to her doctors on March 6, 2020, that she was experiencing ongoing right wrist and hand pain that occasionally goes down the entire arm,” and that applicant was diagnosed with pain in right wrist/arm and radiculopathy cervical region and received medical treatment including medications, a wrist splint and activity modification. (Opinion on Decision, at p. 6.) The WCJ also stated that “any issues dealing with contribution disputes under Labor Code section 5500.5 shall be litigated through Arbitration.” (*Ibid.*)

ICW’s Petition notes that applicant received significant relief from her occupational therapy sessions in March, 2020, thus raising the issue of whether applicant knew she had sustained compensable temporary or permanent disability as of 2020. (Petition, at p. 4:12.) ICW also contends that applicant received no medical evidence as to the industrial nature of that disability until the QME found applicant to be permanent and stationary with ratable permanent impairment on October 8, 2021. (*Id.* at p. 5:1.) Thus, ICW concludes the correct date of injury under section 5412 was October 8, 2021.

Cypress’ Answer asserts that section 3208.1 “sets forth that the end date of a cumulative injury shall be the date determined under LC § 5412,” and that applicant “first suffered disability and knew or should have known the disability was work related by [March 6, 2020] in the sense that by that time her condition deteriorated to a state where she was forced to seek medical attention and was prescribed splints, medication, and activity modification.” (Answer, at p. 4:25.) Cypress concludes that the medical opinions expressed to applicant as of March 6, 2020 “should have, with reasonable diligence, led the applicant to believe the disability was caused by employment.” (*Id.* at p. 5:2.)

The WCJ’s Report notes that “based on the medical reports, specifically the April 24, 2020 report, the applicant was on light duties due to her symptoms and was referred to additional treatment, which satisfies the knowledge requirement under 5412.” (Report, at p. 5.)

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

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.

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 June 10, 2026, and 60 days from the date of transmission is Sunday, August 9, 2026. The next business day that is 60 days from the date of transmission is August 10, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on August 10, 2026, 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

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 workers' compensation administrative law judge, the Report was served on June 10, 2026, and the case was transmitted to the Appeals Board on June 10, 2026. 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 June 10, 2026.

II.

These supplemental proceedings arise out of Cypress' June 27, 2024 Petition for Contribution in which Cypress alleges a "legal CT period" of September 17, 2019 to January 10, 2020 and seeks contribution from ICW pursuant to section 5500.5.

Pursuant to section 5275(a)(2), disputes with respect to a right to contribution in accordance with section 5500.5 must be submitted for arbitration. (Lab. Code, § 5275(a)(2).) Here, although the parties nominate this dispute as pertaining to injury AOE/COE and the section 5412 date of injury, the genesis of the dispute is Cypress' pending petition for contribution from ICW. Accordingly, the disputes herein appear to be subject to mandatory arbitration under section 5275(a)(2). Pursuant to section 5272, "[a]rbitrators shall have all of the statutory and regulatory duties and responsibilities of a workers' compensation judge" with exceptions regarding medical evaluations and contempt proceedings not relevant to this dispute. (Lab. Code, § 5272.) Thus, a Workers' Compensation Arbitrator (WCA) has the authority to resolve the disputes placed in issue herein, including injury AOE/COE, the competency of the medical record, and the date of injury. (See Minutes, at p. 2:15.)

The parties have nonetheless sought adjudication of the issues of injury AOE/COE and the date of injury in proceedings before a WCJ, and to the extent that the WCJ has determined that record supports injury AOE/COE, and because that finding is not contested herein, we decline to disturb it.

However, with respect to the date of injury, we are not persuaded that as of March 6, 2020 applicant knew, or through the exercise of reasonable diligence, should have known, that her compensable permanent or temporary disability was caused by her employment.

Section 5412 provides:

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.)

“The date of injury is a statutory construct which has no bearing on the fundamental issue of whether a worker has, in fact, suffered an industrial injury ... the 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. Thorpe v. Workers’ Comp. Appeals Bd. (Butler)* (1984) 153 Cal.App.3d 327, 347 [49 Cal.Comp.Cases 224].)

The Court of Appeal has defined “disability” per section 5412 as “either compensable temporary disability or permanent disability,” noting that “medical treatment alone is not disability, but it may be evidence of compensable permanent disability, as may a need for splints and modified work. These are questions for the trier of fact to determine and may require expert medical opinion.” (*State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998, 1005 [59 Cal.Comp.Cases 579].)

Here, we concur with the WCJ’s evaluation of the *disability* component of section 5412 inasmuch as applicant had received three months of medical treatment responsive to her bilateral upper extremity and spinal complaints, had been working modified duties, and was prescribed wrist splints and medications of the March 6, 2020 evaluation. (Opinion on Decision, at p. 6.) Pursuant to the court’s analysis in *Rodarte, supra*, applicant’s medical treatment including her need for splints and modified work were sufficient for the WCJ to reasonably determine the existence of compensable temporary or permanent disability. (*Rodarte, supra*, 119 Cal.App.4th at p. 1005.)

However, we are not persuaded that the evidentiary record supports applicant’s knowledge that such disability was work-related as of March 6, 2020. The record reflects no medical advice to applicant *as of that date* that her disability was caused by her work exposures, and we are not

persuaded that a passing reference to applicant's work as a "CNA lifting" in the March 6, 2020 encounter notes is sufficient to constitute such medical advice. (Ex. PP, Records of Jaisimaran Sidhu, M.D., various dates, at p. 3.) Although the WCJ's Report opines that applicant may have obtained knowledge that her disability was work-related at some point *after* March 6, 2020, we conclude the record does not support applicant's knowledge *as of March 6, 2020*.

Accordingly, we will grant ICW's Petition and defer the issue of the date of injury. We recommend that the parties attempt amicable resolution of the contribution petition. However, should the parties be unable to reach an agreement, they will likely need to initiate arbitration proceedings as required by section 5275(a)(2).

In addition, we offer the following nonbinding guidance to the parties. Section 5500.5 specifies that liability for an injury is the one year preceding either the section 5412 date of injury or the last date of injurious exposure, whichever is earlier. (Lab. Code, § 5500.5(a).) Thus, any determination of the period of liability under section 5500.5 requires the determination of two dates: (1) the section 5412 date of injury and (2) the last date of injurious exposure. (See *Western Growers Inc. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227 [58 Cal.Comp.Cases 323].) Although it is possible that both the date of injury and the last date of injury may occur at the same time, the two dates are not interchangeable and require separate analyses. In the instant matter, even if the WCJ finally determined the date of injury pursuant to section 5412, the period of liability under section 5500.5(a) would not be resolved because there has been no determination of applicant's last date of injurious exposure. Given the conflicts in the record about how long and in what capacity applicant continued to work after initially noting the onset of symptoms in January, 2020, the last date of injurious exposure will require a specific analysis based on the evidence in the record. Only once the last date of injurious exposure has been determined can the parties and/or the arbitrator determine the section 5500.5 liability period based on the earlier of the section 5412 date of injury or last date of injurious exposure.

Similarly, we note ICW's contention as set forth in the trial issues submitted for decision that the section 5412 date precludes a finding of a cumulative injury from January 10, 2019 to January 10, 2020. (Minutes, at p. 2:18.) However, while section 3208.1 provides that "[t]he date of a cumulative injury shall be the date determined under Section 5412," this date of injury identified under section 5412 is not dispositive of the last date of injurious exposure under section 5500.5. While it is possible that the section 5412 date and the last date of injurious exposure may

occur on the same day, a separate analysis of the facts and the medical record is required to identify each date. (*Butler, supra*, 16 Cal.App.4th at p. 240 [“[T]he crucial date under section 5500.5 is either the date of injury as defined by section 5412, or the last date of exposure, whichever occurs first.”].)

In summary, we concur with the WCJ’s analysis of AOE/COE and as to the substantiality of the QME reporting but are not persuaded that applicant possessed the requisite knowledge of industrial etiology of her disability as of March 6, 2020. Accordingly, we will grant reconsideration, rescind the F&O, and substitute a new Findings of Facts that applicant sustained injury AOE/COE and to defer the issue of the date of injury pursuant to section 5412.

We encourage the parties to attempt informal resolution of Cypress’ pending petition for contribution. However, should the parties be unable to resolve the issue amicably, liability under section 5500.5(a) and the issues of the date of injury and the last date of injurious exposure, which are separate issues with separate analyses, likely will need to be decided in mandatory arbitration proceedings pursuant to section 5275(a).

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of May 13, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the decision of May 13, 2026 is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Alexandra Metcalfe, while employed during the period January 10, 2019, through January 10, 2020, as a certified nursing assistant, Occupational Group Number 340, at Tulare, California, by Tulare Nursing Rehab Center, AKA, Caber Enterprises, Inc., sustained injury arising out of and during the course of employment to the bilateral wrists, bilateral hands, bilateral shoulders, and upper extremities.

2. At the time of injury, the employer's workers' compensation carrier was Insurance Company of the West from January 1, 2019, through December 31, 2019, and Cypress Insurance Company from January 1, 2020 through January 1, 2022.
3. The issue of the date of injury pursuant to Labor Code section 5412 is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 10, 2026

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

**DUNCAN, CASSIO, LUCCHESI, BINKLEY & VAN DOREN
D'ANDRE LAW**

SAR/abs

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