WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CARLOS JARAMILLO, *Applicant*

vs.

STUCCO CONTRACTORS, INC.; SELF INSURED GROUP (INSOLVENT), administered by SELF-INSURERS SECURITY FUND, *Defendants*

Adjudication Number: ADJ9400358
Van Nuys District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings of Fact & Order (F&O) issued on June 7, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that Labor Code section 5405[1] time-barred applicant's claim for workers' compensation benefits thereby resulting in him taking nothing from his claims filed herein.

Applicant contends that the evidence at trial does not support the conclusion that his employer provided him with notice as to his workers' compensation rights, thereby tolling section 5405's statute of limitations and entitling him to workers' compensation benefits.

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

We have considered the allegations in applicant's Petition and defendant's Answer and the contents of the WCJ's Report. Based on our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we rescind the WCJ's June 7, 2022 F&O and return the matter to the trial level for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

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

BACKGROUND

On June 12, 2014, the parties submitted a Compromise and Release (C&R) that resolved a cumulative injury claim for the period February 7, 2009 to February 7, 2010 (ADJ7395306) and specific injury claims of May 7, 2007 (ADJ7395192) and December 6, 2007 (ADJ9291242). Paragraph 8, references a date of injury of May 14, 2007. However, duplicate claims alleging injury on May 7, 2007 (ADJ9291246) and December 6, 2007 (ADJ7395331) were not resolved by the agreement.

In ADJ9400358, applicant, while employed on May 14, 2007, as a laborer, sustained an industrial injury to his back. The injury occurred while applicant was walking on scaffolding carrying a hose over his left shoulder, when the scaffolding fell and applicant fell with it. (Minutes of Hearing / Summary of Evidence (MOH/SOE, 04/05/2022, 3:1-3.) While he received treatment, he waited until 2010 to file his claim because he did not know how long he could wait to file a claim. (MOH/SOE, 04/05/2022, 3:3-5.) He subsequently sustained another injury on December 6, 2007 to his right knee when, while walking on scaffolding, he jumped over a chair on the scaffolding and got a splinter in his right knee. (MOH/SOE, 04/05/2022, 3:6-10.) Applicant's former attorney waited to file the May 14, 2007 claim until after settling the December 6, 2007, date of injury. (MOH/SOE, 04/05/2022, 4:24-25.)

The WCJ, in his Report, wrote as follows:

> On 5/14/07 applicant sustained an admitted injury to his back. This is the claim being litigated herein. Applicant was sent on the date of injury to High Desert Medical Center where he was evaluated and treatment was commenced. A claim form was provided, completed, and signed by the applicant and employer the following day (EAMS #39762885). The injury was accepted by the employer.
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> Applicant was released to return to work with work restrictions that were apparently provided by the employer. Applicant was paid temporary partial disability indemnity (TPD) while being treated. An initial TPD notice was provided (Defendant Exhibit B), as well as a follow up notice when TPD ended on 6/26/07 when applicant was released to full duty (Defendant Exhibit C). Treatment continued at Los Angeles Orthopedic Institute with subsequent referral to orthopedist Dominic Sisto, M.D. (Defendant Exhibit G). Subsequent notices were timely provided by the employer relating to the inability to determine if there was any permanent disability (PD) (Defendant Exhibit D), a NOPE letter on 7/12/07 (Defendant Exhibit E), and subsequently a PD denial letter following a final PTP release report on 11/29/07 (Defendant Exhibit F). Applicant did not request a panel, seek representation, nor request additional treatment contemporaneous with the notices and release from treatment, and continued working his usual and customary duties for the employer.

> Applicant sustained a subsequent specific knee injury due to a wood splinter seven months later on 12/6/07 and received additional treatment relating to that injury.
>
> Following applicant's lay off two years later, in February 2010, he obtained legal representation with the law firm of Reyes Baroum. Three applications for adjudication were filed on applicant's behalf on 8/11/10. ADJ7395306 alleged a continuous trauma injury through 2/7/10 with injuries alleged to applicant's knees, psyche, lungs, chemical exposure and sleep. ADJ7395331 related to the specific 12/6/07 knee splinter injury referenced above, and ADJ7395192 related to a specific scaffolding fall injury to applicant's back purportedly occurring on 5/7/07. The undersigned notes that there is no contemporaneous evidence anywhere in the record relating to reporting or treatment associated with a May 7, 2007 back injury. All the contemporaneous medical reporting solely references the accepted 5/14/07 scaffold back injury. In addition, subsequent treatment records obtained after applicant sought representation in 2010 also correctly note the May 2007 specific injury as occurring on 5/14/07.
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> At trial herein applicant initially denied recollection of the admitted and chronicled 5/14/07 injury but claimed he did recall an undocumented 5/7/07 injury. The undersigned did not find applicant's historical recollection to be credible. A lack of historical credibility was also noted by Alan Gross, M.D. who reported initially as a PQME in 2013 (Court Exhibit 1).
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> Compounding confusion in this case, is the fact that applicant obtained new legal representation from George Almodovar relating to the three claims referenced above on 10/27/11.

(Report, pp. 2-3.)

On June 7, 2022, the WCJ issued his F&O, finding that section 5405 time-barred applicant's May 14, 2007 claim of injury.

DISCUSSION

Generally, the filing of an application commences proceedings before the WCAB. (Lab. Code, § 5500; Cal. Code Regs., tit. 8, § 10450.) The time limitations for commencing proceedings are set forth in section 5405 as follows:

> The period within which proceedings may be commenced for the collection of the benefits provided by Article 2 (commencing with Section 4600) or Article 3 (commencing with Section 4650), or both, of Chapter 2 of Part 2 is one year from any of the following:
>
> (a) The date of injury.
>
> (b) The expiration of any period covered by payment under Article 3 (commencing

with Section 4650) of Chapter 2 of Part 2.

(c) The last date on which any benefits provided for in Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 were furnished.

(Lab. Code, § 5405.)

Thus, an applicant must commence proceedings with the WCAB within one year of (1) the date of injury; or (2) the expiration of the period covered by the employer's last payment of disability indemnity; or (3) the date of the last furnishing by the employer of medical, surgical or hospital treatment. (*J.T. Thorp v. Workers' Comp. Appeals. Bd.* (1984) 153 Cal.App.3d 327, 333-334 [49 Cal.Comp.Cases 224].)

In the instant case, applicant claims that his injury occurred on May 14, 2007. Applicant did not file his application for adjudication of claim until April 15, 2014. Applicant therefore filed his claim more than the one-year period under section 5405(a). Nonetheless, the employer's provision of healthcare benefits constitutes the provision of benefits specified in section 5405(c) and may toll the running of the statute of limitations.

In *Plotnick v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 622 [35 Cal.Comp.Cases 13], the Supreme Court held that section 5405(c) operated to toll the statute of limitations where the employer furnished medical treatment for a prior specific injury to the same body part later alleged in a cumulative injury claim because the treatment furnished for the earlier injury was also necessary to relieve the effects of the subsequent cumulative trauma. As the Court explained, "[i]t follows inevitably that any treatment received during that time from the employer must to some extent have been designed to relieve him from the effects of the injury incurred in the 1957–1966 period." (*Id.* at pp. 625–626.)

Similarly, in *Nielsen v. Workers' Comp. Appeals Bd.* (1985) 164 Cal.App.3d 918 [50 Cal.Comp.Cases 104], the Court of Appeal wrote that "if an employer or its compensation carrier, knowing of a potential claim, furnishes treatment or advances sums for purposes bearing a clear relationship to an industrial injury, such benefits will be deemed to have been given under the Act thus tolling the statute." (*Id.* at pp. 932-933.) The purpose "is the protection of the injured employee from being lulled into a sense of security by voluntary payments of benefits until the time to commence formal proceedings with the commission has expired." (*Id.* at p. 932.)

A decision "must be based on admitted evidence in the record" (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate

and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

The law has long recognized that where the Appeals Board cannot reach a justly reasoned decision on the existing record because the evidence is insufficient, unclear or conflicting, it has the power and even the duty to develop the record under sections 5701 and 5906. When the record is inadequate to address the issues framed by the parties, "the WCJ has a duty to develop an *adequate* record." (*Kuykendall v Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264] (italics added); *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1120 [63 Cal.Comp.Cases 261].) The duty arises out of the Board's obligation to adjudicate completely the issues submitted for decision by the parties, consistent with principles of due process. (*Telles Transport v. Workers' Comp. Appeals Bd.* (*Zuniga*) (2001) 92 Cal.App.4th 1159, 1165 [66 Cal.Comp.Cases 1290].)

Here, while the WCJ wrote in his Report that applicant filed his application "six years from the last date of employer provided treatment," (Report, at p. 4) we are unable to discern from the record evidentiary support for that statement. Accordingly, upon remand, the WCJ will need to develop the evidentiary record and determine in accordance with section 5405(c) the last date the employer provided medical treatment attributable to applicant's May 14, 2007 back injury. This is essential in determining if the claim is indeed time-barred under section 5405(c).

We further observe that 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].) Thus, once having granted reconsideration, the

Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acc. Com.* (1958) 50 Cal. 2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor."].)

Here, we observe that the June 12, 2014 C&R for $65,000.00 resolved the February 7, 2009 to February 7, 2010 injury (ADJ7395306), the "May 7, 2007" injury (ADJ7395192), and the December 6, 2007 injury (ADJ9291242).[2] Paragraph 8 refers to a "5/14/07" date of injury.

The record contains no contemporaneous evidence of reporting or treatment relating to an alleged May 7, 2007 back injury. Rather, the only documented reporting and treatment concerns the accepted May 14, 2007 scaffold back injury.

Furthermore, the January 31, 2013 report by panel qualified medical evaluator, Alan M. Gross, M.D., references ADJ7395192 (the case number resolved in the C&R). In the history, Dr. Gross refers to the date of injury of May 14, 2007. (Court's Ex. 1, p. 3.) In the summarized medical records, the date of injury is referred to as May 14, 2007. (*Id.* at pp. 19, 22, 29.) Dr. Gross opined that the December 6, 2007 injury constituted a compensable consequence of the "May 14, 2007" injury. (*Id.* at p. 34.)

It is unclear whether the claimed May 14, 2007 injury is the same injury as the claimed May 7, 2007 injury.

In *Le Parc Community Assn. v. Workers' Comp. Appeals Bd.* (*Curren*) (2003) 110 Cal.App.4th 1161 [68 Cal. Comp. Cases 1041], the Court of Appeal explained as follows:

> Under the doctrine of *res judicata*, a valid, final judgment on the merits precludes parties or their privies from re-litigating the same "cause of action" in a subsequent suit. *Res judicata*, or claim preclusion, prevents re-litigation of the same cause of action in a second suit between the same parties or parties in privity with them … Under the doctrine of *res judicata*, if a plaintiff prevails in an action, the cause is

[2] Duplicate claims for the May 7, 2007 injury (ADJ9291246) and the December 6, 2007 injury (ADJ7395331) remained unresolved.

> merged into the judgment and may not be asserted in a subsequent lawsuit; a judgment for the defendant serves as a bar to further litigation of the same cause of action."

(*Id.* at p. 1169; citations omitted.)

In addition, pursuant to Civil Code section 1647, "[a] contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates." (Civ. Code, § 1647.) In *Pacific Gas & E. Co. v. Thomas Drayage Co.* (1968) 69 Cal.2d 33, the Supreme Court held that:

> Although extrinsic evidence is not admissible to add to, detract from, or vary the terms of a written contract, these terms must first be determined before it can be decided whether or not extrinsic evidence is being offered for a prohibited purpose. The fact that the terms of an instrument appear clear to a judge does not preclude the possibility that the parties chose the language of the instrument to express different terms. That possibility is not limited to contracts whose terms have acquired a particular meaning by trade usage, but exists whenever the parties' understanding of the words used may have differed from the judge's understanding.
>
> Accordingly, rational interpretation requires at least a preliminary consideration of all credible evidence offered to prove the intention of the parties. Such evidence includes testimony as to the "circumstances surrounding the making of the agreement … including the object, nature and subject matter of the writing …" so that the court can "place itself in the same situation in which the parties found themselves at the time of contracting." If the court decides, after considering this evidence, that the language of a contract, in the light of all the circumstances, "is fairly susceptible of either one of the two interpretations contended for …," extrinsic evidence relevant to prove either of such meanings is admissible.

(*Id.* at pp. 39-40, citations and footnotes omitted.)

Finally, "the interpretation of [a] compromise and release requires consideration of all credible evidence offered to prove the intentions of the parties." (*Claxton v. Waters* (2004) 34 Cal.4th 367, 379 n.3 [69 Cal.Comp.Cases. 895] (internal quotation marks and citations omitted).)

Based on the present record, we cannot determine whether the parties in their June 12, 2014 C&R intended to resolve the May 14, 2007 date of injury as one merging with the May 7, 2007 date of injury, and to resolve the December 6, 2007 date of injury. In addition, what appears to be duplicate case numbers ADJ9291246 and ADJ7395331 remain unresolved. (See Cal. Code Regs., tit. 8, § 10455(a).) Therefore, upon return, the WCJ will need to develop the evidentiary record and determine whether the parties intended the C&R to resolve both the present case and the dates of injury discussed above, both previously resolved and still unresolved.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the WCJ's decision of June 7, 2022 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 23, 2026

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

CARLOS JARAMILLO
SHATFORD LAW
LAW OFFICES OF ALLWEISS, MCMURTRY & MITCHELL

DLP/*ara*

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