WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CHRISTOPHER HESTON, *Applicant*

vs.

SAN FRANCISCO GIANTS; ACE AMERICAN INSURANCE COMPANY, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ15615310
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award issued by the workers' compensation administrative law judge (WCJ) on February 25, 2026. Therein, the WCJ found that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to his right shoulder, right elbow, right knee and right great toe while employed as a professional athlete for the period June 1, 2009 through July 27, 2018. The WCJ further found that applicant did not meet his burden of proof that he sustained injury to all other body parts claimed; that applicant became permanent and stationary as of February 22, 2024; that applicant is entitled to an unapportioned award of 29% permanent disability; that the Labor Code[1] section 5412 date of injury is February 22, 2024; that the section 5500.5 liable party is the San Francisco Giants, insured by Ace American Insurance Company and administered by Sedgwick CMS; and that applicant's claim is not barred by the statute of limitation.

Defendant contends that the WCJ erred in failing to find the claim barred by the statute of limitation pursuant to section 5405. Alternatively, defendant contends that the WCJ should have relied on qualified medical evaluator (QME) Gregory Mack, M.D., to find apportionment.

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

Applicant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration recommending that reconsideration be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report) with respect thereto. Based on our review of the record, and for the reasons stated below, we will grant reconsideration and amend the WCJ's decision to find that the section 5412 date of injury is January 3, 2022. We otherwise affirm the WCJ's decision for the reasons stated in the WCJ's Report, which we adopt and incorporate, except as noted herein.

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.
>
> (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 April 1, 2026 and 60 days from the date of transmission is Sunday, May 31, 2026. The next business day that is 60 days from the date of transmission is Monday, June 1, 2026. (See Cal. Code Regs., tit. 8, §

10600(b).)[2] This decision is issued by or on Monday, June 1, 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 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 April 1, 2026, and the case was transmitted to the Appeals Board on April 1, 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 April 1, 2026.

II.

We do not adopt or incorporate the WCJ's determination regarding the section 5412 date of injury. A cumulative injury is defined "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. The date of a cumulative injury shall be the date determined under Section 5412." (Lab. Code, § 3208.1(b).) Therefore, the determination of the "date of injury" of a cumulative injury for purposes of section 5405 is governed by section 5412.

Section 5412 provides that "[t]he 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." Determination of a section 5412 "date of injury" is a two-part analysis: 1) when did the employee first suffer a compensable disability from a

[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.

cumulative injury; and, 2) when did the employee know, or in the exercise of reasonable diligence should have known, that the compensable disability was caused by her employment. (See *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998 [69 Cal.Comp.Cases 579].)

Whether an employee knew or should have known that the disability is industrially related is generally a question of fact to be determined by the trier of fact, i.e., the WCJ. (*City of Fresno v. Workers' Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 471, [50 Cal.Comp.Cases 53]; *Nielsen v. Workers' Comp. Appeals Bd.* (1985) 164 Cal.App.3d 918 [50 Cal.Comp.Cases 104]; *Chambers v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal.2d 556 [33 Cal.Comp.Cases 722]; *Alford v. Industrial Accident Com*. (1946) 28 Cal.2d 198 [11 Cal.Comp.Cases 127].) It is not sufficient for defendant to show that applicant "knew he had some symptoms." (*Johnson, supra*, 163 Cal.App.3d at 471, citing to *Chambers, supra*, and *Pacific Indem. Co. v. Industrial Acc. Comm*. (1950) 34 Cal.2d 726.)

Thus, date of injury when the employee knew or should have known that the disability was caused by cumulative injury from employment may be established by the date the employee received expert medical advice to that effect. (*County of Riverside v. Workers' Comp. Appeals Bd. (Sylves)* (2017) 10 Cal.App.5th 119, 124-125 [82 Cal.Comp.Cases 301]; *Chambers, supra*, 69 Cal.2d at p. 559; *Johnson, supra*, 163 Cal.App.3d at pp. 472-473.) Alternatively, an employee may have had sufficient training, knowledge, or qualifications to recognize the causal relationship between the disability and employment, or be informed by the employee's attorney based on the record. (*Nielsen, supra*, 164 Cal.App.3d at p. 927; *Johnson, supra*, 163 Cal.App.3d at pp. 472-473; *Bassett-McGregor, supra*, 205 Cal.App.3d at pp. 1111-1115; *Hurwitz v. Workers' Comp. Appeals Bd*. (1979) 97 Cal.App.3d 854, 867-874 [44 Cal.Comp.Cases 983].)

While an employer's burden of proving the statute of limitations has run can be met by presenting medical evidence that an injured worker was informed a disability was industrially caused, "[t]his burden is not sustained merely by a showing that the employee knew he had some symptoms." (*Id*. at p. 55.) The fact that a worker had knowledge of disease pathology does not necessarily mean that they knew, or should have known, that they had disability caused by the employment. (*Chavira v. Workers' Comp. Appeals Bd*. (1991) 235 Cal.App.3d 463, 474 [56 Cal.Comp.Cases 631]; *Rodarte, supra*, 119 Cal.App.4th at p. 998.) An injured worker's suspicion that an injury is work-related is not sufficient to establish the date of injury on a cumulative injury.

An injured worker will not be charged with knowledge that a disability is job-related without medical advice to that effect, unless given "the nature of the disability and the applicant's training, intelligence and qualifications," he or she should have recognized the relationship. (*Johnson, supra*, 163 Cal.App.3d at p. 473.) This is because "the medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters." (*Peter Kiewit Sons v. Industrial Acc. Com. (McLaughlin)* (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188].) Moreover, it is employer's burden of proof that the employee knew or should have known their disability was industrially caused. (*Johnson, supra*, at p. 471, citing *Chambers v. Workers' Comp. Appeals Bd., supra*, 69 Cal.2d at p. 559.) That burden is not sustained merely by a showing that the employee knew they had symptoms. (*Johnson, supra*, at p. 471, citing *Chambers, supra*, at p. 559.)

In this case, we agree with the WCJ that defendant did not meet it burden to show the concurrence of knowledge and disability in 2018. However, we attribute knowledge to applicant once he filed the Application for Adjudication of Claim on January 3, 2022 alleging "PLAYING AND PRACTICING PROFESSIONAL BASEBALL. APPLICANT HAD INJURIOUS EXPOSURE AND INJURIES IN CALIFORNIA THAT CONTRIBUTED TO HIS DISABILITY.." (*Old Republic Insurance v. Workers' Comp. Appeals Bd*. (2000) 85 Cal.Comp.Cases 504 (writ den.) Therefore, we find the section 5412 date of injury to be January 3, 2022 and will amend the WCJ's decision accordingly.

Next, we turn to the issue of apportionment. The report by the physician addressing the issue of apportionment must be supported by substantial evidence. (*Escobedo, supra*, 70 Cal.Comp.Cases at p. 620, citing Lab. Code, § 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. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) A medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (*Hegglin, supra*, 4 Cal.3d at p. 169; *Place v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 372, 378–379 [35 Cal.Comp.Cases 525].)

In order to comply with section 4663, a physician's report in which permanent disability is addressed must also address apportionment of that permanent disability. However, the mere fact

that a physician's report addresses the issue of causation of permanent disability and makes an apportionment determination by finding the approximate respective percentages of industrial and non-industrial causation does not necessarily render the report substantial evidence upon which we may rely. Furthermore, the physician must explain the nature of the disease and how and why it is causing disability at the time of the evaluation. (*Id*.)

In the context of apportionment determinations, the medical opinion must disclose familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion, so that the Appeals Board can determine whether the physician is properly apportioning under correct legal principles. (*Escobedo, supra*, 70 Cal.Comp.Cases at p. 621.) Our decision in *Escobedo* summed up the minimum requirements for an apportionment analysis as follows:

> [T]o be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.
>
> For example, if a physician opines that approximately 50% of an employee's back disability is directly caused by the industrial injury, the physician must explain **how** and **why** the disability is causally related to the industrial injury (e.g., the industrial injury resulted in surgery which caused vulnerability that necessitates certain restrictions) and **how** and **why** the injury is responsible for approximately 50% of the disability. And, if a physician opines that 50% of an employee's back disability is caused by degenerative disc disease, the physician must explain the nature of the degenerative disc disease, how and why it is causing permanent disability at the time of the evaluation, and how and why it is responsible for approximately 50% of the disability.
>
> (*Ibid.*, emphasis added.)

For the reasons stated in the Report, we agree that Dr. Mack's opinion regarding the issue of apportionment was not substantial medical evidence and that, therefore, defendant did not meet its burden of proof on this issue.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the February 25, 2026 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

8. The Labor Code section 5412 date of injury is January 3, 2022.

* * *

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 1, 2026

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

CHRISTOPHER HESTON
PRO ATHLETE LAW GROUP
BOBER PETERSON & KOBY

PAG/oo

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

REPORT AND RECOMMENDATION ON DEFENDANT'S PETITION FOR RECONSIDERATION

I

INTRODUCTION

1.	Date of Injury	:	[]
2.	Identity of Petitioner	:	Defendant filed the Petition.
	Timeliness	:	The Petition is timely filed.
	Verification	:	The Petition is verified.
3.	Date of Findings of Fact	:	February 25, 2026

4. Petitioner's contentions:

(a) The evidence does not justify the findings of fact.
(b) The findings of fact does not support the Order, Decision or Award.

ACE American Insurance Company on behalf of the San Francisco Giants[3] ("Defendant") seeks reconsideration of the Findings and Award issued February 25, 2026, contending that Applicant's cumulative trauma claim is barred by the statute of limitations pursuant to Labor Code section 5405, and alternatively, that the Board erred in failing to issue an apportioned award. Defendant also raises that this trial court did not address the testimony of defense witness, Eric Ortega or Qualified Medical Examiner ("QME"), Dr. Mack's opinion on the date of disability. Although the WCJ must make findings on all material issues and provide a summary of the evidence relied upon in accordance with Labor Code section 5313, there is no requirement that the WCJ address all testimony or evidence item by item especially if it is not material to the finding. *See Saeed v. Workers' Comp. Appeals. Bd.*, 46 Cal. Comp. Cases 1224. However, to the extent that the Opinion on Decision did not address those issues, pursuant to *Smales v. Workers' Comp. Appeals Bd.*, (1980) 45 Cal. Comp. Cases 1026, this Report and Recommendation cures those defects.

II

FACTS

Christopher Heston ("Applicant") by and through counsel Pro Athlete Law Group filed an Application for Adjudication of claim on January 3, 2022, alleging injury to multiple body parts.

[3] Identified in Defendant's Petition for Reconsideration as the San Francisco Baseball Associates L.P.

(EAMS DOC. ID#39589954).[4] The matter came before the undersigned for three days of trial on April 10, 2025, September 30, 2025, and was submitted on January 7, 2026. Applicant claimed injury arising out of and in the course of employment while employed for the period June 1, 2009, through July 27, 2018, as a professional athlete. (Minutes of Hearing/ Summary of Evidence "MOH/SOE" 4/10/2025 at p. 2:5½ -8). During the cumulative trauma period as pled, Applicant worked for the San Francisco Giants for the periods June 22, 2009, through December 7, 2016, and again from January 29, 2018, through July 27, 2018. (Id. at p. 2:7-8). The San Francisco Giants were the only parties to the trial.

There is no disputing that Applicant sustained injuries through the course of playing baseball as a child and as a professional athlete. In high school, he found out he had bone spurs to his right elbow and required surgery. (Id. at p.12:15½ -24½). During his professional career, he had problems with his right elbow developing over time and discovered he had a bone spur in 2013. (Id. at p. 5:7-12). He had surgery for the right elbow in 2013 and was off for the rest of the season. (Id. at p. 5:13-15). After his right elbow injury, he believes he returned to pitching at the same level. (Id. at p. 6:6-7). His right toe had always bothered him, so he got a work-up in 2015 and was diagnosed with a sesamoid bone on his right big toe. (Id. at p. 6:8-10). In 2016, he tore his oblique during a game and missed time after this injury. (Id. at p. 5:23-25.) In 2017, he felt a stabbing pain in his right shoulder that had been present for about a year and he attributed it to the baseball innings over the years. (Id. at p. 6:21-24). He did not know the diagnosis for the shoulder or get any diagnostics, but he was rehabbing with trainers and doctors. (Id. at p. 7:1-3). By 2018, his velocity had dropped. (Id. at p.7:11-14). While with the Giants in 2018, he continued treatment for the right shoulder and received some PRP shots. (Id. at p.8:13-15). In 2018, he was released by the Giants affiliate Richmond Virgina. (Id. at p. 9:9-13).

In July 2019, he sought a second opinion from a physician near his home because his shoulder was not getting better.[5] (Id. at p. 9:21-23.). Dr. Osbahr diagnosed him with a rotator cuff and labrum tear and recommended surgery which he had in July 2019. (Id. at p. 10:1-4). He reached out to his attorney in late 2021 after he saw an advertisement on Facebook. (Id. at p. 10:12-14). He testified that at the time he was released from the Giants, no doctor had ever told him he had permanent disability or a cumulative trauma to any body part. (Id. at p. 10:18-21).

[4] The Court takes judicial notice of the EAMS file.
[5] These reports are not in evidence.

Notably, Applicant testified that he did not always know the difference between when he was healthy or injured because sometimes, he was sore after throwing which could be mistaken for an injury. (MOH/SOE 9/30/2025 at p. 3:13-15). His right knee started to bother him in 2015, about the same time as his right toe and he associated the two because he had to change how he walked. (Id. at p. 4:19-22).

In evidence there are several documents informing Applicant about his rights to file a workers' compensation claim, and while he authenticated his signature on several of these documents, he testified he had no recollection of signing nor discussing the documents. (Id. at p. 8:4½ - 8). The following is a summary of what is reflected within the evidentiary record:

September 4, 2010, October 19, 2010, September 11, 2011, and September 1, 2012 Applicant signed an Exit Questionnaire Form with the following statement:

> I declare that I have been told by my medical staff that I may have symptoms and injuries which are the result of repetitive or cumulative trauma. These may include symptoms caused by the repetitive day to day activities of playing baseball. Despite this knowledge, and despite having received notification of my right to file a workers' compensation claim in multiple jurisdictions for such symptoms and conditions, I have chosen not to pursue any such claim. As such, I will in no way hold the Club responsible for workers' compensation purposes going forward and I release them from liability for any symptoms, injuries, illnesses or medical complaints that are not written down below on this exit questionnaire. I agree that any non-reported injuries/illnesses or medical complaints are not the Club's responsibility.

(Joint Exhibit 6 at pp. 517, 519, 523, & 525).

September 1, 2012, March 3, 2011, March 2, 2012, and February 12, 2013 Notice of receipt of DWC-1 & DWC-7 with the following statement:

> Regarding the State of California (CA) Workers' Compensation Laws: Employee acknowledges receipt of CA Workers' Compensation Claim Form (DWC 1)) & Notice of Potential Eligibility and CA Notice to Employees – Injuries Caused by Work (DWC 7). Employee understands that the CA statute of limitations to file a workers' compensation claim for a specific injury or cumulative trauma injury is one year from the date of injury. Should a claim not be timely filed, the employee may lose his rights to potential benefits.

(Joint Exhibit 6 at p. 526; Exhibit B at pp. 149, 270 & 316).

Of significance in this case are the Applicant's last two exit physicals done in 2017 and 2018. The August 30, 2017, post-season physical conducted by Dr. Kenny had the following comment "right rotator cuff tendinopathy, supraspinatus / resolved". (Joint Exhibit 6 at pp. 532-542). Further the box with the following language was shaded: "[I]n my opinion, the Player/Staff is NOT now suffering from any medical or physical disability that prevents him from playing professional baseball or engaging in other employment. The Player/Staff has no impairment or Permanent Partial Disability (PPD) and would be considered Permanent and Stationary at Maximum Medical Improvement (MMI). Further, the Player/Staff is released to full work activities with no restrictions". (Id.).

His final physical dated July 27, 2018, in the team record, albeit not signed, again mentioned the impingement syndrome of right shoulder but also concluded there was no disability. (Joint Exhibit 6 at pp. 543-558).

Also testifying at trial was Certified Athletic Trainer, Eric John Ortega, who works for the Giants. Mr. Ortega testified generally to the procedures and practices of the team. He testified that the Giants as a standard practice conducted entrance, mid-season and exit physicals on the players. (MOH/SOE 1/7/2026 at p. 3:5-6). He testified that it is standard at these physicals for a player to see a doctor who reviews the players previous and recent injuries and completes the physical. (Id. at p. 3:7-9). He also testified that the players are given information regarding their rights and responsibilities for filing claims and an opportunity to discuss these forms. (Id. at p. 3:16-20). He recalled interacting with the Applicant in 2013, 2014, 2015 and parts of 2016. (Id. at p. 3:21-23). In these interactions, he spoke to Applicant about his physical condition, complaints, injuries, prognosis or medical treatment plan. (Id. at p. 4:4-6). Mr. Ortega, however, was not present for Applicant's final exit physicals in 2017 nor in 2018.

Parties utilized Dr. Gregory R. Mack who issued three reports. Dr. Mack's initial report of February 22, 2024, contains the following on apportionment:

> With regard to the right elbow, residuals are due 50% to an underlying condition requiring arthroscopic debridement before his professional career. Further aggravation (25%) occurred in the 2013 timeframe. His present state of arthrosis reflects additional trauma through 2018 (25%). Regarding his upper extremity numbness and nerve irritability, the patient reports that his complaints of numbness on the right side began in 2017 or 2018 but that he had occasional symptoms as early as 2012, prior to his second right elbow surgery.

> Numbness associated with cubital tunnel syndrome is more likely than not a consequence of injury to the elbow itself. Apportionment of Mr. Heston's cubital tunnel residuals is therefore the same as that of the right elbow, with 50% to an existing condition aggravated 25% from 2009 to 2013 and 25% from 2014 through 2018, 0% to all other factors.

(Joint Exhibit 3 at p. 33).

In his July 18, 2024, report, he reconsidered his opinion on apportionment and provided the following:

> **RIGHT ELBOW**: 50% of residuals preceded employment with major league baseball and are therefore nonindustrial, whereas the remainder of residuals are due to industrial exposure, i.e. cumulative trauma in the course of employment, 0% to all other factors.
>
> **CUBITAL TUNNEL SYNDROME**: Causation and apportionment are directly related to the patient's elbow injury. Causation is therefore apportioned 50% to nonindustrial factors prior to employment, 50% to cumulative trauma while employed by major league baseball, and 0% to all other factors.

(Joint Exhibit 1 at p. 3).

Dr. Mack's final report on May 9, 2025, was in response to Defendant's interrogatory requesting that he provide a date in which the Applicant sustained disability from the CT. (Joint Exhibit 2 at p. 1). In response he wrote:

> Review of Mr. Heston's medial and sports history indicates that he last played for the San Francisco Giants in July 2018. I am advised that he was released by the San Francisco Giants [sic] July 27, 2018. It was clear at that point that he had a substantial alteration of his capacity to meet occupational demands because of his impairment. July 27, 2018, therefore, represents the onset of his disability.

(Id.).

III

DISCUSSION:

STATUTE OF LIMITATIONS

Defendant asserts that Applicant's cumulative trauma claim is barred by the statute of limitations pursuant to Labor Code sections 5405 and 5412, asserting that the date of injury occurred no later than July 27, 2018, when Applicant was released from his final professional baseball team. Defendant relies on the retrospective opinion of QME, Dr. Mack, who opined that

Applicant sustained disability as of that date. These arguments are not supported by the record. Labor Code section 5412 requires the concurrence of two elements: (1) disability and (2) knowledge that such disability was caused by employment. Both elements must be established before the statute of limitations under section 5405 begins to run. Defendant has not established the convergence of knowledge and disability on July 27, 2018.

Defendant blurs the distinction between injury, pain, symptoms, treatment, loss of elite performance, and disability under Labor Code section 5412. The evidence establishes that, during his playing career, Applicant experienced pain, underwent treatment, and sustained multiple orthopedic conditions. However, such evidence demonstrates, at most, knowledge of injury, not knowledge of disability within the meaning of section 5412. Critically, the contemporaneous medical records at the time of Applicant's separation from employment affirmatively establishes the absence of disability. The 2017 and 2018 exit physicals specifically concluded that Applicant had no impairment, no permanent disability and was capable of full work without restrictions. Accordingly, even if Applicant was aware of ongoing symptoms, the record does not establish that he sustained compensable disability at that time. Without disability, the statutory requirements of section 5412 were not met, and the statute of limitations did not commence.

Defendant's reliance on the retrospective opinion of Dr. Mack does not alter this conclusion. Dr. Mark's opinion, rendered several years after the relevant period, attempts to assign a date of disability of July 27, 2018. This opinion does not constitute substantial medical evidence, as it is retrospective and directly inconsistent with the contemporaneous medical findings of the physicians who evaluated the Applicant, finding no impairment. A determination of the date of injury under section 5412 cannot be based on hindsight reconstruction. To do so would improperly substitute after-the-fact analysis for the statutory requirement that disability and knowledge exist at the time of question. *See generally Bengals v. Workers' Comp. Appeals Bd.*, 90 Cal. Comp. Cases 1024, 1026.

Defendant further contends that Applicant's inability to continue his professional baseball career establishes disability as of 2018. This argument is flawed. The inability to perform at the elite level required of a Major League Baseball pitcher does not, by itself, establish compensable disability under the workers' compensation system. The workers' compensation system measures impairment of earning capacity in the general labor market, not the loss of the ability to perform at an elite or specialized level. A decline in performance, velocity or inability to maintain a

professional roster position does not, by itself, establish compensable disability. Professional athletes carry out extraordinary physical demands that exceed those of the general labor market. Accordingly, Applicant's inability to continue his career as a professional athlete does not establish the disability element required under section 5412.

Defendant also relies on Applicant's awareness of pain, treatment, and multiple injuries throughout his career, his skilled status as a professional athlete, as well as his receipt of documents referencing workers' compensation rights to establish knowledge. As stated in Vaughn, "we are not persuaded that employment in a physically demanding profession confers an understanding of the relationship between the known adverse factors involved in applicant's employment and applicant's disability. Such a finding of knowledge would necessarily rest on a court's after the fact determination that a specific profession was sufficiently arduous and would necessarily impute to every member of that profession the knowledge that injuries occurring during their professional career were related to occupational hazards, effectively vitiating the knowledge requirement of section 5412." *Vaughn v. Colorado Rockies et al.* 2024 Cal. Wrk. Comp. P.D. LEXIS 33 *30.

Awareness of symptoms, even when persistent, does not equate to knowledge of compensable disability. Similarly, general notices regarding workers' compensation rights, given to the Applicant five years before he retired from professional baseball, with no copies in file, and that the Applicant does not recall getting, does not establish actual knowledge that a particular condition has resulted in permanent disability. Section 5412 requires a fact-specific inquiry into when the employee knew or reasonably should have known that he had sustained disability caused by employment. That standard is not satisfied here.

Defendant's position ultimately relies on a series of stacked inferences: that because Applicant experienced pain, he knew he was injured; because he knew he was injured, he knew he was disabled; and because he knew he was disabled, he knew the disability was industrial. This reasoning is not supported by the record or the law.

APPORTIONMENT

Defendant contends that it is entitled to an apportioned award pursuant to Labor Code sections 4663 and 4664 based on the opinions of Dr. Mack. Although Dr. Mack's reports were admitted into evidence as joint exhibits, their admission does not establish that they constitute substantial medical evidence on all issues.

Dr. Mack's apportionment opinion fails to satisfy the requirements as set forth in *Escobedo*[6]. His analysis relies primarily on the timing of Applicant's employment and the existence of pre-existing conditions, without explaining "how and why" those conditions are causing permanent disability at the time of the evaluation. As explained in Escobedo, a medical opinion on apportionment must do more than state percentages. It must explain the causal relationship between the industrial injury and the permanent disability and separately explain how and why nonindustrial factors are responsible for a portion of that disability. Dr. Mack's reports do not provide this required analysis. The deficiency is also apparent with respect to the cubital tunnel syndrome. While Dr. Mack relates this condition to the elbow pathology, he does not explain why 50% of the resulting disability is attributable to nonindustrial factors or identify what those factors are. A mere medical relationship between conditions does not establish apportionment. Because Defendant bears the burden of proof on apportionment, and because the medical evidence offered does not constitute substantial evidence, the Court is not permitted to rely upon it. Accordingly, an unapportioned award is warranted.

IV.

RECOMMENDATION

For the reasons stated above, it is respectfully requested that the decision not be disturbed and Defendant's Petition for Reconsideration be denied.

Notice is hereby given that this matter was transmitted to the Reconsideration Unit on the date below.

DATE: April 1, 2026

Josephine Broussard

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

[6] *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604 (Appeals Bd. en banc).