WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JACOB OROZCO, *Applicant*

vs.

COUNTY OF MONTEREY, permissibly self-insured, administered by INTERCARE HOLDINGS INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ19122773
Salinas District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact and Order (F&O) issued on July 31, 2026, by the workers' compensation administrative law judge (WCJ). By the F&A, as relevant here, the WCJ found that applicant, while employed on October 5, 2022 as a deputy sheriff by defendant, sustained injury arising out of and in the course of employment (AOE/COE) to his left ankle; and that applicant's claim was timely filed.

Defendant contends that the WCJ erred by finding applicant's claim was timely filed because the Application for Adjudication of Claim (Application) was not filed within one year of the date of injury and that there is no basis for tolling the statute of limitations.

We received an Answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Amended Report) recommending that the Petition for Reconsideration be denied.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Amended Report of the WCJ with respect thereto. Based on our review of the record and for the reasons discussed below, we will deny the Petition for Reconsideration.

FACTS

We will briefly review the relevant facts.

On October 5, 2022, the day of the injury, applicant filed a County of Monterey Report of Employee Incident (Employee Incident Report) (App. Exh. 4). The Employee Incident Report describes applicant's injury in detail as follows:

> I was in the V/X tower heating up my lunch. I walked past a chair that was in front of the control panel desk and rolled my left ankle on one of the legs that sticks out. I heard a pop and experienced pain that prevented me from movement briefly. After the pain subsided, I was able to walk on my left foot, but with discomfort. Sgt. Sheppy was notified of the incident at around 0230 hours.

(App. Exh. 4.)

The Employee Incident Report included a supervisor's signature, dated October 6, 2026. (*Id.*)

On January 29, 2024, applicant completed a DWC-Claim form. (App. Exh. 2; Def. Exh J.) The employer indicated that the date that it first knew of the injury was January 17, 2024; that the claim form was provided on January 19, 2024; and that it received the claim form from applicant on January 29, 2024. (*Id.*) It was signed by an unidentified "Sergeant" at "EXT. 5105."

On April 10, 2024, applicant filed an Application alleging injury to his left ankle on October 5, 2022. Defendant denied liability for the claim, alleging the claim was barred by the statute of limitations set forth in Labor Code section[1] 5405. (Lab. Code, § 5405.)

On December 10, 2025, a Findings and Award issued. Defendant sought reconsideration, we granted the Petition for Reconsideration, and as our Decision After Reconsideration, we rescinded the Findings and Award and returned it to the trial level to create a record.

Thereafter, the parties proceeded to trial on July 13, 2026. Applicant testified in relevant part as follows:

On October 5, 2022, the date of the injury, he rolled his left ankle on a chair while in the control tower. (Minutes of Hearing and Summary of Evidence (MOH/SOE), July 13, 2026, p. 2, lines 13-15.) Applicant filed an Employee Incident Report (App. Exh. 4) on the same day, indicating he did not plan to see a doctor because he did not feel the injury was severe enough to warrant a visit, and he signed the form. (MOH/SOE, p. 2, lines 14-16.) His supervisor did not offer

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

him a claim form on that date, and he continued working. (MOH/SOE, p. 2, lines 23-25.) He did not seek any treatment for his October 5, 2022 left ankle injury until January 2024. (MOH/SOE, p. 2, lines 23-p. 3, line. 2.)

On January 19, 2024, following emails with Diana Leon Subia, a workers' compensation liaison with defendant, County of Monterey, he requested and received a claim form for the first time related to his October 5, 2022, which he signed on January 29, 2024 (App. Exh. 2). (MOH/SOE, p. 2, lines 19-20.) Applicant filed a claim form because he felt his ankle started to get worse. (MOH/SOE, p. 2, lines 17-19.)

January 2024 was the first time he asked for medical care for the injury. (MOH/SOE, p. 3, lines 1-2.) He was approved for treatment of the left ankle, and had treatment on December 11, 2024, January 13, and February 25, 2025 (App. Exhs. 7, 8, 9). (MOH/SOE, p. 2, lines 20-22.) To his knowledge, defendant authorized and paid for that care. (MOH/SOE, p. 2, lines 21-22.)

Elizabeth O'Keefe, a workers' compensation claims handler for defendant, Intercare Holdings Insurance Company, testified for the defense as follows:

She was familiar with applicant's claims and worked on them since the end of October 2024. (MOH/SOE, p. 3, lines 14-15.) Applicant's claim was denied on March 15, 2024, based on the statute of limitations defense. (MOH/SOE, p. 3, lines 21-22.) Defendant did not send an acceptance letter for applicant's October 5, 2022 injury and never told applicant it intended to waive the statute of limitations defense. (MOH/SOE, p. 3, lines 23-24.) The left ankle diagnostics and treatment were inadvertently authorized, and as Ms. O'Keefe had just taken over the claim, she did not intend to accept the left ankle injury. (MOH/SOE, p. 4, lines 7-9.)

Following the trial, the WCJ issued the F&O that is the subject of the Petition for Reconsideration herein, finding in relevant part that applicant's claim was timely filed. Thereafter, defendant filed the Petition.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to section 5909, which states 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 August 31, 2026, and 60 days from the date of transmission is October 30, 2026. This decision is issued by or on October 30, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 31, 2026, and the case was transmitted to the Appeals Board on August 31, 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 August 31, 2026.

II.

Pursuant to section 5401, within one working day from when an employer receives written notice or knowledge of an injury caused by employment or knowledge of an assertion of an injury claim resulting in lost time from work beyond the employee's shift or medical treatment beyond first aid, the employer is required to provide the employee personally, or by first class mail, the

claim form and a Notice of Potential Eligibility for benefits. (Lab. Code, § 5401; Cal. Code Regs., tit. 8, § 10138 et seq.; *Honeywell v. Workers' Comp. Appeals Bd.* (*Wagner*) (2005) 35 Cal.4th 24, 32 [70 Cal.Comp.Cases 97].)

As used in section 5401(a), "first aid" means:

> any one-time treatment, and any follow up visit for the purpose of observation of minor scratches, cuts, burns, splinters, or other minor industrial injury, which do not ordinarily require medical care. This one-time treatment, and any follow up visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(Lab. Code, § 5401.)

If an employer breaches the duty to provide the claim form and the Notice of Potential Eligibility, the statute of limitations is tolled until the employee learns of their workers' compensation rights, including knowledge of the procedural process for collection of benefits. (Lab. Code, §§ 5401; 5402(a); *Wagner*, *supra*, at pp. 35-37; *Kaiser Foundation Hospitals Permanente Medical Group v. Workers' Comp. Appeals Bd.* (*Martin*) (1985) 39 Cal.3d 57, 60, 64-65 [50 Cal.Comp.Cases 411]; *California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd.* (*Carls*) (2008) 163 Cal.App.4th 853, 859-860 [71 Cal.Comp.Cases 771].) Additionally, the employer has the burden of proof to show when the employee gained actual knowledge of their workers' compensation rights. (*Martin*, *supra*, at pp. 60, 64-67; *Carls*, *supra*, at p. 860.) The employer may also be precluded from asserting that the employee failed to file a timely claim form or the statute of limitations defense if the elements of equitable estoppel are established. (*Wagner*, *supra*, at pp. 36-38; *Carls*, *supra*, at p. 865.)

Pursuant to sections 5401 and 5402, once the employee files the claim form with the employer by personal delivery or first class or certified mail, the employee is entitled to certain benefits, and the one-year statute of limitations period to file the claim is tolled under section 5405 until the claim is denied or the injury is presumed compensable under section 5402. (Lab. Code, §§ 5401, 5402; *Wagner*, *supra*, at pp. 32-33.)

Under section 5409, the statute of limitations is an affirmative defense, and thus, it is defendant's burden to show that it has run and that the claim is barred. (Lab. Code, § 5409; *Martin, supra*, at p. 65.)

Here, applicant satisfied his burden of notifying defendant that his October 5, 2022 injury caused by employment resulted in medical treatment beyond first aid by the email with Ms. Subia

on January 18, 2024. (App. Exh. 3, p. 5.) At that time, applicant informed Ms. Subia that he would like to get his ankle checked out because he continued to experience pain since the October 5, 2022 injury. (App. Exh. 3, p. 2.) At trial, applicant consistently testified that January 2024 was the first time he asked for medical care since the initial injury. (MOH/SOE, p. 3, lines 1-2.) Defendant did not rebut applicant's testimony.

Defendant failed to meet its burden in showing that applicant gained actual knowledge of his workers' compensation rights prior to his receipt of the claim form, which did not occur until January 19, 2024, and, therefore, failed to establish that the statute of limitations had run. According to defense witness Ms. O'Keefe, applicant's claim was denied on March 15, 2024. (MOH/SOE, p. 3, lines 21-22.) Following the denial, applicant filed an Application on April 8, 2024, which was less than one year from January 19, 2024, the date applicant received the claim form. Accordingly, applicant's Application was timely.

Defendant alleges that applicant's injury required little more than first aid, and that under section 5401, first aid claims do not require provision of a claim form. Defendant is under the mistaken belief that an employer may be indefinitely relieved from the requirements outlined under section 5401 and AD Rule 10138, et seq. even if an injury later requires more comprehensive treatment. (Lab. Code, § 5401; Cal. Code Regs., tit. 8, §10138, et seq.) There is no statutory or case law to support such a theory.

Moreover, it is questionable whether applicant's injury falls within the meaning of "first aid" as provided in section 5401(a). Notably, as described by applicant on an Employee Incident Report from the date of injury, the nature of applicant's injury was enough to cause a "pop" sound and to prevent applicant from moving briefly. (App. Exh. 4.) Even after the pain subsided, although applicant was able to walk, it was with reported discomfort. (App. Exh. 4.) Such an injury could reasonably be considered to exceed the scope of "first aid." By assuming otherwise and not providing applicant with a claim form, defendant assumed the risk associated with failing to give applicant appropriate notice of his workers' compensation rights, including the tolling of the statute of limitations.

In an attempt to support its position, defendant cites to *Nieblas v. Ruiz Foods*, (2014) 2014 Cal. Wrk. Comp. P.D. LEXIS 385[2], where the employer did not provide the employee a claim

[2] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However,

form, and we found the employee's claim was barred by the statute of limitations defense. However, the facts of *Nieblas* are clearly distinguishable from the facts before us. In *Nieblas*, the employee experienced a slip and fall at work. (*Id.* at p. 2.) Unlike the instant case, the employee in *Nieblas* actually lost time from work related to her injury, taking it outside the realm of "first aid." (*Id.* at pp. 5-7.) Yet, the employee in *Nieblas* did not establish that her employer had notice of the injury, such as informing her employer that her absences were due to the industrial injury. (*Id.* at pp. 8-9.) Thus, in *Nieblas*, the employee failed to meet her initial burden of notifying her employer of an industrial injury and there was no evidence that the employer had actual knowledge of the injury beyond the initial slip and fall event.

Here, there is no evidence that applicant missed work due to his October 5, 2022 left ankle injury nor that he received treatment after the initial injury and before January 2024, when he requested a claim form. Defendant did not rebut applicant's testimony nor allege facts to the contrary. Accordingly, the statute of limitations was appropriately tolled until applicant received a claim form.

As further explained by the WCJ:

> Petitioner correctly cites […] section 5401(a) which provides that an employer has a duty to provide a claim form and notice of potential eligibility for workers compensation benefits upon receiving notice or knowledge of injury under LC 5400 or 5402, "which injury resulted in lost time beyond the employee's work shift at the time of injury or which results in medical treatment beyond first aid."
>
> Under LC § 5402, knowledge from any source may constitute employer knowledge if obtained by a person in authority, and the duty arises when the employer actually knows of an injury or claim, not merely when it should have known. (See *Honeywell v. WCAB* (*Wagner)* (2005) 70 CCC 97).
>
> If the employer fails to provide a claim form and notice of potential eligibility for benefits when required, the statute of limitations is tolled until the employer provides the required notices or the employee gets actual notice of workers' compensation rights. (See *Kaiser Foundation Hospitals, Permanente Medical Group v. WCAB* (Martin) (1985) 50 CCC 411, 416).
>
> In this case, the credible evidence established that the applicant verbally reported a specific left ankle injury to his supervisor on 10/5/2022. This was not

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panel decisions are citable authority and the Appeals Board may consider these decisions to the extent that their reasoning is found persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to the cited panel decision because defendant cited to it.

> rumor, speculation, or a circumstance from which defendant merely should have inferred injury. This was actual notice of a specific injury to a supervisory representative and is distinguished from *Wagner, supra*, in that *Wagner* rejected a constructive-knowledge standard; it does not excuse an employer who in fact knows of an injury.
>
> Moreover, although LC 5401 speaks in terms of lost time beyond the shift or medical treatment beyond first aid, case law supports the proposition that once an employer has actual knowledge of a claimed injury, failure to provide the DWC-1 claim form tolls the statute. In *Delta Dental Plan of California v. WCAB* (*Funk*) (2014) 79 CCC 954 (W/D), the statute was tolled when the employer had actual knowledge and failed to provide the claim form. In *Iverson v. CVX Pharmacy, Inc*. 2023 Cal. Wrk. Comp. P.D. LEXIS 366, the actual knowledge of the factual underpinning of injury is sufficient and an employer's mistaken legal understanding does not negate that knowledge.

(Amended Report, August 31, 2026, p. 4, ¶¶ 1-5.)

We also reject defendant's contention that applicant's prior filings of workers' compensation claims, standing alone, established that he had the requisite knowledge. As explained by the WCJ:

> Lastly, actual knowledge of workers' compensation rights is difficult to prove and that ignorance is presumed until the employee receives notice or otherwise gains actual knowledge that he or she may be entitled to workers' compensation. Prior claims do not necessarily establish actual knowledge for a new injury. [(See [*CIGA v. WCAB* (*Carls*) (2008) 73 CCC 771] and *Galloway v. WCAB* (1998) 63 CCC 532]. In this case, petitioner correctly pointed out that applicant had a concurrent workers' compensation claim and a prior claim. However, there is absolutely no evidence that applicant had knowledge that if he actually reported his injury and indicated that he did not feel he needed medical treatment at that time, that he could not later come back and request treatment for a known, reported, industrial injury. Thus, the WCJ herein remains unpersuaded that applicant had the requisite knowledge as to his rights with this particular claim.
>
> Post-*Wagner* authorities recognize that actual employer knowledge of the factual injury can trigger the notice obligation and toll the statute where no claim form is provided. See *Funk* and *Iverson, supra*. For the foregoing reasons, applicant's claim was tolled until the county liaison officer provided a claim form to the applicant on January 19, 2024 (A-3). The claim form was then executed and returned by the applicant on January 29, 2024 (A-2). Applicant subsequently sought representation for the ankle claim and filed a timely application on April 10, 2024. The application was filed less than three months after the claim form was provided. Therefore, defendant's statute of limitations defense fails.

(Amended Report, August 31, 2026, p. 5, ¶¶ 1-2.)

Accordingly, based upon our review of the evidentiary record and taking into consideration all the above, we agree that applicant's claim was timely and is not barred by the statute of limitations.

The WCJ found applicant's unrebutted trial testimony credible. (Amended Report, August 31, 2026, p. 2, ¶¶ 3, 5.) We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Moreover, following our independent review of the record, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations (*Id*.)

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the July 31, 2026 Findings of Fact and Order issued on is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 30, 2026

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

JACOB OROZCO
DILLES LAW GROUP, P.C.
HERMANSON, GUZMAN & WANG, A P.C.

DC/*pm*

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