WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JAMES HALE, *Applicant*

vs.

SHIEKH SHOES, LLC;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants*

Adjudication Number: ADJ20267126
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Order issued by the workers' compensation administrative law judge (WCJ) on February 3, 2026. Therein, the WCJ found that applicant claims to have sustained injury arising out of and occurring in the course of employment (AOE/COE) to his neck, back, arms, and shoulders, while employed as a sales representative during the period from March 15, 2008 to December 18, 2009. The WCJ further found that the applicant's claim is not barred by the statutes of limitations; the claim is not barred by laches; the reporting of panel qualified medical evaluator (PQME) Raffy Mirzayan, M.D., was not timely served; defendant formally objected to the timeliness of Dr. Mirzayan's report prior to the service of that report; the reporting of Dr. Mirzayan has been stricken from the record, the court lacks sufficient credible medical evidence to adjudicate injury AOE/COE; and the record needs to be further developed in order to adjudicate injury AOE/COE.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate as quoted below, and for the reasons stated below, we will deny reconsideration.

I.

Preliminarily, we note that former Labor Code[1] section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
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> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

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

Here, according to Events, the case was transmitted to the Appeals Board on March 17, 2026 and 60 days from the date of transmission is Saturday, May 16, 2026. The next business day that is 60 days from the date of transmission is Monday, May 18, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, May 18, 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

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

[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 March 17, 2026, and the case was transmitted to the Appeals Board on March 17, 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 March 17, 2026.

II.

Next, we address the WCJ's assertion that defendant's petition is untimely. There are 30 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address outside California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

Here, the WCJ's decision issued on February 3, 2026 and was served on defendant in Dallas, Texas. Based on the authority cited above, defendant had until March 5, 2026 to seek reconsideration. Therefore, the Petition for Reconsideration filed on March 3, 2026 is timely.

III.

The WCJ provided the following discussion in the Report:

> This dispute concerns a denied cumulative trauma claim of injury for which defendant raised the statute of limitations and laches defenses. Mr. Hale testified that he believes that he injured himself performing his usual and customary duties at Sheikh Shoes. Although he reported some of his complaints to his manager, no one at the job informed him of his workers' compensation rights. At that time he was unaware of the ability to file a cumulative trauma claim; he only learned that he could do this upon hearing his attorney's radio advertisement. The Court found that Applicant's testimony was credible and unrebutted in all respects.
>
> ….

The Court found that defendant had not met its burden to prove its affirmative defenses. However, the Court did grant defendant's petition to strike the PQME Dr. Mirzayan, which left the Court without any medical evidence upon which to base a potential finding of injury. On that basis, the Court Ordered further development of the medical record was necessary to adjudicate injury AOE/COE.

Defendant has filed [a] … verified petition for reconsideration of the Findings and Orders. Petitioner disputes that it failed to prove its affirmative defenses.

….

[P]etitioner argues that the "court was presented with evidence that applicant's unreasonable delay has prejudiced Defendants." This is not correct. Defendant did make oral representations to the Court before the record was opened, but defendant presented neither testimony nor documentary evidence to substantiate that the defendant was "unable to locate any relevant records related to applicant's employment ...", and that defendant was "unable to secure testimony from any source representing the employer in this matter."

" ... Evidence submitted by the parties must be formally admitted and must be included in the record to enable the parties to comprehend the basis for the decision." Hamilton v. Lockheed Corp. *(en banc),* 66 Cal. Comp. Cases 473, 475. A party's oral representations and argument in briefing are not evidence. The Court has no basis to make factual findings in the absence of actual evidence submitted for its consideration. As defendant did not present actual evidence of prejudice or its inability to investigate the claim, the Court properly found that defendant did not prove that laches applied to extinguish applicant's claim.

The Statute of Limitations was tolled

As to the Statute of Limitations defense, applicant credibly testified that he reported some of his physical complaints to his manager, that the employer did not inform him of his workers' compensation rights, and that he was unaware of the ability to file a cumulative trauma claim until he heard his attorney's radio advertisement years after the fact. Defendant introduced no evidence in rebuttal of these points.

Defendant argued that applicant should have been charged with notice of his rights by virtue of having filed an earlier completely unrelated workers' compensation claim as the result of a motor vehicle accident, but applicant credibly explained that at the time, he had no concept of cumulative trauma claims, and he only learned of their existence from his attorney's radio advertisement. Based on the credible evidence in the record, it was clear that applicant lacked requisite knowledge of his rights to file a claim. Having lacked that knowledge, pursuant to Labor Code §5401(a), upon applicant's report to his

manager, it was then the employer's affirmative obligation to furnish a claim form, which it apparently did not do.

"[W]hen an employer fails to perform its statutory duty to notify an injured employee of his workers' compensation rights, and the injured employee is unaware of those rights from the date of injury through the date of the employer's breach, then the statute of limitations will be tolled until the employee receives actual knowledge that he may be entitled to benefits under the workers' compensation system." With applicant having provided credible testimony of a report to his manager, it was defendant's burden to prove that a claim form was furnished. Defendant failed to meet this burden, and the Court found that the statute of limitations was tolled. Defendant offers nothing on Reconsideration that the Court did not already consider at the time of its decision.

(Report, at pp. 1-4, footnotes omitted.)

IV.

The December 3, 2025 Minutes of Hearing and Summary of Evidence (MOH/SOE) summarize applicant's trial testimony as follows:

He has filed a claim for "wear and tear." He injured his shoulders, neck, wrists, hands, and every part of his body that he used. He cannot remember other parts. He was young at the time. He did notice aches and pains related to his job. At the time he thought that these were liveable and that they would be temporary. He was young. As he got older, he wondered "was it from this or what can it be from?" This was his first job.
(MOH/SOE, at p. 5:21-22.)

He did report his neck complaints to Khalid Bashir, his manager. He also reported his back, left arm, and right arm complaints as well.
(MOH/SOE, at p. 7:4-5.)

No one at the job informed him of his workers' compensation rights. At that time he was unaware of the ability to file a cumulative trauma claim. He only learned that this existed when he heard the advisement on the radio talking about wear and tear claims.
(MOH/SOE, at p. 5:24-6:1.)

The time limit to file a claim for workers' compensation benefits is one year from either (1) the date of injury, (2) the last payment of disability indemnity or (3) the last date on which medical benefits were provided. (Lab. Code § 5405.) The statute of limitations is an affirmative defense, and the burden of proof is on the defendant. (Lab. Code § 5409.) The statute of limitations

is tolled if the employer failed to notify the injured employee of a potential right to workers' compensation benefits by providing the claim form (DWC-1 form) and notice of potential eligibility of benefits required under section 5401. (*Kaiser Found. Hosps. Permanente Medical Group v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57, 60 [50 Cal.Comp.Cases 411].) An employer's obligation to provide a claim form arises when the employer receives written notice of an injury or obtains knowledge of the injury. (Lab. Code §§ 5400, 5402.) Section 5402, subdivision (a) explains that "Knowledge of an injury, obtained from any source, on the part of an employer, the employer's managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts, is equivalent to service under Section 5400." (Lab. Code § 5402(a).) As noted by the WCJ, applicant testified at trial that he reported his injury to his manager (MOH/SOE, at p. 7:4-5) and that his employer did not inform him of his workers' compensation rights. (MOH/SOE, at p. 5:24.)

Laches is also an affirmative defense, and therefore defendant had the affirmative burden of proof. (Lab. Code, § 5705.) "Generally speaking, the existence of laches is a question of fact to be determined by the trial court in light of all of the applicable circumstances …" (*Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624.) The Supreme Court describes the requisite showing for a claim to be barred by laches as follows:

> As we pointed out in *Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d 351 [82 Cal. Rptr. 337, 461 P.2d 617], the affirmative defense of laches requires unreasonable delay in bringing suit "plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." (*Id*., at p. 359, fns. omitted.) *Prejudice is never presumed*; *rather it must be affirmatively demonstrated by the defendant in order to sustain his burdens of proof and the production of evidence on the issue*. (*Id*., at p. 361.) "(*Miller, supra*, 27 Cal.3d at p. 624, emphasis added.)

"[U]nreasonable delay by the plaintiff is not sufficient to establish laches. There must also be prejudice to the defendant resulting from the delay or acquiescence by the plaintiff." (*Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037, 1049–1051.)

As noted by the WCJ in the Report, defendant presented no evidence to establish either affirmative defense. A decision of the Workers' Compensation Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274, 280-81 [39 Cal.Comp.Cases 310].) A decision "must be based on admitted evidence

in the record" (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351]), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

Finally, we have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. *(Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id*.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 18, 2026

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

JAMES HALE
ROBERT OZERAN
WOOLFORD ASSOCIATES

PAG/bp

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