

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

KIMBERLY ANN PETARRA, *Applicant*

vs.

**AZUSA UNIFIED SCHOOL DISTRICT, permissibly self-insured; administered by
ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ17359397
Pomona District Office**

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

Defendant seeks reconsideration of the Findings and Order (F&O) issued on November 20, 2025 wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that defendant failed to meet their burden in proving that applicant's claim should be barred under Labor Code¹ sections 5400 and 5405, and ordered further development of the record, including additional Qualified Medical Evaluation panels in the specialties of orthopedic surgery and psychology.

Defendant contends that the WCJ erroneously rejected the statute of limitations defense by applying a new legal standard, in contradiction to *Honeywell v. Workers' Comp. Appeals Bd. (Wagner)* (2005) 35 Cal.4th 24, 32 [70 Cal.Comp.Cases 97], which requires defendant to prove that applicant's injury was a first aid only claim, thereby relieving defendant of its duty to provide a Workers' Compensation Claim Form DWC 1 under section 5401. (Petition for Reconsideration (Petition), p. 4.) Defendant further contends that applicant's claim should be barred under sections 5400 and 5403 considering applicant's failure to provide a timely written notice of injury. (*Id.* at

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

p. 9.) Given this failure, defendant alleges that further development of the record, including additional panels, is unnecessary. (*Id.* at pp. 10-13.)

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted unless the Appeals Board finds that defendant had a duty to offer applicant medical treatment, in which case the Petition should be denied.

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for the solitary purpose of admitting into evidence, applicant's exhibits 1-15. We otherwise affirm the F&O.

FACTS

On February 24, 2023, applicant filed an Application for Adjudication of Claim (Application) alleging that while employed by defendant on March 10, 2022 as a lead food service worker, she sustained an injury arising out of and in the course of employment (AOE/COE) to the left ankle.

Prior to the filing of the Application, applicant was provided with and completed a DWC 1 (Claim Form) on September 9, 2022, alleging injury AOE/COE in March of 2021. (Exhibit A.)

Thereafter, on December 2, 2022, defendant issued a denial letter on the basis that the alleged date of injury is March 10, 2021, and that the claim is barred based upon the one-year rule per section 540². (Exhibit B.)

On July 18, 2023, the Application was amended to reflect a corrected injury date of March 10, 2021.

On October 9, 2023, the claim was further amended to include the left knee and psyche.

On November 13, 2023, applicant was deposed by defendant, and testified, in relevant part, as follows:

Q: When did you first report to your employer that you suffered this injury?

A: I believe it was the day after.

Q: How did you go about doing that?

A: I was talking to her in the kitchen, and I told her I twisted my ankle.

² We presume this to be a typographical error as section 540 does not exist.

Q: Who did you tell that to?

A: To Maria. I can't remember her last name. She was a supervisor at the time.

Q: Was Maria your direct supervisor?

A: Yes.

Q: What did Maria say to you, if anything, after you told her that you had suffered that injury?

A: She said, "You can still walk. Right?" I said, "Yes." She said, "Okay."

Q: Was that the end of the conversation?

A: Yes.

Q: Did you speak to anyone else about the injury?

A: No.

...

Q: You have a claim form, a DWC-1 that was filled out by [sic] yourself on September 9, 2022, I'm wondering how that came about.

A: September 9, 2022, I filled out a paper?

Q: Yeah. A DWC-1 claim form.

...

Q: ...the paperwork I'm referring to is called DWC-1. It is a claim form, and you may have been provided some other paperwork at the time you were provided that. I'm just trying to put together a timeline of whether you approached the employer at that point and requested that sort of paperwork. Anything to that effect?

A: When I went back to work in August, I went back to work for a couple of days, and they told me I couldn't work with a boot on, and Stella, my supervisor, told me that I had to go and see their doctor in Irwindale. So maybe that is when I filled out something. That is what I'm thinking.

Q: Would that have been in August of 2022?

A: That would be August—yes.

Q: Okay.

A: Because I went to the Irwindale Clinic September 9, that would make sense, I think. Maybe something back then.

Q: Of 2022?

A: Yes.

...

A: I'm just thinking maybe I filled out that paperwork in September of 2022 because I can't figure out filling no other paper. I can't remember.

...

A: ...I had to go to meetings in August of 2022 before school started, and then when I went in to give them my paperwork to get my keys to work in August of '22, they told me, "You can't work with a boot on." And I got a phone call saying go to Irwindale Clinic 9/9 and then 9/16.

Q: And that's 2022?

A: Yes, sir.

Q: Do you recall having been given any workers' compensation paperwork by the District at any time before that?

A: I can't remember that.

Q: Were you provided with any paperwork after your conversation with the supervisor the day after the injury occurred?

A: No. No paperwork. No nothing.

Q: After you spoke with the supervisor—Maria? Is that correct?

A: Yes.

Q: Did you speak with anyone else?

A: No.

(Exhibit C, pp. 27:2-22, 31:17-35:16.)

Applicant ultimately sought treatment for her injury, and the parties retained William McCarron, M.D., and later, Tiffany Chin, M.D., as the podiatry panel Qualified Medical Evaluator (PQME).

On December 26, 2024, applicant filed a Petition for Order Compelling Medical Unit to Issue Additional Panels (Petition for Additional QME Panels) in the specialties of orthopedic surgery and psychology.

On March 26, 2025, defendant filed a Declaration of Readiness to Proceed to a priority conference. The matter proceeded to multiple hearings and was ultimately set for trial on September 4, 2025.

At trial, the following issues were set for determination: injury AOE/COE, whether applicant's claim is barred by the statute of limitations under section 5405; whether applicant reported the injury pursuant to section 5401(a); whether applicant's claim is barred under sections 5400 and 5403; whether the reporting of Dr. Chin is substantial medical evidence; whether further development of the record is necessary including but not limited to additional reporting from Dr. Chin and/or additional QME panels per applicant's Petition for Additional QME Panels; and whether applicants attorney is liable for costs and sanctions relating to issues raised in defendant's Petition to Stay QME Evaluation and for Costs and Sanctions (Petition for Costs and Sanctions). Defendant submitted as evidence, the Claim Form dated September 9, 2022; the notice of denial dated December 2, 2022; and a transcript of applicant's November 13, 2023 deposition. Applicant submitted as exhibits, correspondence from applicant's attorney requesting additional panels; applicant's Petition for Additional QME panels; and various medical reports from Ryan Culver, M.D., Edwin Haronian, M.D., John Dorsey, M.D., Jeffrey Breuning, M.D., and Arnold Yuan, M.D. Defendant's exhibits were admitted and applicant's exhibits were objected to by defendant on the basis that the reports were not filed twenty days prior to trial as required under WCAB Rules 10620 and 10670(b)(3)³. The exhibits were thus marked for identification only, with admissibility to be determined by the WCJ at the time of the issuance of his decision. (Minutes of Hearing and Summary of Evidence (MOH & SOE), September 4, 2025, pp. 4-5.)

At trial, applicant testified that she "definitely reported her injury to Maria regardless of whether it was on the same day or the day after [the injury]." (*Id.* at p. 8.)

³ Rule 10620 states that "[a]ny document that a party proposes to offer into evidence at a trial shall be filed with the Workers' Compensation Appeals Board at least 20 days prior to the trial unless otherwise ordered by the Workers' Compensation Appeals Board.

Rule 10670(b)(3) similarly states that "[t]he Workers' Compensation Appeals Board may decline to receive in evidence" ... "[a]ny document not filed 20 days prior to trial, unless otherwise ordered by a workers' compensation judge or good cause is shown."

On November 20, 2025, the WCJ issued a F&O wherein he found, in relevant part, that defendant failed to meet their burden in proving that applicant's claim is barred under sections 5400 and 5405. The WCJ ordered further development of the record, including additional QME panels in the specialties of orthopedic surgery and psychology.

It is from this F&O that defendant seeks reconsideration.

DISCUSSION

I.

Preliminarily, 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 under the Events tab 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 December 29, 2025, and 60 days from the date of transmission is February 27, 2026. This decision was issued by or on February 27, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on December 29, 2025, and the case was transmitted to the Appeals Board on December 29, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on December 29, 2025.

II.

Turning now to the merits of the Petition, defendant contends that applicant's claim should be barred due to her failure to provide defendant with a timely written notice of injury as required under sections 5400 and 5403. (Petition, p. 9.)

Section 5400 outlines the timelines for provision by the injured employee to the employer, a written notice of injury. It states that:

Except as provided by sections 5402 and 5403, no claim to recover compensation under this division shall be maintained unless within thirty days after the occurrence of the injury which is claimed to have caused the disability or death, there is served upon the employer notice in writing, signed by the person injured or someone in his behalf, or in case of the death of the person injured, by a dependent or someone in the dependent's behalf.

There exists, however, a caveat to the written notice requirement, as outlined under section 5402(a), which states, in relevant part, that:

Knowledge of an injury, obtained from any source, on the part of an employer, his or her 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.

Thus, an employer's knowledge that an injury was caused by employment, or knowledge that an employee is asserting that an injury was caused by employment, constitutes service of a written notice of injury under section 5400, and, as in the case of written notice, sufficiently enables the employer to investigate the employee's claim.

Further, under section 5403, an injured employee's "failure to give notice under section 5400, or any defect or inaccuracy in a notice is not a bar to recovery under this division if it is found as a fact in the proceedings for the collection of the claim that the employer was not in fact misled or prejudiced by such failure." Additionally, any "[l]imitations provisions in the [workers'] compensation law must be liberally construed in favor of the employee unless otherwise compelled by the language of the statute, and such enactments should not be interpreted in a manner which will result in a loss of compensation." (*Blanchard v. Workers' Comp. Appeals Bd.* (1975) 53 Cal.App.3d 590, 595, 40 Cal. Comp. Cases 784, 787 (internal citations omitted).)

Here, applicant's injury date is March 10, 2021, and per applicant's un rebutted testimony, the injury was first reported to her supervisor, Maria, either the same day, or the day following the injury. (Exhibit C, p. 27:2-12; MOH & SOE, September 4, 2025, p. 8.) Notwithstanding defendant's knowledge, the Claim Form was not provided until September 9, 2022.

Pursuant to section 5401 and A.D. Rule 10138 et seq., 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.; *Wagner, supra*, at p. 32.)

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 in showing 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.)

Here, defendant failed to meet their burden in showing that applicant gained actual knowledge of her workers' compensation rights prior to her receipt and filing of the Claim Form, which occurred on September 9, 2022.

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.)

Upon receipt of the Claim Form, defendant issued a denial letter dated December 2, 2022. (Exhibit B.) Following the denial, applicant filed her initial Application on February 24, 2023. The Application was filed less than one year from the September 9, 2022 filing of 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.

Notwithstanding defendant's failure to provide evidence supporting their assertion that applicant's injury required little more first aid, defendant is under the mistaken belief that an employer may be indefinitely relieved from the requirements outlined under section 5401 and A.D. Rule 10138, et seq. even if an injury later requires more comprehensive treatment. There is no statutory or case law to support defendant's theory nor does defendant provide any.

Based upon our review of the evidentiary record and taking into consideration all the above, we agree that applicant's claim is not barred by sections 5400 or 5405.

III.

Lastly, defendant argues that further discovery, including additional panels in the specialties of orthopedic surgery and psychology, are unnecessary. (Petition, pp. 10-13.)

We remind defendant that the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on a threshold issue. (Lab. Code, §§ 5701, 5906; *Nunes (Grace) v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741, 752; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 392-394 [62 Cal.Comp.Cases 924]; *McDonald v. Workers' Comp. Appeals Bd., TLG Med. Prods.* (2005)

70 Cal.Comp.Cases 797, 802.) The Appeals Board has a constitutional mandate to ensure “substantial justice in all cases” and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404.) Sections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141-143 (Appeals Bd. en banc).)

Where the record requires further development, the preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. L.A. County Metro. Transit Authority, supra*, 67 Cal.Comp.Cases at p. 142.) This is further reflected by A.D. Rule 31.7(a), which specifies that if a new medical dispute arises after the agreed PQME, selected PQME, or AME, has already issued a comprehensive medical-legal report, the parties are to obtain a follow-up evaluation or supplemental report from the same evaluator. Assuming good cause, the parties may also wish to seek an additional QME panel in another specialty pursuant to A.D. Rule 31.7(b), which provides, in relevant part, that:

(b) Upon a showing of good cause that a panel of QME physicians in a different specialty is needed to assist the parties reach an expeditious and just resolution of disputed medical issues in the case, the Medical Director shall issue an additional panel of QME physicians selected at random in the specialty requested. For the purpose of this section, good cause means:

(1) A written agreement by the parties in a represented case that there is a need for an additional comprehensive medical-legal report by an evaluator in a different specialty and the specialty that the parties have agreed upon for the additional evaluation; or

...

(3) An order by a Workers' Compensation Administrative Law Judge for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected and the residential or employment-based zip code from which to randomly select evaluators...

Here, based upon the existing evidence, the WCJ found good cause for the issuance of additional panels in the specialties of orthopedic surgery and psychology. As noted above, defendant was provided notice of the additional claimed body parts of the left knee and psyche when applicant filed an amended Application on October 9, 2023. (See *Jover v. County of San*

Bernardino Dept. of Public Health (May 8, 2025, ADJ18210611) [Cal. Wrk. Comp. P.D. LEXIS 125] [verification of medical causation of contested body parts not a prerequisite to obtain additional QME panels]; *Espinoza v. Marborg Industries* (June 24, 2024, ADJ14300773, ADJ16390001) [Cal. Wrk. Comp. P.D. LEXIS 229] [although best practice would involve direct QME referral, sufficient notice to defendant of claimed body part to satisfy good cause requirement for additional panels].) We note also that in the absence of these additional panels, applicant would be precluded from conducting the medical-legal discovery necessary to determine the nature and extent of her injury. (See *Hester v. Sloat Garden Center* (June 24, 2024, ADJ12396719) [Cal. Wrk. Comp. P.D. LEXIS 227] [applicant will incur significant prejudice if not allowed QME on contested body parts].) We therefore agree that good cause exists for additional QME panels in the specialties of orthopedic surgery and psychology.

We also agree that further discovery is necessary on the issue of whether applicant's March 10, 2021 incident caused a mere exacerbation of applicant's prior injury or an industrial aggravation of a pre-existing condition. An aggravation is an increase in the severity of a pre-existing condition whereby the underlying pathology is permanently moved to a higher level whereas an exacerbation is a temporary increase in the symptoms of a pre-existing condition which returns to its prior level within a reasonable period of time. The industrial aggravation of a pre-existing condition constitutes an injury for workers' compensation purposes. (*Tanenbaum v. Industrial Acc. Com.* (1935) 4 Cal.2d 615, 617; *Zemke v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358]; *Reynolds Electrical & Engineering Co. v. Workers' Comp. Appeals Bd. (Buckner)* (1966) 65 Cal.2d 438 [31 Cal.Comp.Cases 421].) The Appeals Board has previously held that the aggravation of a prior condition constitutes an injury when the aggravation causes a need for medical treatment and a period of temporary disability. (*City of Los Angeles v. Workers' Comp. Appeals Bd. (Clark)* (2017) 82 Cal.Comp.Cases 1404 (writ den.); *Johnson v. Cadlac, Inc.*, 2021 Cal. Wrk. Comp. P.D. LEXIS 194.) Based upon the current evidentiary record, there is insufficient evidence to determine whether applicant experienced an exacerbation of a prior injury or an industrial aggravation of a pre-existing condition warranting compensation.

Finally, while the WCJ stated in his Opinion that he was admitting into evidence, applicant's exhibits 1 to 15, he failed to issue an order to that effect. (F&O, p. 6.) We therefore grant the Petition for the solitary purpose of admitting applicant's exhibits 1-15. We otherwise affirm the F&O.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the November 20, 2025 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the November 20, 2025 Findings and Order is **AFFIRMED, EXCEPT** that is **AMENDED**, as provided below:

ORDER

C. Exhibits 1 through 15 are admitted into evidence.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 26, 2026

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

**KIMBERLY ANN PETARRA
PÉREZ LAW, PC
MICHAEL SULLIVAN & ASSOCIATES LLP**

RL/cs

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