WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LISA HILLS (deceased); ALEXANDRA ZAKIN (daughter), ***Applicants***

vs.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA; permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., ***Defendants***

Adjudication Numbers: ADJ11105118
Marina del Rey District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.[1]

Applicant seeks reconsideration of the Findings of Fact (Findings) issued on May 20, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found that, while employed as a registered nurse by defendant The Regents of the University of California, decedent did not sustain a cumulative injury during the period from January 29, 2016 to January 29, 2017 in the form of Hepatitis C induced hepatocellular carcinoma and cirrhosis resulting in her death on January 29, 2017. In addition, the WCJ found that, because the alleged injury related back to previously settled specific injuries in 1992, the statute of limitations pursuant to Labor Code section 5406(b)[2] barred the claim.

Applicant contends that there is substantial medical evidence to find a cumulative injury during decedent's period of employment; that the WCJ failed to determine correctly the date of injury pursuant to section 5412; and that defendant untimely denied the death claim pursuant to section 5402(b).

We have received an Answer from defendant. The WCJ filed a Report and Recommendation

[1] Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been appointed in her place.

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

on Petition for Reconsideration (Report) recommending we deny reconsideration.[3]

We have considered the allegations in applicant's Petition and defendant's Answer, and the contents of the WCJ's Report with respect thereto. Based upon our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will rescind the Findings and return the case back to the trial level for further proceedings consistent with this opinion.

BACKGROUND

Decedent worked as a registered nurse for The Regents of the University of California from 1979 to 1994 and, during that time, she sustained several inadvertent blood contaminated needle puncture wounds. Despite completing a course of vaccinations, in January 1993, she tested positive for hepatitis C. In 1994, after leaving her employment, she developed chronic active hepatitis.

On October 26, 1995, decedent and defendant agreed to resolve their dispute by joint Stipulations with Request for Award and Award for needle puncture injuries on July 18, 1992 and December 31, 1992 causing "Hepatitis" resulting in no temporary or permanent disability, but the need for further medical treatment. (ADJ3840278 (MON 0182826) / ADJ1999285 (MON 0182839).) Notably, the Stipulations refer to "Hepatitis" and not to "Hepatitis C."

On January 11, 1996, decedent filed a petition to reopen claiming new and further disabilities.

On August 19, 2004, a WCJ found that decedent did not sustain any new and further disabilities. Notably, the WCJ did not refer to any body parts or a date of injury in the Findings and Order. In her Opinion on Decision accompanying the August 19, 2004 decision, the WCJ stated that:

> By way of background, applicant sustained injury in the course of her employment as a registered nurse when she contracted hepatitis as a result of being stuck with a contaminated needle on two or *perhaps more occasions* in the year 1992.

(Opinion on Decision, p. 1, emphasis added.)

Applicant, the decedent's daughter, filed a death claim on October 19, 2017, alleging that while employed as a registered nurse from January 29, 2016 to January 29, 2017, decedent sustained an industrial injury in the form of hepatitis C–related hepatocellular carcinoma and cirrhosis, resulting in her death on January 29, 2017.

On February 22, 2022, the parties proceeded to trial. Among the issues submitted were injury arising out of and in the course of employment, presumption of compensability pursuant to

[3] The WCJ has since retired.

section 5402(b), and applicability of the statute of limitations pursuant to section 5406(b).

The parties submitted into evidence denial letters by defendant (App. Exs. 6 to 7), and QME reports and deposition of Stewart A. Lonky, M.D. (App. Exs. 8 to 10, Def. Ex. F), and Graham Woolf, M.D. (App. Ex. 11, Def. Ex. B).

QME Dr. Lonky, in his report dated May 1, 2019, stated, "it is quite clear that hepatic failure, ascites, decreased platelet county, and bleeding were all complications of her hepatic carcinoma and the attempts at treatment." (App. Ex. 9 at p. 62.) In addition, decedent died from "hepatocellular carcinoma and end-stage liver disease with portal vein thrombosis and cirrhosis from hepatitis C virus." (*Id.* at p. 63.) QME Dr. Lonky opined that decedent's cirrhosis and hepatocellular cancer secondary to her industrially caused infection from needle punctures resulted in her death rendering this an industrial injury. (*Ibid.*)

In his deposition of October 30, 2019, QME Dr. Lonky testified, with respect to a May 12, 1999 report, that decedent suffered seven blood-contaminated needle sticks, one of which caused her to develop her illness. (App. Ex. 10, Def. Ex. F at pp. 26:3-12; 27:3-12.)

QME Dr. Woolf, in his report dated March 19, 2020, also opined that decedent's cirrhosis and hepatocellular cancer secondary to her industrially caused infection from needle punctures resulted in her death rendering this an industrial injury. (App. Ex. 11, Def. Ex. B at p. 43.)

On May 20, 2022, the WCJ issued her Findings that applicant's death claim relates back to the original specific dates of injury previously pled by decedent and resolved by Award dated October 26, 1995 and that section 5406 time-barred the death claim.

It is from this Finding that applicant seeks reconsideration.

DISCUSSION

I. APPLICABILITY OF LABOR CODE SECTION 5402(b)

Pursuant to section 5402(b):

> If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division. The presumption of this subdivision is rebuttable only by evidence discovered subsequent to the 90-day period.

Section 5402's 90-day period for denial of liability runs from the date the employee files a DWC-1 Claim Form, not from the date the employer receives notice or knowledge of the injury or claimed injury. (*Honeywell v. Workers' Comp. Appeals Bd.* (*Wagner*) (2005) 35 Cal.4th 24, 35

[70 Cal.Comp.Cases 97]; *Pendergest v. Wilmington Propeller Serv.* [2022 Cal. Wrk. Comp. P.D. LEXIS 76, *11-12].) [4]

In this case, applicant served the DWC-1 Claim Form on defendant by mail on November 17, 2017. There is a certified mail receipt directed to UCLA Medical Center that appears to have been signed as received on November 27, 2017, but no document is identified on the receipt. (App. Ex. 3.) The record further includes a certified mail receipt addressed to UCLA Medical Center, apparently signed as received on January 12, 2018, but the receipt does not identify the document transmitted. (App. Ex. 5.)

Pursuant to a Declaration from defendant's claims adjustor Candace Porche dated April 27, 2021, Ms. Porche stated under penalty of perjury that:

> I declare that while applicant's counsel has notified defense counsel and Sedgwick of the service of an original Application for Adjudication of Claim on or about November 17, 2017, the undersigned has not been able to confirm that the original Application was received by Sedgwick CMS.
>
> Sedgwick received an Amended Application for Adjudication of Claim via a cover letter dated July 16, 2018 from the Law Offices of Jeffrey L. Linnetz. Said documentation was received by Sedgwick on August 6, 2018. (Exhibit "A").

(App. Ex. 21.)

Defendant issued denial letters on August 6, 2018 and October 30, 2018. (App. Exs. 6 to 7.)

Pursuant to *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803 (Appeals Board en banc) (*Suon*), the Appeals Board stated as follows:

> A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail.
>
> If the opposing party alleges that the information was not received, the WCJ may separately consider lack of receipt of the information by the opposing party in evaluating whether equitable relief is warranted . . . The presumption that a letter mailed was received is rebuttable. However, the trier of fact is obligated to assume the existence of the presumed fact unless and until evidence is introduced to support a finding of its nonexistence. A mere allegation that the recipient did not receive the

[4] 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, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, 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 these panel decisions because they considered a similar issue.

> mailed document has been found to be insufficient to rebut the presumption. If the sending party thus produces evidence that a document was mailed, the burden shifts to the recipient to produce believable contrary evidence that it was not received. Once the recipient produces sufficient evidence showing non-receipt of the mailed item, the presumption disappears and the trier of fact must then weigh the denial of receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received.

(*Id.* at p. 1817, citations and internal quotations omitted.)

Here, no testimony was offered as to the usual practices for mailing and as to receipt or non-receipt of the mailed documents. We are unable to discern from the record if this claim is presumptively compensable pursuant to section 5402(b) based on the limited evidence of the proof of service of the DWC-1 Claim Form, the return receipt postcards unconnected to any documents mailed and the sworn declaration from Ms. Porche. Without a complete record, we must return this case back to the trial level to provide the parties with an opportunity to present further evidence regarding mailing and receipt of the DWC-1 Claim Form and allow the WCJ to issue a decision in accordance with *Suon*.

II. INJURY AOE/COE AND STATUTE OF LIMITATIONS

Section 3600 imposes liability on an employer for workers' compensation benefits only if its employee sustains an injury "arising out of and in the course of employment." As with any injury, to be entitled to workers' compensation benefits, an employee has the burden of proving reasonable probability of industrial causation based on substantial evidence. However, the employee is not required to prove causation to a "scientific certainty." (See *McAllister v. Workmen's Comp. App. Bd.* (1968) 69 Cal.2d 408, 419 [33 Cal.Comp.Cases 660].) It is merely sufficient if work was a contributing cause of the injury. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 298 [80 Cal.Comp.Cases 489].)

Pursuant to section 3208.1:

> An injury may be either: (a) 'specific' occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) 'cumulative' occurring 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 trauma injury shall be the date determined under section 5412.

In addition, pursuant to Section 5411:

> The date of injury, except in cases of occupational disease or cumulative injury, is that date during the employment on which occurred the alleged incident or exposure, for the consequences of which compensation is claimed.

Finally, pursuant to section 5412:

> The date of injury in cases of occupational disease 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.

In cumulative injury cases, there is no "date of injury" until there is a concurrence of both disability and knowledge. (*Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal. App. 3d 1102, 1110 [53 Cal.Comp.Cases 502].) As used in section 5412, "disability" means either compensable temporary disability or permanent disability. (*State Compensation Insurance Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (2004) 119 Cal.App.4th 998, 1002-1004, 1005-1006 [69 Cal.Comp.Cases 579]; *Chavira v. Workers' Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 473-474 [56 Cal.Comp.Cases 631].)

An occupational disease is one where the symptoms are latent after exposure to a disease-causing agent in the workplace. (*General Dynamics Corp. v. Workers' Comp. Appeals Bd.* (1999) 71 Cal.App.4th 624, 629 [64 Cal.Comp.Cases 515]. Given its latency, it may not be possible to pinpoint with certainty the date of exposure. (*Dieball v. State of California* [2022 Cal. Wrk. Comp. P.D. LEXIS 15, *7]; see *Leggette v. CPS Security* [2020 Cal. Wrk. Comp. P.D. LEXIS 3, *8-9] ("[r]equiring an injured worker to know the exact date of exposure in a case like this one would be nearly impossible, and would be counter to the Constitutional mandate that the workers' compensation system 'accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.'")

> [T]he "date of injury" in latent disease cases "must refer to a period of time rather than to a point in time." (Citation.) The employee is, in fact, being injured prior to the manifestation of disability...[T]he purpose of section 5412 was to prevent a premature commencement of the statute of limitations, so that it would not expire before the employee was reasonably aware of his or her injury.

(*J. T. Thorp v. Workers' Comp. Appeals Bd.* (*Butler*) (1984) 153 Cal.App.3d 327, 340-341 [49 Cal.Comp.Cases 224].)

Thus, where a specific date of injurious exposure is unknown, an applicant may allege a cumulative trauma over the approximate employment period to preserve the claim, with the "date of injury" determined under section 5412. (See *County of Los Angeles v. Workers' Comp. Appeals Bd.* (*Gleason*) (2002) 67 Cal.Comp.Cases 1049 (writ denied) [applicant suffered dirty needle sticks on three to four occasions, but could not recall specific date but sometime between July 1987 to May 1989, not precluded from pleading cumulative trauma]; see also *Los Angeles County Office of Educ. v. Workers' Comp. Appeals Bd.* (*Guajardo*) (2003) 68 Cal.Comp.Cases 1505 (writ denied) [decedent's death from Hepatitis C virus when history of child with Hepatitis C virus biting her and other children scratching her deemed properly pled as cumulative trauma, found industrially related and not barred by statute of limitations].)

Here, in the Stipulations, decedent and defendant stipulated that decedent sustained two specific injuries. Yet, in her Opinion on Decision accompanying the August 19, 2004 decision, the WCJ referred to "two or *perhaps more occasions* in the year 1992." We are unable to discern why the parties stipulated to two specific injuries, when, as explained above, sections 5411 and 5412 clearly state that section 5412 applies to occupational diseases. Without speculating, it appears possible that, in 1995, the potential consequences of Hepatitis C were yet unknown, and, as noted above, the parties stipulated to "Hepatitis" and not to "Hepatitis C."

In any event, as explained below, the stipulations entered into between decedent and defendant do not bind applicant, where such stipulations are unsupported by correct legal analysis or an accurate factual record. Moreover, as explained below, where the injured employee is deceased and the beneficiary seeks death benefits, the section 5412 date of injury is determined based on the beneficiary's knowledge, not the decedent's.

Section 5406(b) provides that a claimant cannot file a death claim more than 240 weeks after the "date of injury." "For purposes of *death* benefit claims, the date of injury may depend on the claimant's knowledge of the industrial nature of the injury causing death." (*Massey v. Workers' Comp. Appeals Bd*. (1993) 5 Cal.4th 674, 678, fn. 1 [58 Cal.Comp.Cases 367], emphasis in the original, citing *Berkebile v. Workers' Comp. Appeals Bd*. (1983) 144 Cal.App.3d 940, 945 [48 Cal.Comp.Cases 438] (*Berkebile*).) The Court held in *Berkebile* that:

> In that the applicant's right to workers' compensation death benefits are independent and severable from the decedent's inter vivos rights, a determination as to the decedent's knowledge of the industrial origin of his disability is not dispositive of the statute of limitations issue. ***The date of the applicant's knowledge of the industrial***

nature of the decedent's condition is the pertinent "date of injury" for purposes of the death claim.

(*Berkebile*, 144 Cal.App.3d at p. 945, emphasis added.)

An *inter vivos* claim and a death claim are separate "transactions," i.e., ***different injuries*** under section 5303, involving a new claim of injury involving different applicants. (*Lemus Saldana v. Tao Tai Homes Corp.* [2025 Cal. Wrk. Comp. P.D. LEXIS 309, *12, fn. 7]; *Glavich v. Industrial Acc. Com.* (1941) 44 Cal.App.2d 517, 522 [6 Cal.Comp.Cases 123].)

In this case, we note that applicant filed a death claim on November 20, 2017, alleging injurious exposure from January 29, 2016 to January 29, 2017, well beyond the stipulated period of decedent's employment from 1979 to 1994. The evidentiary record does not explain the basis for the selection of this alleged exposure period. Accordingly, the parties must redefine the period of injurious exposure to reflect the actual time worked. In addition, the QME reports of Dr. Lonky and Dr. Woolfe do not definitively state whether decedent's death arose from the two needle punctures resolved by the October 26, 1995 Stipulations or from other puncture wounds sustained over her career that, given the unknown timing, could constitute a different cumulative injury or injuries. Finally, the WCJ must determine the "date of injury" pursuant to section 5412, before it can be determined whether section 5406(b) time-bars this claim.

It is axiomatic that substantial evidence must support the decisions by the Appeals Board. (Lab. Code, §§ 5903, 5952(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. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence ". . . 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." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525].)

"[I]n order to ensure reliance on substantial evidence, and a complete adjudication of the issues consistent with due process," the WCJ and the Appeals Board both have a duty to further develop the record where there is an absence of, or insufficient evidence to determine the issues raised for trial. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal. App.4th 389, 393-395 [62 Cal.Comp.Cases 924] (*Tyler*); *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see Lab. Code, §§ 5701 and 5906; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 139 (Appeals Board en banc).) Indeed, the Appeals Board has a constitutional mandate to "ensure substantial justice in all cases," and is therefore "clearly permitted" to admit evidence even after the discovery cut-off under section 5502(d)(3). (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-405 [65 Cal.Comp.Cases 264].) "[A]llowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims" and militates in favor of our presuming the continued vitality of sections 5701 and 5906, absent a clear legislative intention to the contrary. (*Tyler, supra*, 56 Cal.App.4th at p. 394.) An adequately developed record affords all parties due process of law and further provides for meaningful review by the Appeals Board of a WCJ's decision. [*Evans v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]; *Hernandez v. Staff Leasing* (2011) 76 Cal.Comp.Cases 343, 346-347 (Appeals Board significant panel decision).)

Pursuant to sections 5701 and 5906, a WCJ or the Appeals Board may not leave undeveloped issues that, through the exercise of its specialized knowledge, recognizes as requiring further evidentiary development. (*Kuykendall, supra*, 79 Cal.App.4th at p. 404.)

Accordingly, as our Decision After Reconsideration, we rescind the Findings and return the matter to the trial level for further proceedings consistent with this decision. Upon return, once the matter is assigned to a new WCJ, in addition to the evidence that must be submitted with respect to the claimed section 5402 presumption, we recommend that the WCJ direct the parties to obtain supplemental reports or deposition testimony specifically addressing the analysis required under sections 3208.1 and 5412. If the injury or injuries are cumulative, the WCJ should issue a decision that includes determining the "date of injury" under section 5412 and the applicability of section 5406(b).

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the May 20, 2022 Findings and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for assignment to a new WCJ and further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 10, 2026

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

ALEXANDRA ZAKIN
LAW OFFICE OF JEFFREY LINNETZ
WAI, CONNOR & HAMIDZADEH, LLP

DLP/md

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