WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MICHAEL RUDDELL, *Applicant*

vs.

CINCINNATI REDS; permissibly self-insured, *Defendant*

Adjudication Number: ADJ12556245
Santa Ana 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 and Order (Findings) issued on April 15, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant's date of injury pursuant to Labor Code section 5412[2] was January 8, 2015, and that section 5405 time-barred his workers' compensation claim.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration

Applicant submitted a supplemental petition for reconsideration (Supplemental Petition) and requested permission to file it. Pursuant to our authority under WCAB Rule 10848, we accept the filing of applicant's Supplemental Petition. (Cal. Code Regs., tit. 8, § 10848.)

We have considered the allegations of the Petition for Reconsideration, the Supplemental Petition, the Answer and the contents of the WCJ's Report. Based on our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will amend the

[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.

Findings to find that the section 5412 date of injury is July 16, 2020 (Finding of Fact 5), find and order that the claim is not time-barred (Finding of Fact 6, Order), and otherwise affirm the decision.

FACTS

Applicant, while employed by defendant as a professional athlete during the period June 5, 1969 to May 30, 1975, claims to have sustained industrial injury to her head, vision, jaw, neck, back, shoulders, elbows, wrists, hands, fingers, hips, knees, ankles, feet, toes, neuropsyche and other body parts.

Applicant filed his Application on September 19, 2019.

On September 15, 2021, the parties submitted at trial, among other issues, the applicability of the statute of limitations pursuant to section 5405. The WCJ bifurcated all other issues.

The parties returned to trial on January 18, 2022. Applicant testified that he did not know what a cumulative trauma injury was or that his problems related to one. (Minutes of Hearing/Summary of Evidence (MOH/SOE), 1/18/2022, 2:20-21.) He first learned about his cumulative injury on July 16, 2020, when he saw Michael Einbund, M.D., for a qualified medical evaluation (QME). (*Id.* at p. 2:22-24.) He did not receive any notice of rights regarding filing a workers' compensation claim from any professional sports team. (*Id.* at pp. 2:24-25 to 3:1-2.) In 2019, he first learned from a classmate that he could file a claim for injuries sustained while employed as a baseball player and, one month later, he retained an attorney. (*Id.* at p. 3:16-19.)

Regarding a prior September 10, 2008 workers' compensation bilateral knee injury as a supervisor while employed by Valero Energy Corporation, applicant testified that he did not initially have an attorney, others filed his workers' compensation claim for him, and neither the employees nor the physicians he saw ever told him his injuries related to his employment as a professional athlete. (*Id.* at p. 3:2-3; 3:6-9.) He did not retain an attorney for his knee injury claim until 2016. (*Id.* at p. 13:2-15.)

In his report dated July 16, 2020, QME Dr. Einbund stated that:

> Applicant suffered . . . injuries to his entire body on a repetitive basis while playing professional baseball. Professional baseball is an extremely strenuous occupation, the demands of which require extreme physical activity. These physical demands put a great deal of stress and strain on the musculoskeletal system. Throughout his career as a professional baseball player, the patient continuously sought treatment from the team trainers which provided him with temporary relief so that he could continue to play in games and participate in practices. He would frequently

> experience exacerbations and aggravations to his joints and musculature due to the requirements of his occupation.

(App. Ex. 1, p. 3.)

Dr. Einbund diagnosed applicant with straining injuries of the cervical spine, lumbar spine, right elbow, thumbs and ankles, right shoulder impingement, post-operative total knee replacements with degeneration, bilateral plantar fasciitis, acid reflux, insomnia and depression secondary to chronic pain. (*Id.* at p.13.)

With respect to causation, Dr. Einbund opined that "all of [applicant's] current symptoms and disability are secondary to the continuous trauma which he sustained during the course of his career as a professional baseball player . . . his entire body was continuously subjected to severe traumatic forces, all of which are part and parcel to his current condition." (*Id.* at p. 19.)

Applicant was evaluated by neuropsychiatrist Ted R. Greenzang, M.D., as a QME. In his report dated October 26, 2020, Dr. Greenzang stated that applicant reported that "he experienced physical difficulties and . . . stressful circumstances throughout his career as a professional baseball [player] . . . [with] stiffness referable to his right shoulder and . . . right elbow beginning in about 1970" with occasional stiffness in 1971. (App. Ex. 2, p. 2.) In 1972, "he experienced a pop referable to his elbow . . . could not straighten his arm . . . or throw as hard . . . [affect]ing his performance . . . [with] difficulties continu[ing] the next season in 1973" requiring surgery to remove the bone chips and spurs and repair the ulnar nerve damage. (*Id.* at p. 3.) In 1972, when he went into Spring Training, he remained symptomatic and could not straighten his right upper extremity with back, right shoulder and right foot pain limiting his pitching abilities. (*Id.* at p. 4.) Up through June or July 1975, his performance degraded by about 75%. (*Id.* at pp. 4-5.) Dr. Greenzang diagnosed applicant with anxiety and depressive disorders not otherwise specified. (*Id.* at p. 11.)

With respect to causation, Dr. Greenzang opined that "[applicant's] participation in baseball related activities . . . play the predominant role in precipitating the physical injuries and stressful events and circumstances which he encountered during the course of his professional baseball career and in precipitating the disabling emotional sequelae which resulted from those physical injuries and difficulties and stressful circumstances." (*Id.* at p. 28.)

Applicant was evaluated by Marvin Pietruszka, M.D., as an internal QME. In his report dated February 5, 2021, he wrote that applicant, while employed as a baseball player, chewed

tobacco during the period 1969 to 1995 causing him to produce "stomach acid" requiring him to take antacids. (App. Ex. 3, p. 3.) He was also under stress and pressure to perform well, leading to hypertension, gastritis and gastroesophageal reflux disease related to his psychological stress and long-standing use of nonsteroidal anti-inflammatory drugs from orthopedic injuries while employed as a baseball player. (*Id.* at p. 3; pp. 12-13.) Finally, he suffers from headaches and insomnia related to his numerous injuries from his professional baseball career. (*Id.* at pp. 13-14.)

In the QME report of Lawrence S. Barnett, M.D., dated April 29, 2014 (Subpoenaed Records from Long Beach WCAB, Def. Ex. C), the QME stated that applicant sustained an injury to his knees when, while he was descending a ladder, he missed the final step and stumbled into a twisting position. (*Id.* at p. 51.) He underwent total knee arthroplasty on both knees. (*Id.* at p. 52.) Dr. Barnett opined that applicant's pre-existing early traumatic arthritis of the left knee and progressive traumatic arthritis on the right knee worsened because of his fall and he suffered permanent disability to his knees. (*Id.* at pp. 67-69.) In Dr. Barnett's supplemental report dated December 18, 2014, his opinion on apportionment remained unchanged. (*Id.* at pp. 72.) Applicant ultimately settled his case by Compromise & Release for $150,000.00. (*Id.* at pp.13-25.)

On April 15, 2022, the WCJ issued his decision that applicant's date of injury was January 8, 2015, based on the date he received Dr. Barnett's medical reports, and applicant's Application, filed on September 19, 2019, was time-barred pursuant to section 5412.

It is from this decision that applicant seeks reconsideration.

DISCUSSION

Generally, the filing of an application initiates a legal proceeding before the WCAB. (Lab. Code, § 5500; Cal. Code Regs., tit. 8, § 10450.) The time limitations for commencing proceedings are set forth in § 5405 as follows:

> The period within which proceedings may be commenced for the collection of the benefits provided by Article 2 (commencing with Section 4600) or Article 3 (commencing with Section 4650), or both, of Chapter 2 of Part 2 is one year from any of the following:
>
> (a) The date of injury.
> (b) The expiration of any period covered by payment under Article 3 (commencing with Section 4650) of Chapter 2 of Part 2.
> (c) The last date on which any benefits provided for in Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 were furnished.

(Lab. Code, § 5405.)

Thus, an applicant must commence proceedings with the WCAB within one year of (1) the date of injury; or (2) the expiration of the period covered by the employer's last payment of disability indemnity; or (3) the date of the last furnishing by the employer of medical, surgical or hospital treatment. (*J.T. Thorp v. Workers' Comp. Appeals. Bd.* (*Butler*) (1984) 153 Cal.App.3d 327, 333-334 [49 Cal.Comp.Cases 224].) "The 'date of injury' is a statutory construct which has no bearing on the fundamental issue of whether a worker has, in fact, suffered an industrial injury … the 'date of injury' in latent disease cases 'must *refer* to a period of time rather than to a point in time' …[t]he employee is, in fact, being injured prior to the manifestation of disability." (*Id.* at p. 341 (italics added).)

Section 3208.1 provides that: "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 injury shall be the date determined under Section 5412."

In addition, section 5412 provides that: "The 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."

Finally, section 5500.5(a) provides that: "Except as otherwise provided in Section 5500.6, liability for occupational disease or cumulative injury claims filed or asserted on or after [January 1, 1981] shall be limited to those employers who employed the employee during a period of [one year] immediately preceding either the date of injury, as determined pursuant to Section 5412, or the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury, whichever occurs first."

As stated above, section 5412 sets the date of injury for cumulative injury cases as "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." Thus, to determine the date of applicant's cumulative injury, there must exist a concurrence of disability and knowledge that employment activities caused the injury. The term "disability" means either compensable temporary disability or permanent disability.

(*Chavira v. Workers' Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 472-473 [56 Cal.Comp.Cases 631]; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (2004) 119 Cal.App.4th 998, 1002-1003 [69 Cal.Comp.Cases 579].)

The existence of disability is a medical question beyond the bounds of ordinary knowledge, and, as such, typically requires medical evidence. (*City & County of San Francisco v. Industrial Acc. Com.* (*Murdock*) (1953) 117 Cal.App.2d 455, 458 [18 Cal.Comp.Cases 103]; *Bstandig v. Workers' Comp. Appeals Bd.* (1977) 68 Cal.App.3d 988, 995 [42 Cal.Comp.Cases 114].) Knowledge requires more than an uninformed belief. Because the existence of disability typically requires medical evidence, an "applicant will not be charged with knowledge that his disability is job related without medical advice to that effect unless the nature of the disability are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability." (*City of Fresno v. Workers' Comp. Appeals Bd.* (*Johnson*) (1985) 163 Cal.App.3d 467, 473 [50 Cal.Comp.Cases 53].)

Here, while Dr. Barnett's QME report dated April 29, 2014, found that applicant first suffered "disability" due to permanent disability from his aggravating specific injury to his knees on September 10, 2008, the evidence does not support that he acquired actual knowledge when served with the initial and December 18, 2024 supplemental report on January 8, 2015 diagnosing pre-existing arthritis. Since "the 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" (*Butler, supra*, 153 Cal.App.3d at p. 341), it would be unreasonable to charge applicant with knowledge based on Dr. Barnett's QME reports alone.

It is axiomatic that any decision of the WCAB must be supported by substantial evidence. (*Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 620 (Appeals Bd. en banc), 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].) Where the issue in dispute is a medical one, expert medical evidence is ordinarily needed to resolve the issue. (*Insurance Co. of North America v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 905, 912 [46 Cal.Comp.Cases 913]; *Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].) In order to constitute substantial medical 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*, *supra*, 70 Cal. Comp. Cases 604, 621.)

Here, we conclude that substantial medical evidence supports a finding that the "date of injury" is July 16, 2020, based on the QME report of Dr. Einbund dated July 16, 2020, where he opined that applicant's job duties as a baseball player caused him to suffer a cumulative injury. Moreover, applicant's testimony that he did not have prior knowledge of the industrial nexus of his orthopedic injuries supports this conclusion. Given that the "date of injury" follows applicant's Application he filed on September 19, 2019, it is not time-barred pursuant to section 5405.

Accordingly, we amend the Findings to reflect that the date of injury is July 16, 2020 (Finding of Fact 5), find and order that the claim is not time-barred (Finding of Fact 6, Order) and otherwise affirm the remainder of the decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Order dated April 15, 2022, by the WCJ is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

5. Applicant's date of injury pursuant to Labor Code section 5412 is July 16, 2020.

6. Applicant's claim for workers' compensation benefits in this case is not time-barred by the statute of limitations pursuant to Labor Code section 5405.

ORDER

IT IS ORDERED that Labor Code section 5405 does not bar this claim.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI , CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 27, 2026

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

MICHAEL RUDDELL
GLENN, STUCKEY, & PARTNERS, LLP
BOBER, PETERSON & KOBY, LLP

DLP/md

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