

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

OLGA HERNANDEZ, *Applicant*

vs.

**JANNEY AND JANNEY ATTORNEY SERVICES, INC.;
STATE FARM FIRE AND CASUALTY COMPANY,
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ12735589
Pomona 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 January 7, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that pursuant to Labor Code section 5405², applicant's claim for workers' compensation benefits was time-barred, whereby resulting in her taking nothing from her claims filed herein.

Applicant contends that the testimonial evidence at trial does not support the finding that her employer gave her a workers' compensation claim form (DWC-1) so that sections 5405's statute of limitations was tolled; and that she is entitled to workers' compensation benefits.

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

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 on our review of the record, and for the

¹ Commissioner Lowe was on the panel that issued the order granting reconsideration. Commissioner Lowe 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.

reasons discussed below as well as the WCJ's Report, which we adopt and incorporate, as our Decision After Reconsideration, we will affirm the WCJ's January 7, 2022 decision.

Generally, the filing of an application commences proceedings before the WCAB. (Lab. Code, § 5500; Cal. Code Regs., tit. 8, § 10450.) The time limitations for commencing proceedings are set forth in section 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.* (1984) 153 Cal.App.3d 327, 333-334 [49 Cal.Comp.Cases 224].)

In the instant case, applicant's injury occurred on May 27, 2016. Applicant did not file her application for adjudication of claim until November 14, 2019. Applicant therefore filed her claim in excess of the one-year period under section 5405(a).

However, pursuant to section 5401(a), an employer has a duty to inform an injured employee of their workers' compensation rights when the employer has actual or constructive knowledge of a work-related injury. Failing to meet that duty equitably tolls the above time limits. (*Kaiser Found. Hosps. Permanente Medical Grp. v. Workers' Comp. Appeals Bd.* (1985) 39 Cal.3d 57, 66 [50 Cal.Comp.Cases 411]; *Reynolds v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 726, 728 [39 Cal.Comp.Cases 768].)

Here, as noted by the WCJ in her Report, based on the testimonies of employer witnesses Robert Delgado and Gloria Leyva-Sanchez, the employer met its statutory duties by timely providing applicant with a claim form and other workers' compensation documents. (Report, p. 2.)

We accord great weight to the WCJ's credibility determinations (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]), and based on our review of the record, we conclude that applicant's claim for workers' compensation benefits is indeed time-barred pursuant to section 5405 and not subject to equitable tolling.

Accordingly, we affirm the WCJ's decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 7, 2022 Findings of Fact is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 22, 2026

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

**OLGA HERNANDEZ
LAW OFFICES OF ADEMOLA M. OKUSANYA, APLC
ALBERT & MACKENZIE, LLP**

DLP/md

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

REPORT AND RECOMMENDATION **ON PETITION FOR RECONSIDERATION**

INTRODUCTION

Applicant, Olga Hernandez, while employed on May 27, 2016, as a court runner, at Riverside, California, by Janney and Janney Attorney Services, claims to have sustained injury arising out of and occurring in the course of employment to the neck, shoulders and arm. (The Findings of Fact dated January 7, 2022, erroneously stated while employed on 05-26-2016 when the date should have been May 27, 2016).

Trial proceeded on the following limited issue: Whether the applicant's claim is barred by the statute of limitations pursuant to Labor Code Section 5405. All other issues were deferred without prejudice.

The Findings of Fact and Opinion on Decision concluded the applicant's claim herein is barred by the statute of limitations pursuant to Labor Code Section 5405(a) since the Application for Adjudication of Claim was filed more than a year from the date of the claimed injury and defendants had not provided any benefits or treatment.

Defendant has filed a response to the Petition for Reconsideration.

Applicant filed a Petition for Reconsideration on the following grounds:

That by the Findings of Fact and Opinion the WCJ has acted without or in excess of its powers;

That the evidence does not justify the findings of fact;

That the findings of fact do not support the decision.

DISCUSSION

The Petition for Reconsideration accurately stated the initial Application for Adjudication of Claim was filed by applicant on November 14, 2019 for a specific date of injury May 27, 2016. An amended application was filed dated December 3, 2020 (exhibit "6"). The Petition for Reconsideration stated the applicant reported the accident on May 27, 2016 to her supervisor Robert Delgado. Applicant testified to that fact (Minutes of Hearing and Summary of Evidence October 6, 2021 page 3). The supervisor Robert Delgado also testified the applicant reported the motor vehicle accident the day it occurred (Minutes of Hearing and Summary of Evidence October 6, 2021 page 8, 9).

Under cross-examination Applicant testified she was certified for FMLA leave in August or September of 2019, certified by a Dr. Nazeri based on non-industrial rheumatoid arthritis (Minutes of Hearing and Summary of Evidence October 6, 2021 page 6). She did receive benefits from EDD for that claim and returned to work after the FMLA benefits ended.

The Petition for Reconsideration stated applicant was not provided a claim form or workers' compensation benefits by the defendant. On the issue of a claim form there is conflicting testimony and a claim form submitted as exhibit "D" which the WCJ deemed to have no probative value due to inconsistencies found in that document compared with trial testimony.

Employer witness Robert Delgado testified he did give applicant a packet of workers' compensation document and those were forwarded from the Los Angeles office. He testified these forms were given to the applicant the week following the motor vehicle accident. He specifically recalled giving applicant the documents within two or three days after she returned from the accident. He stated it was a packet with all of the forms and included a claim form and notice (Minutes of Hearing and Summary of Evidence October 6, 2021 page 9).

Employer witness Gloria Leyva-Sanchez testified she sent a claim form and other notices to applicant for the May 27, 2016 motor vehicle accident. Ms. Leyva-Sanchez testified she has been with the company 41 years and worked in a different office than the applicant. This witness also testified the applicant had first reported a work related motor vehicle accident injury in 2013 or 2014, that the applicant was given a claim form for that motor vehicle accident but that applicant returned the claim form and declined to pursue the case (Minutes of Hearing and Summary of Evidence October 26, 2021 page 3). No rebuttal evidence was offered to contradict the testimony the applicant had been provided a claim form for a motor vehicle accident in 2013 or 2014 and that applicant declined to pursue a claim. That testimony shows applicant had notice in 2013 and was offered a claim form for a work related injury before the injury occurred in 2016. Ms. Leyva-Sanchez also testified employees are given a handbook upon being hired and that provides notice of workers' compensation rights. The applicant would have received that handbook when hired in 2006 (page 3).

The combined testimony of the employer witnesses was found to be sufficiently credible and persuasive that applicant was provided a claim form and notice of her rights to file a workers' compensation claim for the May 27, 2016 motor vehicle accident on or about the end of May, 2016.

On the issue of the claim form, applicant testified when she reported the accident of May 27, 2016 to Robert Delgado it was in person and she was not given any paperwork. She also testified she got an attorney for the motor vehicle accident and received treatment until she was told they could no longer provide treatment. Applicant testified that at the end of 2019 she was still in pain and was told she could still file a workers' compensation claim. Applicant also testified she had a work injury where she injured her ankle while at the courthouse. She was given a form to fill out (in 2018) and was sent for medical treatment, she described that as a minor injury (Minutes of Hearing and Summary of Evidence October 6, 2021, page 3, page 5). Applicant's testimony was in 2018 she was given treatment and a claim form following a work related ankle injury. However there was no application filed for the May 27, 2016 injury until November 14, 2019.

The claim form entered into evidence as exhibit "D" was dated December 3, 2020. The date of injury referenced was May 27, 2016 (the subject motor vehicle accident). The description of the injury is an ankle injury at the Riverside Courthouse. Applicant confirmed at trial that was her signature. Mr. Delgado confirmed his signature is at the bottom of exhibit "D" but he did not sign the claim form in 2020 (Minutes of Hearing and Summary of Evidence October 26, 2021 page 2). The applicant is not claiming an ankle injury on May 27, 2016. The description of injury in exhibit "D" is not a motor vehicle accident. There is no information in exhibit "D" as to the date of knowledge of the employer or when a claim form was provided to the applicant. Exhibit "D" in the bottom section appears to have lines previously filled in but appear to possibly been redacted. Therefore, the WCJ determined exhibit "D" while entered into evidence had no probative value and was not reliable and not considered in the decision issued on the limited trial issue.

As to the issue of workers' compensation benefits, defendant does not deny no benefits or treatment was provided to the applicant.

The record developed at trial was applicant was involved in a motor vehicle accident in the course of employment on May 27, 2016. She elected to pursue a civil case arising out of that incident and received treatment for nearly a year according to her testimony. Applicant testified she was not aware she could ask for medical treatment for the May 27, 2016 accident (Minutes of Hearing and Summary of Evidence October 6, 2021 page 3). The testimony that she did not know she could ask for medical treatment for an injury that occurred while she was performing her job duties but she could get treatment in the context of a civil case is not credible. Also due to the

unrebutted testimony applicant was provided a claim form for a prior motor vehicle accident in 2013 or 2014 shows prior notice of rights to seek workers' compensation benefits.

No application was filed within a year of that date of injury to toll the statute of limitations. Applicant had another work related injury when she injured her ankle at the Riverside Courthouse and although she acknowledged she was given a form to fill out (in 2018) she described that as a minor injury and did not file a workers' compensation claim for the ankle injury.

The Petition for Reconsideration referred to a "document yet to be introduced into evidence". There was a discussion with the parties during the course of the trial and applicant's attorney had requested and defendant agreed to provide an additional document. Trial was continued to allow for applicant's attorney to be served with that document (Minutes of Hearing and Summary of Evidence October 6, 2021, page 10). Thereafter trial was continued to October 26, 2021. The Minutes of Hearing and Summary of Evidence October 26, 2021 does not show any request for any additional document to entered into evidence and further testimony was taken without objection. Under re-direct examination there was testimony from defense witness Mr. Delgado related to a claim form of June 10, 2019. However, as the Minutes of Hearing and Summary of Evidence October 26, 2021 page 2 notes no claim form dated June 10, 2019 was offered into evidence and no further testimony was taken referencing any document that date.

Based on the evidence submitted and testimony given at trial it was concluded applicant's claim herein was barred by the statute of limitations. Labor Code Section 5405 states proceedings for the provision of workers' compensation benefits may be commenced one year from the date of injury or the last date on which any benefits were provided. In this case there is no dispute no benefits were provided. Having concluded the evidence supports the finding the applicant was provided a claim form following the injury on May 27, 2016 the failure to file an Application for Adjudication of Claim within a year of the date of injury bars the applicant's claim.

CONCLUSION

It is respectfully recommended the Petition for Reconsideration be denied.

Dated: February 11, 2022

Sharon Bernal
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE