WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RALPH LAKES, *Applicant*

vs.

CLIPPER INTERNATIONAL EQUIPMENT COMPANY, INC.; STATE COMPENSATION INSURANCE FUND; TECHNOLOGY INSURANCE COMPANY, administered by AMTRUST NORTH AMERICA, INC., *Defendants*

Adjudication Numbers: ADJ7155088; ADJ7155138
Oakland 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 and defendant Technology Insurance Company, administered by AmTrust North America, Inc. (defendant), each seek reconsideration of the Findings and Award (F&A) issued on February 14, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant, while employed during the cumulative trauma period through August 28, 2009, "within the meaning of Labor Code section 5412," as a tower crane operator, by defendant Clipper International Equipment Co., Inc., sustained injury arising out of and in the course of his employment to his back, hips, and left leg;, and that defendant Technology Insurance Company c/o Amtrust North America (Technology) insured defendant's employer during the last year of applicant's employment and was liable for the claim pursuant to Labor Code section 5500.5.[2] The WCJ also found that applicant was entitled to temporary disability at the weekly rate of $958.01 and that no adjustment to permanent disability pursuant to section 4658(d) applied.

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[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.

Applicant contends that the WCJ erred in failing to calculate the temporary disability rate pursuant to section 4661.5, arguing that the stipulated earnings allow for an increase above the 2009 maximum rate. Applicant further contends that the WCJ erred in failing to allow further development of the record to determine whether the increase under section 4658(d) permanent disability applies.

Defendant contends that the WCJ erred in determining that the date of injury under section 5412 was through applicant's last day of work on August 28, 2009, rather than on November 6, 2006, when applicant first received temporary disability. Defendant further contends that the WCJ incorrectly relied on Agreed Medical Evaluator (AME) Stephen Conrad, M.D.'s opinion, asserting that it is not substantial evidence because it relied on inaccurate facts regarding applicant's return to regular work duties. Defendant asserts that the WCJ should place liability on the appropriate insurance carrier based on a November 6, 2006 date of injury pursuant to section 5500.5.

We have received Answers from applicant and State Compensation Insurance Fund (SCIF). The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petitions for Reconsideration, the Answers 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 rescind the F&A and return this case to the trial level for further proceedings consistent with this opinion.

FACTS

At trial on December 2, 2021, the parties stipulated to the following facts:

1. Ralph Lakes, [] while employed during the (in dispute) period from 12/12/2006 to 8/28/2009 (as pled), [ADJ7155138] and (in dispute) 9/1/2005 to 9/1/2006 (as pled, in dispute), [ADJ7155088] as a tower crane operator, Occupational Group No. 481, at Novato, California, by Clipper International Equipment Company, Inc., sustained injury arising out of and in the course of employment to back, hips, and left leg.

2. At the time of injury, the employer's workers' compensation carrier was Technology Insurance Company, care of Amtrust, 10/29/2008 to 10/29/2009.[3]

[3] The parties did not stipulate to the insurance coverage periods for SCIF, Zurich American Insurance Company, or Liberty Mutual Insurance Company. However, SCIF did state, in its Answer, that its insurance coverage ended on October 29, 2007. (Answer, 4:20-21.) In addition, Zurich American Insurance Company, in its petition for dismissal

3. At the time of injury, the employee's earnings were $1,703.25 per week, warranting indemnity rates of $958.01 for temporary disability and maximum for permanent disability.

4. Carrier/employer has paid compensation as follows:

   Temporary disability at the weekly rate of $958.01 from 11/6/2006 to 12/11/2006 (by SCIF prior to Dr. Conrad, AME) all according to proof.

(Minutes of Hearing and Summary of Evidence (MOH/SOE, 12/02/2021, 3:8-28.)

At trial, the parties submitted the following issues for adjudication: entitlement to temporary disability during the period August 29, 2009 to March 15, 2015, permanent disability (with applicability of section 4658(d)), need for further medical treatment, attorney fees, period(s) of injurious exposure pursuant to section 5500.5, date of injury pursuant to section 5412, and resolution of the lien of the Employment Development Department (EDD) of $49,868.00 at the rate of $959.00 per week during the period November 2, 2009 to October 31, 2010.[4] (MOH/SOE, 12/02/2021, 3:40-45 to 5:1-10.)

The parties jointly submitted into evidence the AME reports of Stephen E. Conrad, M.D., (Joint Exs. 101-105) and Jacquelyn A. Weiss, M.D., Ph.D. (Joint Exs. 106-109.)

In his deposition dated June 13, 2014, applicant testified that he worked for defendant as a tower crane operator. (Joint Ex. 110, p. 26:6-8.) His daily duties involved operating a crane from a seated position to hoist and place heavy materials, including concrete, steel, rebar, and windows. (*Id.* at p. 26:12-19.) The role was physically demanding, requiring a daily ascent and descent of crane towers reaching heights of up to 300 feet. (*Id.* at pp. 27:4-8, 35:2-3.) Additionally, he performed periodic maintenance, ranging from weekly to monthly, which required climbing the tower sections to lubricate grease fittings and spray open gears. (*Id.* at p. 27:9-23.)

Applicant's symptoms originated in 2006 while working on the Opus project. He noted that newer machinery featured protective cages, which necessitated awkward vertical climbs that led to progressive groin strain. (*Id.* at pp. 30:20-25 to 31:1-13, 32:22-25 to 33:1-3.) Despite escalating

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of party defendant (ADJ7155138) dated May 27, 2015, stated that it provided an owner controlled insurance program policy from March 1, 2008 to March 1, 2009 and April 27, 2009 to March 1, 2010. (2:10-14.) Finally, Liberty Mutual Insurance Company, in its petition for dismissal of party defendant (ADJ7155138) dated June 22, 2013, stated that it also provided an owner controlled insurance program policy from October 2, 2008 to April 15, 2010. (1:22-23.)

[4] We rely on applicant's petition for reconsideration regarding monies and periods paid by EDD. (3:3-7.)

pain, he continued working until the project's conclusion. He first sought treatment from Brad Moy, M.D., who diagnosed a groin pull and placed him on temporary disability from October 2006 through December 2006. (*Id.* at pp. 34:4-12, 36:4-21.) Following his return to work, applicant experienced a significant re-aggravation of his symptoms in May 2009. While operating a freestanding rig that required a 300-foot daily climb within an enclosed cage, his pain progressed from the groin into the left hip, low back, and left knee (*Id.* at pp. 38:3-21, 41:9-42:4.) He subsequently treated with Lisa Zacharewicz, M.D., who diagnosed strained hip ligaments and prescribed a cane and crutches for ambulation. (*Id.* at pp. 44:2-23, 70:14-23.) His later evaluating physicians, Joel Renbaum, M.D., and George Pugh, M.D., both recommended that applicant undergo a total hip replacement. (*Id.* at pp. 46:21-23, 54:22-55:3.)

In his report dated March 28, 2017, AME Dr. Conrad, after evaluating applicant in the field of orthopedics, took a history that he began experiencing insidious low back and left leg pain in approximately 2006 when modified occupational safety standards compelled him, a six-foot-seven-inch individual, to ascend enclosed crane ladders sideways. (Joint Ex. 101, pp. 2-3, 11.) Despite developing an increasingly ataxic gait that necessitated the use of one walking stick in 2007 and two walking sticks by 2009, applicant continued working until his final day of work on August 28, 2009, and his retirement in October 2009. (*Id.* at pp. 2-4, 13.) AME Dr. Conrad diagnosed lumbar degenerative disc disease with left S1 radiculopathy, bilateral degenerative osteoarthritis of the hips, and a polysensory neuropathy of the lower extremities. (*Id.* at p. 10.) He further determined that cumulative trauma through August 28, 2009 caused applicant's injuries. (*Id.* at p. 13.)

In his supplemental report dated July 13, 2017, AME Dr. Conrad clarified his opinion on injurious exposure as follows:

> Following a second review of the clinical course in the case of Mr. Lakes, I am unable to agree that causation can be subdivided into two distinct periods of cumulative microtrauma. Instead, the dates of CT which had been pled are inextricably intertwined, and in reality, the cumulative microtrauma did not end until the final day of work. Although there was an apparent three-month period of time while Mr. Lakes was off work (from 1 September 2006 until 1 December 2006) according to the cover letter, when considered in the context of the work history which is 12 years for Clipper International, this three-month period of off work is brief rather than lengthy and to somehow apportion causation of disability to exposure before and then after this three-month period would be speculative.

> We must recall that when Mr. Lakes resumed work following the three-month period of TTD, he resumed regular work rather than modified duty; and the regular duty continued until 28 August 2009.
>
> In the final analysis, I am unable to agree . . . that there are two periods of CT. Instead, the injurious exposure during each period is inextricably intertwined. To provide percentage causation for each would invite speculation. Overall, I am unable to meet the standard of reasonable medical probability and to subdivide apportionment into two periods of CT. Instead, this gentleman's lumbar spine and hip conditions are related to a single period of CT which ended on the final day of work for Clipper International which is believed to be 28 August 2009.

(Joint Ex. 102, p. 2.)

In his reevaluation report dated March 10, 2020, AME Dr. Conrad stated that applicant reached maximum medical improvement on March 16, 2015, and reiterated that there was a single period of cumulative trauma through August 28, 2009, with no evidence to support two periods of cumulative trauma. (Joint Ex. 103, p. 8.)

In his supplemental report dated May 12, 2020, AME Dr. Conrad stated that applicant developed symptoms in his spine and lower extremities in 2006 prompting him to file a claim dated September 1, 2006. Following his voluntary resignation on August 29, 2009, he received a diagnosis of bilateral hip osteoarthrosis from an evaluation that same day. Objective imaging identified sensory polyneuropathy, lumbar multilevel intervertebral disc disease, and thoracic myelopathic changes at T11-T12. Applicant subsequently obtained his first formal medical treatment on November 2, 2009. (Joint Ex. 104, pp. 4-5.)

In her report dated March 4, 2019, AME Dr. Weiss, after evaluating applicant in the field of neurology, took a history that he began working as a crane operator for defendant in 1998 and developed low back pain and hip pain in 2006, with difficulty ambulating and balance problems by the latter part of that year. Due to new safety regulations requiring enclosure of crane ladders in cages, defendant reassigned him to a newer crane that, because of his height, he had to crouch and twist while ascending an enclosed ladder upward on a daily basis. (Joint Ex. 106, p. 2.) He treated for a left thigh strain and left groin strain beginning November 6, 2006, participated in physical therapy, and the condition resolved sufficiently for him to return to full duty by December 11, 2006. (*Id.* at pp. 6-7.) Applicant returned to work after a two-month period of temporary disability and performed his duties without noted difficulty for approximately two years thereafter. (*Id.* at p. 2.) Afterwards, around late 2008 or November 2009, while climbing a 300-foot

caged tower with an enclosed ladder, his symptoms flared. (*Id.* at pp. 7-9.) He subsequently developed bilateral lower extremity numbness and tingling in 2010. AME Dr. Weiss stated that applicant filed two cumulative injury claims with the second occurring after a two-month period of temporary disability from the first claim. (*Id.* at pp. 2-3.) AME Dr. Weiss documented physical findings including intrinsic foot atrophy, diminished vibration and position sense in the lower extremities, and vastus medialis fasciculations, yielding a primary diagnosis of peripheral polyneuropathy with significant proprioceptive loss. (*Id.* at pp. 4, 18, 21.)

In her supplemental report dated July 11, 2019, AME Dr. Weiss attributed the gait dysfunction primarily to peripheral polyneuropathy and severe cervical and thoracic spinal stenosis. Following a review of a lumbar MRI, she identified lumbar nerve root compromise as an additional contributing factor. She concluded that neuropathy and cephalad spinal pathology disrupted the sensory signals to the brain, causing the gait imbalance. (Joint Ex. 106, p. 4.)

On February 14, 2022, the WCJ issued her decision finding a "cumulative trauma date of injury through 08/28/2009, within the meaning of Labor Code section 5412" (Findings of Fact 2) and that defendant "has liability for applicant's claim pursuant to Labor Code section 5500.5." (Findings of Fact 9.)

It is from this decision that both applicant and defendant Technology seek reconsideration.

DISCUSSION

I.

Section 4661.5 provides:

> Notwithstanding any other provision of this division, when any temporary total disability indemnity payment is made two years or more from the date of injury, the amount of this payment shall be computed in accordance with the temporary disability indemnity average weekly earnings amount specified in Section 4453 in effect on the date each temporary total disability payment is made unless computing the payment on this basis produces a lower payment because of a reduction in the minimum average weekly earnings applicable under Section 4453.

In *Hofmeister v. Workers' Compensation Appeal Board* (1984) 156 Cal.App.3d 848 [49 Cal.Comp.Cases 438] (*Hofmeister*), a firefighter operating a bulldozer was injured in 1979, but the defendant disputed employment and paid no benefits until an award issued in July 1983. In the interim, the maximum statutory temporary disability rate had increased from $154.00 per week to $196.00 per week. The court held that, in enacting section 4661.5, the Legislature assigned

the risk of inflation of indemnity rates to the employer. Accordingly, temporary disability payments more than two years from the date of injury are payable at the statutory amount prevailing when the payment is made. (*Id.* at pp. 851, 853.)

Section 4661.5 does not mandate a new determination of applicant's average weekly earnings, rather it requires that payments of temporary disability more than two years after the date of injury be paid at current rates, i.e., at the prevailing minimum and maximum rates as of the date of payment as set forth in section 4453(a). For example, *Hofmeister* did not involve applicant's earnings capacity, but rather the applicable temporary disability rate. Thus, "under section 4661.5, when any TTD payment is made two years or more after the date of injury, the amount of the payment is to be computed in accordance with *the limits in effect* on the date of payment, not the date of injury." (*Coca-Cola Enterprises Inc. v. Workers' Comp. Appeals Bd.* (*Espinoza*) (2011) 194 Cal.App.4th 809, 812-813 [76 Cal.Comp.Cases 391], emphasis added.)

Here, the WCJ erred in awarding temporary disability indemnity at the 2009 statutory maximum rate of $958.01 rather than at the higher rate justified by the stipulated earnings under section 4661.5. The parties expressly stipulated that applicant's average weekly earnings at the time of injury were $1,703.25. Two-thirds of that figure equals $1,135.50. At the time of the 2009 injury, the statutory maximum temporary disability rate was only $958.01, materially less than two-thirds of applicant's earnings. Section 4661.5, however, mandates that, when temporary total disability indemnity is payable two or more years after the date of injury, "the amount of payment shall be computed in accordance with the temporary disability indemnity rate that would apply at the time of payment." (Lab. Code, § 4661.5.) Applicant is seeking temporary disability during the period August 29, 2009 to March 15, 2015. The current statutory maximum far exceeds $1,135.50. Therefore, applicant would be entitled to temporary disability indemnity at the full rate of $1,135.50 per week if awarded. Although, for the reasons set forth in paragraph II, we defer any findings of temporary disability, on remand, the WCJ should determine that temporary disability, if owed, would be payable at $1,135.50 per week less any necessary adjustments to the EDD lien.

II.

Section 5500.5(a) states that liability for cumulative injury is limited to the employer who employed the employee in the year preceding the "date of injury." This "date of injury" is either the last date of injurious exposure or the date under section 5412. (Lab. Code, § 5500.5(a).) The

earlier of these two dates is the one that sets the one-year period of liability, and the employer during that last one-year period is liable. (*Ibid.*)

No cumulative injury can occur without disability. (*Van Voorhis v. Workmen's Comp. Appeals Bd.* (1974) 37 Cal.App.3d 81, 87 [39 Cal.Comp.Cases 137]; *Aetna Cas. & Surety Co. v. Workmen's Comp. Appeals Bd.* (*Coltharp*) (1973) 35 Cal.App.3d 329, 342 [38 Cal.Comp.Cases 720].) A cumulative injury is one that occurs 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." (Lab. Code, § 3208.1.) "The number and nature of the injuries suffered are questions of fact for the WCJ or the WCAB." (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd.* (*Austin*) (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323]; *Coltharp*, *supra*, 35 Cal.App.3d at p. 333.) "[I]f an employee becomes disabled, is off work and then returns to work only to again become disabled, there is a question of fact as to whether the new disability is due to the old injury or whether it is due to a new and separate injury." (*Austin*, *supra*, 16 Cal.App.4th at p. 234.) However, the "general rule is that where an employee suffers contemporaneous injury to different body parts over an extended period of employment, the employee has suffered one cumulative injury." (*Gravlin v. City of Vista* [2017 Cal.Wrk.Comp. P.D. LEXIS 413, *16.])[5] For example, if "the employee's occupational activities after returning to work from a period of industrially-caused disability are not injurious—i.e., if any new period of temporary disability, new or increased level of permanent disability, or new or increased need for medical treatment result solely from an exacerbation of the original injury—then there is only a single cumulative injury." (*Id.* at p. 24; *Austin*, *supra*, 16 Cal.App.4th at p. 235.)

Where there are two periods of injurious repetitive activities or stresses at work, interrupted by a period of disability or a need for medical treatment, there are two distinct and separate cumulative injuries. (*Coltharp*, *supra*, 35 Cal.App.3d at p. 342-343; see also *American Bridge Co. v. Workers Comp. Appeals Bd.* (*Lee*) (1995) 60 Cal.Comp.Cases 869 (writ denied) [holding that substantial medical evidence supported the WCJ's finding that applicant suffered separate periods

[5] 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.

of cumulative trauma to his right knee when the demonstrated need for medical care without a period of temporary disability occurred in 1986, a subsequent demonstrated need for medical care without temporary disability occurred in 1988, and the ongoing trauma led to surgical need and disability in 1991].)

With respect to the "date of injury" pursuant to section 5412, the period of exposure to cumulative trauma pursuant to section 5500.5 is separate and distinct from the "date of injury" pursuant to section 5412. Where permanent disability results from cumulative trauma, the injury occurs not at the time of exposure, but at the time the cumulative effect of the injury resulting from the exposure has ripened into disability. (Lab. Code, § 5412 [providing "[t]he 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"]; see also *Federal Insurance Co. v. Workers' Comp. Appeals Bd.* (*Johnson*) 221 Cal.App.4th 1116, 1130 [78 Cal.Comp.Cases 1257].) Determining whether an employee knew or should have known their disability was work-related is a question of fact. (*City of Fresno v. Workers' Comp. Appeals Bd.* (*Johnson*) (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53]; *Nielsen v. Workers' Comp. Appeals Bd.* (1985) 164 Cal.App.3d 918, 927 [50 Cal.Comp.Cases 104]; *Chambers v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 556, 559 [33 Cal.Comp.Cases 722] .) The employer has the burden of proving that the employee knew or should have known their disability related to their employment activities. Merely showing that the employee knew they had some symptoms will not sustain that burden. (*Johnson*, *supra*, 163 Cal.App.3d at p. 471, citing *Chambers*, *supra*, at 69 Cal.2d at p. 559.) In general, an employee cannot presume to have knowledge that their disability is job-related without medical advice to that effect. (*Johnson*, *supra*, 163 Cal.App.3d at p. 473; *Newton v. Workers' Comp. Appeals Bd.* (1993) 17 Cal.App.4th 147, 156, fn. 16 [58 Cal.Comp.Cases 395].) "Thus, the determination of knowledge is an inherently fact-based inquiry, requiring an individualized analysis in each case." (*Raya v. County of Riverside* (2024) 89 Cal.Comp.Cases 993, 1006.)

An employee may not satisfy the knowledge component until medical evidence confirms the injury's industrial nature. This is particularly true where a condition is difficult to diagnose and the employee lacks sufficient knowledge of industrial causation at the time of filing the initial

claim form. (*Id.* at p. 1007; *Johnson*, *supra*, 163 Cal.App.3d at p. 472; *Nielsen v. Workers' Comp. Appeals Bd.* (1985) 164 Cal.App.3d 918, 927-928) [50 Cal.Comp.Cases 104].)

Under these authorities, a section 5412 injury date may precede the last date of exposure because section 5500.5 fixes liability on whichever occurs first. Rather than relying on the exposure period alone, liability hinges on the point where disability and medical knowledge converge. (*Lee v. MakeshopNcompany, Inc.* [2022 Cal. Wrk. Comp. P.D. LEXIS 58, *27].)

Finally, the law requires the Appeals Board to base its decisions of whether a cumulative injury exists on substantial medical evidence supporting the finding of industrial injury. (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 state its conclusions in terms of reasonable probability, avoid speculation, rely on pertinent facts and an adequate examination and history, and explain the reasoning supporting its conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Medical reports and opinions do not constitute substantial evidence when they contain known errors or rely on facts that are no longer germane, inadequate medical histories or examinations, or incorrect legal theories. Likewise, a medical opinion cannot support the Board's findings if it rests on surmise, speculation, conjecture, or guesswork. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Here, the parties stipulated that applicant worked as a tower crane operator for defendant during two pleaded periods that straddle a documented three-month absence: September 1, 2005 to September 1, 2006 (ADJ7155088) and December 12, 2006 to August 28, 2009 (ADJ7155138). They further stipulated that applicant was not working and received temporary disability from November 6, 2006, to December 11, 2006, paid by SCIF, and that he returned thereafter to his full, regular duties as a tower crane operator rather than to modified duty.

Unfortunately, the AME reports lack the analytical depth required to resolve the conflicting factual record. AME Dr. Conrad, in his July 13, 2017 supplemental report, expressly acknowledged the three-month absence and the return to regular duty, yet concluded that "the dates of CT which had been pled are inextricably intertwined" and that any attempt to apportion causation "would be speculative." He reiterated this view in his March 10, 2020 reevaluation,

stating there was "no evidence to support two periods of cumulative trauma." This analysis ignores the mandate of *Coltharp*, which requires an assessment of whether an intervening period of disability and a subsequent return to work signify a separate and distinct injurious period. Furthermore, AME Dr. Conrad failed to evaluate the post-December 2006 work environment, nor does he explain why the intervening disability and return to full duty did not break the chain of causation. He neglected to consider whether applicant's post-December 2006 flare-up constituted a new source of repetitive microtrauma. Consequently, AME Dr. AME Dr. Conrad's opinion rests upon an incomplete history and remains speculative under the standards set forth in *Escobedo*.

AME Dr. Weiss, in contrast, documented two separate claim filings, a two-month period of temporary disability resolving sufficiently for return to full duty, approximately two years of subsequent regular work, and then a flare of symptoms linked to climbing a 300-foot caged enclosed ladder. Her neurologic opinion attributes the later gait dysfunction and polyneuropathy to a combination of lumbar nerve-root compromise and cephalad spinal pathology that progressed after the return to work. These observations are consistent with the possibility of a second period of injurious exposure, yet AME Dr. Weiss was not asked to, and did not, render an opinion on whether the post-2006 work activities produced a distinct cumulative injury for purposes of section 5500.5.

With respect to the "date of injury" pursuant to section 5412, the record contains evidence of disability and a claim filing in 2006, with temporary disability paid from November 6, 2006 to December 11, 2006, followed by a return to full duty and continued work until August 28, 2009. In addition, applicant's deposition testimony established a history of industrial exposure beginning in 2006 while working as a tower crane operator where awkward vertical climbs caused progressive groin strain. This resulted in a period of temporary disability and a formal claim in November 2006 following a diagnosis of a "groin pull" by Dr. Moy. The record is silent as to whether Dr. Moy or any other physician informed applicant at that time that his condition was a result of his cumulative occupational activities. After a return to full duty, he experienced a recognized reoccurrence of symptoms in May 2009 due to the increased physical demands of a 300-foot freestanding rig, leading to a final work date of August 28, 2009, and subsequent work restrictions imposed by Dr. Zacharewicz.

However, the AMEs and the WCJ failed to determine the exact moment applicant first attributed his back, hip, and left leg disabilities, or their recurrence, to his work

activities. AME Dr. Conrad's reports focus on the end date of exposure rather than the ripening of disability and knowledge components. AME Dr. Weiss's history notes the 2006 symptoms and claim, but does not correlate them to applicant's contemporaneous understanding of causation.

"[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]; *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.)

The WCJ found that the cumulative injury occurred "through 08/28/2009" (Finding of Fact No. 2) and placed liability solely on defendant Technology's coverage period. (Finding of Fact No. 9.) By making these findings, the WCJ essentially treated the temporal periods under sections 5412 and 5500.5 as coterminous. However, the decision lacks any articulated explanation of how the WCJ applied the governing legal authorities to this inconclusive medical record. Without additional evidence clarifying whether applicant's post-return duties were independently

injurious or merely exacerbated the pre-2006 pathology, any determination of the number of cumulative trauma periods and the identity of the liable carrier under section 5500.5(a) would rest on surmise rather than substantial evidence.

On return, we recommend that the WCJ develop the record on the issues identified above. This may include: (1) supplemental reports or deposition testimony from the AMEs regarding separate cumulative trauma periods and the section 5412 knowledge component; (2) evidence clarifying applicant's post-December 11, 2006 duties and their causal link to any disability; and (3) any other evidence the WCJ deems necessary. Upon the record's completion, the WCJ shall issue a new decision consistent with the authorities discussed herein.

With respect to applicant's claim for increased permanent disability pursuant to section 4658(d), we make no findings at this time. However, since we are returning the matter for further development of the record, if further evidence is needed to determine this issue, the parties will now have the opportunity to submit it.

Accordingly, we rescind the F&A and return the matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the February 14, 2022 Findings and Award is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA
OCTOBER 5, 2026

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

RALPH LAKES
BOXER & GERSON, LLP
STATE COMPENSATION INSURANCE FUND
CIPOLLA & CALABA, ALC
THOMAS KINSEY, LLP
SANTANA & HART
FLOYD SKEREN MANUKIAN LANGEVIN, LLP
LIBERTY MUTUAL

DLP/md

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