**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**RANDY READY, SR., *Applicant***

**vs.**

**ANGELS BASEBALL LP; ACE AMERICAN INSURANCE, administered by GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ13858864**
**Santa Ana District Office**

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

Applicant seeks reconsideration of the December 15, 2025 Findings and Order (F&O) wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a professional athlete from January 1, 1996 to September 30, 1997, sustained industrial injury to his cervical spine, left knee, right thumb, right large toe, and internal system. The WCJ found that applicant's date of injury occurred in 2004, and that compensation is barred under Labor Code[1] section 5405. The WCJ further determined that applicant's claim is barred under the equitable doctrine of laches, and that the defendant is not estopped to assert the affirmative defense of the statute of limitations.

Applicant contends that the applicant's claim is not barred by the statute of limitations because the claim was not filed more than one year after the date of injury. Applicant also contends that defendant did not meet its burden of proof necessary to the defense of laches.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

[1] All further references are to the Labor Code unless otherwise noted.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration and affirm the F&O, except that we will amend it to find that the section 5412 date of injury was May 4, 2021 (Finding of Fact No. 2); that compensation is not barred by section 5405 (Finding of Fact No. 3); and that applicant is not estopped from claiming injury under the equitable doctrine of laches (Finding of Fact No. 5).

**FACTS**

Applicant claimed injury to his neuro[logical system], neuro/psych[iatric system], stress, hips, digestive system, excretory system, arms, legs, knees, ankles, feet, toes, circulatory system, hips, elbows, wrists, hands, fingers, internal [system], and in the form of chronic pain, ENT/TMJ, hearing loss, vision loss, sleep disturbance, and reproductive system, while employed as a professional athlete by defendant Angels Baseball LP from January 1, 1996 to September 30, 1997. Defendant denies injury arising out of and in the course of employment (AOE/COE).

The parties have selected Domenick Sisto, M.D., as the Qualified Medical Evaluator (QME) in orthopedic medicine, Stanley Majcher, M.D., as the QME in internal medicine, and Cheri Lewis as the QME in dentistry. Applicant has also obtained medical reporting from Michael Einbund, M.D., in orthopedic medicine, Marvin Pietruszka, M.D., in internal medicine, Rosabel Young, M.D., in neurology, and Michael Wells, D.D.S., in dentistry.

On January 29, 2025, the parties proceeded to trial and framed the issues including injury AOE/COE, permanent disability, and need for further medical treatment. Defendant challenged the substantiality of the reporting of Drs. Einbund, Young, Wells, and Pietruszka, and further raised the affirmative defense of the statute of limitations. Defendant also sought equitable relief under the doctrine of laches. Applicant alleged, in relevant part, that defendant was estopped from asserting the statute of limitations. The WCJ continued the matter to hear testimony.

On May 7, 2025, the WCJ heard testimony from applicant and ordered the matter continued for additional testimony.

On September 17, 2025, the WCJ heard additional testimony from applicant and ordered the matter submitted for decision.

On December 15, 2025, the WCJ issued the F&O, determining in relevant part that applicant met his burden of establishing injury to the cervical spine, left knee, right thumb, right

large toe, and internal system. The WCJ found that applicant's date of injury under section 5412 was "in 2004," that defendant was not estopped from asserting the running of the statute of limitations, and that compensation for applicant's claim was barred under section 5405. (Findings of Fact, Nos. 2-4.) The WCJ also determined that applicant's claim was barred by laches. (Finding of Fact No. 5.)

Applicant's Petition contends that he had neither compensable disability nor knowledge of its industrial etiology until after the filing of the commencement of proceedings for the collection of benefits. (Petition, at p. 12:21.) Applicant also contends that defendant is estopped from asserting the statute of limitations for failure to provide a timely claim form. (*Id.* at p. 17:26.) Applicant also asserts that the defense of laches fails for want of evidence establishing prejudice. (*Id.* at p. 20:21.)

Defendant's Answer responds that applicant filed a claim in 2004 sufficient to establish the necessary convergence of knowledge and disability sufficient to fix a date of injury under section 5412 more than one year prior to the commencement of proceedings for the collection of benefits. (Answer, at p. 3:1.)

The WCJ's Report observes that applicant testified to being unable to work following his retirement from professional baseball, and that this testimony supports applicant's knowledge of the industrial nature of his disability. (Report, at p. 3.) In addition, the WCJ notes that applicant's prior filing of a claim obviates the claim that applicant was unaware of his rights to bring a California claim. Finally, with respect to laches, the Report states that applicant's delay in prosecuting his claim resulted in actual prejudice to defendant. (*Id.* at p. 7.)

## DISCUSSION

### I.

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 in Events 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 January 22, 2026, and 60 days from the date of transmission is March 23, 2026. This decision is issued by or on March 23, 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 be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on January 22, 2026, and the case was transmitted to the Appeals Board on January 22, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on January 22, 2026.

**II.**

The WCJ found that compensation for applicant's claim of cumulative injury is barred by section 5405, which limits the time in which an employee may commence proceedings for the

collection of California workers' compensation benefits. (Finding of Fact No. 3.) Section 5405 provides:

> 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.

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, Inc. v. Workers' Comp. Appeals Bd.* (*Butler*) (1984) 153 Cal.App.3d 327 [49 Cal.Comp.Cases 224].)

In cases involving an alleged cumulative injury, the date of injury is governed by section 5412, which states:

> 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.

The court of appeal has defined "disability" per section 5412 as "either compensable temporary disability or permanent disability," noting that "medical treatment alone is not disability, but it may be evidence of compensable permanent disability, as may a need for splints and modified work. These are questions for the trier of fact to determine and may require expert medical opinion." (*State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (2004) 119 Cal.App.4th 998, 1005 [59 Cal.Comp.Cases 579].)

With respect to the "knowledge" component of section 5412, whether an employee knew or should have known his disability was industrially caused 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].) The burden of proving that the employee knew or should have known rests with the employer. This burden is not sustained merely by a showing that the employee knew he had some symptoms.

(*Id.* at p. 471.) This is because "the medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters." (*Peter Kiewit Sons v. Industrial Acci. Com.* (*McLaughlin*) (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188].)

The WCJ's analysis of section 5412 places the date of injury at an unspecified date in 2004. (Finding of Fact No. 2.) The WCJ opines:

> Based on the record the Court finds that Applicant's claim is barred by the Statue of Limitations contained Labor Code section 5405. Applicant's date of injury for purposes of Labor Code section 5412 is found to be in 2004 when Applicant's initial claim was filed by his agent this point it time a nexus of disability and knowledge of the industrial injury coincided. Applicant's own testimony was that he was unable to work for several months after ceasing to play professional baseball due to injuries from his activities involved in the sport and that in 2004, he was aware he could pursue a claim but chose not to at that time. (MOH/SOE dated May 7, 2025, page 5 line 3) Having dismissed the claim in 2005, Applicant's claim is barred by barred by Labor Code section 5405.

(Opinion on Decision, at p. 7.)

The WCJ identified the first date of compensable disability as the end of applicant's professional baseball career in 1997, and the date upon which applicant knew or through the exercise of reasonable diligence should have known that his disability was work-related in 2004 when a workers' compensation claim was filed on applicant's behalf. Based on the WCJ's analysis, the concurrence of these two dates places the section 5412 date at some point in 2004, which was more than one year from the filing of the instant application for adjudication on November 13, 2020. (Application for Adjudication of Claim, dated November 13, 2020.)

Generally, knowledge of the existence of a disability and its industrial etiology is established through medical advice. In *Pacific Indem. Co. v. Industrial Acc. Com.* (*Rotondo*) (1950) 34 Cal.2d 726, applicant flight instructor felt his symptoms of tuberculosis were industrial as early as 1942 but received no medical advice of an industrial relationship. The applicant further inquired of his employer whether his symptoms might be industrial, but the employer advised the symptoms were not. Applicant obtained medical treatment and took several months off work. Following his return to work, applicant later began to experience the recurrence of symptoms. In 1944, applicant was advised by a physician that his tubercular condition had been reactivated by his work activities. (*Id.* at p. 727.) Applicant filed a claim for benefits in 1945 and was awarded benefits. Defendant appealed the award, averring applicant's date of injury was as early as 1942,

and that compensation was barred by section 5405. The California Supreme Court observed, however, that applicant's undisputed testimony established he was unaware that he had a compensable condition until receiving explicit medical advice in 1944. With respect to the question of whether applicant should have known prior to that date, the court observed that no physician had advised applicant against flying prior to 1944, and that the Industrial Accident Commission[2] (IAC) was therefore justified in finding that defendant had not sustained the burden of proving applicant's claim was barred by the statute of limitation. (*Id.* at p. 730.)

Similarly, in *Price v. Workers' Comp. Appeals Bd.* (2007) 72 Cal.Comp.Cases 1687 [2007 Cal. Wrk. Comp. LEXIS 388] (writ den.),[3] the Appeals Board held that the applicant's receipt of reporting from the Agreed Medical Evaluator (AME) describing her injury and its industrial relationship was sufficient to constitute knowledge and to trigger the running of the statute of limitations of section 5405. (cf. *Hughes Aircraft Company v. Workers' Comp. Appeals Bd.* (*Zimmerman*) (1993) 58 Cal.Comp.Cases 220 [1993 Cal. Wrk. Comp. LEXIS 2853] (writ den.) [general medical advice that work stress was depleting applicant's immune system insufficient to confer knowledge for purposes of section 5412].)

The court further articulated the requirements of knowledge under section 5412 in *Johnson*, *supra*, 163 Cal.App.3d at p. 471. Therein, applicant, a long-term employee of the City of Fresno, experienced chest pain on December 21, 1980, and was subsequently hospitalized with a myocardial infarction. (*Johnson, supra*, at p. 469.) Applicant entertained the belief that his condition was work-related in early 1981, but a medical examination conducted in June, 1981 concluded that applicant's heart problems were nonindustrial. In July, 1981, the City provided applicant with the requisite notices regarding his workers' compensation rights. However, applicant did not file his claim for workers' compensation benefits until July 9, 1982. The WCJ found applicant's claim was not barred by the statute of limitations, and the WCAB affirmed. Following defendant's Petition for Writ of Review, the Fifth District Court of Appeal began its analysis by observing that, "[w]hether an employee knew or should have known his disability was

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[2] The Industrial Accident Commission was the predecessor to the Workers' Compensation Appeals Board (WCAB).

[3] Panel decisions are not binding precedent (as are en banc decisions) on all Appeals Board panels and workers' compensation judges. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) A California Compensation Cases digest of a "writ denied" case is also not binding precedent. (*MacDonald v. Western Asbestos Co.* (1982) 47 Cal.Comp.Cases 365, 366 [Appeals Bd. en banc].) While not binding, the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Bd. en banc).)

industrially caused is a question of fact." (*Id.* at p. 471.) The court pointed out that "[a]n employee clearly may be held to be aware that his or her disability was caused by the employment when so advised by a physician," but that "in some cumulative injury cases a medical opinion that the applicant's disability is work related is not necessary to support a finding that an applicant, in the exercise of reasonable diligence, should have known of that relationship." (*Id.* at pp. 472-473.) Synthesizing these principles, the *Johnson* court concluded that, "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 and applicant's training, intelligence and qualifications are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability." (*Id.* at p. 473.) Accordingly, and notwithstanding his suspicions of work-relatedness, the applicant was not charged with knowledge that his condition was work related until he received medical advice. (*Ibid.*)

Shortly thereafter, the Fourth District Court of Appeal articulated a more restrictive analysis in *Nielsen v. Workers' Comp. Appeals Bd.* (1985) 164 Cal.App.3d 918 [50 Cal.Comp.Cases 104]. Therein, applicant was employed as a welder and regularly performed heavy lifting as part of his job duties, which caused neither pain nor discomfort. At trial, "[a]pplicant testified emphatically he thought from the very first day he was off work that his condition was caused by the work assembling and disassembling the bottle racks …." (*Id.* at p. 927.) *Nielsen* also addressed applicant's contention that medical advice was necessary to support "legal knowledge" for purposes of §5412, as was the holding in *Johnson, supra*. The *Nielsen* court reviewed the holding in *Johnson* and concluded that "the absence of a medical opinion confirming industrial causation is but one important circumstance which is to be considered together with the other circumstances in determining in a particular case whether the applicant should reasonably have known his or her injury was industrially caused." (*Id.* at p. 930).

Both *Johnson* and *Nielsen* are of an accord, however, with respect to the primacy of medical advice confirming industrial causation of a claimed disability. "There is no real disagreement that medical advice to an applicant for workers' compensation benefits that his disability was caused by his employment is sufficient to trigger the statute of limitations." (*Johnson, supra,* 163 Cal.App.3d at p. 473.)

Here, the first medical advice as to the existence of an industrial cumulative injury is the May 4, 2021 report of Michael Einbund, M.D. Therein, the physician reviews applicant's

professional sports career and the available medical record and lists his findings on clinical examination. The report reflects twelve different diagnostic impressions, including cervical spine strain, impingement syndrome to the bilateral shoulders, and a chronic sprain to the right elbow and fingers of both hands. (Ex. 1, Report of Michael Einbund, M.D., dated May 4, 2021, at p. 21.) The report discusses causation as follows:

> Professional baseball is an extremely strenuous occupation. In addition to the specific right thumb injury noted above, Mr. Ready also sustained numerous other injuries throughout his career as he played in games, practiced and worked out. He would receive treatment from the team trainers and he would occasionally miss some playing time; however, he was always able to return to playing without any limitations … It is noted that Mr. Ready did pass his preseason physical examinations prior to participating each season. It should also be noted that Mr. Ready did participate in numerous games and practices in the state of California during his professional baseball career and it is my medical opinion that the time he spent playing professional baseball in California was a contributing factor to his cumulative trauma injuries.

(*Id.* at p. 27.)

Orthopedic QME Dr. Sisto also evaluated applicant and undertook a comprehensive evaluation including a medical history and clinical examination. Dr. Sisto similarly identified 12 orthopedic diagnoses, including strains to the cervical spine, bilateral shoulders, right elbow, left hand and right thumb, bilateral hips and knees. (Ex. C, Report of Domenick Sisto, M.D., dated November 1, 2021, at p. 13.) The QME also endorsed the existence of a cumulative injury with corresponding permanent disability. (*Id.* at pp. 15-16.)

Thus, the first evidence in the records of medical advice to the applicant of the existence of a cumulative injury is the reporting of Dr. Einbund and QME Dr. Sisto, both in 2021.

The WCJ's finding of a section 5412 date of injury in 2004 arises out of the filing of a cumulative injury claim. On or about April 15, 2004, a DWC-1 claim form was filed by attorney Ron Mix, asserting a cumulative injury on applicant's behalf from 1980 to 1996. (Ex. G, Record of WCAB Sana Ana Claims File (ADJ864045), various dates, p. 34.) The claim form is not signed by applicant, but by "Ron Mix, Applicant's Attorney." An Application for Adjudication of Claim was filed simultaneously, averring a similar cumulative injury through 1996, again signed by "Ron Mix, Applicant's Counsel." (*Id.* at p. 38.) The accompanying proof of service does not reflect service on applicant. (*Id.* at p. 37.)

Approximately six weeks later, Mr. Mix filed a Request for Dismissal of claim, averring that "applicant has decided that he does not wish to proceed with his claim for [workers'] compensation benefits because of reasons that are personal to him." (Ex. G, Record of WCAB Sana Ana Claims File (ADJ864045), various dates, p. 15.) In support of the petition, Mr. Mix offered the following declaration:

> On or about April 15, 2004, I filed an Application For Adjudication of Claim on behalf of Applicant. I was later advised by James J. Cunningham, [a] person I know to be the personal attorney of Applicant that Applicant did not wish to continue to pursue a claim for workers compensation benefits. Therefore, it is respectfully requested that the Application of Applicant be dismissed without prejudice.

(*Id.* at p. 16.)

On July 6, 2005, a Presiding WCJ ordered the case dismissed without prejudice. (Ex. G, Record of WCAB Sana Ana Claims File (ADJ864045), various dates, p. 15.)

In trial testimony, applicant testified that he found out a claim had been filed on his behalf by Mr. Mix through applicant's agent Mr. Attanasio. (Transcript of Proceedings, dated September 17, 2025, at p. 19:3.) Applicant testified the claim was filed without his consent. (*Id.* at p. 19:22.) When asked if applicant knew he could have filed a claim if he wanted to, applicant testified, "possibly, yes." (*Id.* at p. 20:23.) Applicant denied ever having spoken to anyone from Mr. Mix's office regarding the case. (*Id.* at p. 21:2.)

The WCJ found applicant's testimony in this regard unpersuasive. The WCJ's Report notes that specific body parts were pleaded in the 2004 application, including "applicant's hips and other body parts that were again claimed in the current case." (Report, at p. 3.) The WCJ reasons, "[n]o explanation was provided as to how prior counsel would know what body parts that Applicant claimed were injured, and leads the undersigned to believe at least some discussion[s] were had with applicant." (*Ibid*.) The WCJ also observes that applicant's assertion that he did not authorize the filing of the claim "conflicts with Applicant's statements that he possibly knew of his rights to file at that time but chose not to proceed … and that he first learned of his right to file for workers compensation benefits in 2021." (*Id.* at pp. 3-4.)

When a petition for reconsideration is filed, the Appeals Board must accord great weight to the WCJ's findings regarding credibility, so long as they are supported by "ample, credible evidence" or "substantial evidence." (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500].) However, the Appeals Board has the power to reweigh the

evidence, make an independent examination of the record, and reach a different conclusion than was reached by the WCJ. (Lab. Code, §§ 5907, 5315; *Buescher v. Workers' Comp. Appeals Bd.* (1968) 265 Cal.App.2d 520, 529 [33 Cal.Comp.Cases 537]; *Allied Comp. Ins. v. Ind. Acc. Comm.* (*Lintz*) (1961) 57 Cal.2d 115 [26 Cal.Comp.Cases 241, 243]; *Garza*, *supra*, 3 Cal.3d at 317; *Mendoza v. Workers' Comp. Appeals Bd.* (1976) 54 Cal.App.3d 820 [41 Cal.Comp.Cases 71]; *Minnie West v. Ind. Acc. Comm.* (1947) 79 Cal.App.2d 711, 719 [12 Cal.Comp.Cases 86].) The Appeals Board can annul the findings of the trial-level WCJ and substitute its own findings and decision in light of all the evidence in the record. (*Buescher*, *supra*, 33 Cal.Comp.Cases at p. 543; Lab. Code, § 5907.) It is also well-established that the Appeals Board has the power to resolve conflicts in the record, to make its own determinations of credibility, and to reject the findings of the WCJ. (*Rubalcava v. Workers' Comp. Appeals Bd.* (1990) 220 Cal.App.3d 901, 908 [55 Cal.Comp.Cases 196].)

"Nevertheless, any award, order or decision of the board must be supported by substantial evidence in the light of the entire record…" (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310].)

Here, we acknowledge the WCJ's careful review of the evidence and his assessment that applicant's statements regarding his involvement with the 2004 claim filing were not credible. (Report, at p. 3.)

However, our independent review of the record reveals no persuasive evidence of applicant's involvement with the 2004 claim filing sufficient to impute knowledge of an industrial nexus to his disability. (*Lamb*, *supra*, 11.Cal.3d 274.) Applicant testified that the 2004 claim was filed "without his permission and consent," and that he "had never met Mr. Mix or had a conversation with him." (Minutes of Hearing and Summary of Evidence, dated May 7, 2025, at p. 7:13.) We observe that neither the DWC-1 claim form nor the Application for Adjudication of Claim filed in April, 2004 were signed by applicant. Rather, they were signed by Mr. Mix, holding himself out as "applicant's counsel." (Ex. G, Record of WCAB Sana Ana Claims File (ADJ864045), various dates, p. 34.) While there appear to be proofs of service for both the claim form and the Application for Adjudication, neither document establishes service on applicant. (*Id.* at p. 37.) Just six weeks after filing the application and claim form, Mr. Mix petitioned the WCAB to dismiss applicant's claim, stating "applicant has decided that he does not wish to proceed with his claim for [workers'] compensation benefits because of reasons that are personal to him." (*Id.*

at p. 15.) The document does not establish that Mr. Mix spoke with applicant. In addition, Mr. Mix's declaration indicates that he was "advised by James J. Cunningham, [a] person I know to be the personal attorney of Applicant that Applicant did not wish to continue to pursue a claim for [workers'] compensation benefits." (*Id.* at p. 16.) The record contains no contemporaneous medical evaluations or reports. The evidence thus aligns with applicant's trial testimony that he was unaware of the initial filing, but upon learning of the pending case, sought to have the matter dismissed. (Transcript of Proceedings, dated September 17, 2025, at p. 19:22.) We further observe that defendant has interposed no witnesses that would rebut applicant's testimony in this respect.

Based on our independent review of the entire record before us, and having considered applicant's trial testimony and the WCJ's Report, we are not persuaded that the record establishes that applicant met with an attorney or personally caused a cumulative injury claim to be filed in 2004. Accordingly, we cannot conclude that applicant had the requisite knowledge that he had sustained an industrial cumulative injury in 2004 necessary to a finding of a section 5412 date of injury.

We further acknowledge the WCJ's discussion of *Nielsen*, *supra*, 164 Cal.App.3d 918, as relevant to applicant's awareness of a potential link between his industrial exposures and his residual permanent disability. (See Report, at p. 6, "applicant should have been reasonably aware of the industrial nature of his injury.") In *Nielsen*, however, applicant "testified emphatically he thought from the very first day he was off work that his condition was caused by the work …." (*Id.* at p. 926.) Here, applicant testified that "[p]rior to the filing of his claim, Applicant had no idea what a cumulative trauma claim was … [h]e did not know if any of his current problems were due to a cumulative trauma." (Minutes of Hearing and Summary of Evidence, dated May 7, 2025, at p. 2:11.) We also observe that pursuant to *Johnson*, *supra*, 163 Cal.App.3d at p. 473, "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 and applicant's training, intelligence and qualifications are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability." And in this respect, we note that applicant, a professional athlete during the entire claimed cumulative injury, and a baseball coach thereafter, does not appear to have any specialized training or background necessary to identify cumulative injury or its relationship to his industrial exposures. Indeed, QME Dr. Sisto opined to the difficulties inherent in separating "the baseball injuries from the effects of the natural aging

process." (Ex. C, Report of Domenick Sisto, M.D., dated November 1, 2021, at p. 14.) As such, applicant's suspicions that his various ailments might be related to his industrial exposure years prior do not rise to the level of the affirmative knowledge necessary to fix a date of injury. As the court has observed, "[i]n a field which forces the experts into hypothesis, unaided lay judgment amounts to nothing more than speculation." (*McLaughlin, supra,* 234 Cal.App.2d at p. 839.)

Thus, and following our review of the entire record occasioned by applicant's petition, we are not persuaded that the 2004 claim filing was sufficient to impute to applicant the knowledge required to fix a date of injury under section 5412. Nor are we persuaded that applicant had the necessary background or training to recognize the relationship between his disability and prior employment. The first indication of the existence of a cumulative injury with a relationship to applicant's professional baseball activities was the orthopedic reporting of Dr. Einbund on May 4, 2021. We therefore conclude that applicant's date of injury pursuant to section 5412 was May 4, 2021 and will amend Finding of Fact No. 2 accordingly.

Turning to the issue of the statute of limitations, we observe that applicant filed the Application for Adjudication on November 13, 2020. Because applicant did not commence proceedings for the collection of benefits more than one year after the date of injury, the expiration of the period covered by the employer's last payment of disability indemnity or the date of the last furnishing by the employer of medical, surgical or hospital treatment, compensation is not barred by section 5405. (*Butler*, *supra*, 153 Cal.App.3d 327.) We will amend Finding of Fact No. 3, accordingly.

In addition, the F&O finds applicant's delay in bringing the claim was sufficiently prejudicial to warrant a complete bar to compensation under a theory of laches. (Finding of Fact No. 5; Report, at p. 7.) The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay. (*Conti v. Board of Civil Service Commissioners* (1969) 1 Cal.3d 351, 359.) "If because of his delay in seeking his remedy, without offering a satisfactory explanation for the delay, a prejudice results to his adversary, he will be precluded from enforcing his demand. It is not so much a question of the lapse of time as it is to determine whether prejudice has resulted. If the delay has caused no material change in status quo, ante, i.e., no detriment suffered by the party pleading the laches, his plea is in vain." (*Brown v. State Personnel Board* (1941) 43 Cal.App.2d 70, 79.)

Here the WCJ's Report observes, "[a]pplicant's delay in prosecuting his claim caused actual prejudice to defendant by not proceeding when the claim was originally filed." (Report, at p. 7.) However, "prejudice is never presumed; it must be *affirmatively demonstrated* by the defendant in order to sustain its burdens of proof and the production of evidence on the issue. (*Piscioneri v. City of Ontario* (2002) 95 Cal.App.4th 1037, 1050 (italics added).) Thus, the lapse of time, standing alone, is insufficient to affirmatively establish the prejudice necessary to a laches defense. Moreover, pursuant to our determination, infra, that applicant was not contemporaneously aware of the filing of the 2004 claim, applicant is not responsible for the alleged delay in prosecuting a claim he did not cause to be filed and in fact sought to have dismissed.

The WCJ notes that orthopedic QME Dr. Sisto opined that it was difficult to differentiate applicant's industrial injuries from the normal aging process, especially when applicant could have been evaluated at an earlier date. (*Ibid*.) However, Dr. Sisto's opinion does not indicate that a lapse in time precluded his assessment of industrial injury, but rather in differentiating that injury from the effects of the natural aging process. In addition, this statement is so broad that it would find some level of application in almost any workers' compensation claim where the medical evaluation does not immediately follow the industrial injury. We agree with applicant's assertion that "[t]here is no evidence Defense tried to locate any witnesses who were otherwise unavailable" and that defendant "was able to subpoena records dating back twenty to thirty years [including] the Santa Ana WCAB records for the prior case ADJ864045, records from the Angels dating back to 1997, records from Green Hospital in the late 1990's etc." (Petition, at p. 21:10.) Nor does the record otherwise indicate that necessary witnesses or documents were unavailable to the parties.

"Generally speaking, the existence of laches is a question of fact to be determined by the trial court in light of all of the applicable circumstances...." (*Miller v. Eisenhower Medical Center* (1980) 27 Cal.3d 614, 624.) Here, following our review of the entire record and in light of all applicable circumstances, we conclude that defendant has not met its burden of identifying specific evidence of prejudice arising out of a lapse in time sufficient to support a complete bar to applicant's claim under a theory of laches. We will amend Finding of Fact No. 5 to reflect that the claim is not barred by laches, accordingly.

In summary, we concur with the WCJ's reasoning regarding injury AOE/COE and the substantiality of the medical reporting but find that the section 5412 date of injury occurred in 2021 and that as a result applicant's claim is not barred by the section 5405 statute of limitations. We also conclude that based on a review of the entire record that defendant has not met its affirmative burden of establishing prejudice necessary to a defense of laches.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the decision of December 15, 2025 issued by the WCJ is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 15, 2025 Findings and Order is **AFFIRMED**, except that it is **AMENDED** as follows:

**FINDINGS OF FACT**

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2. Pursuant to Labor Code section 5412, the date of injury is May 4, 2021.

3. Compensation is not barred by Labor Code section 5405.

***

5. Applicant's claim is not barred under the equitable doctrine of laches.

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**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ PAUL F. KELLY, COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**March 23, 2026**

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

**RANDY READY, SR.**
**GLENN STUCKEY & PARTNERS**
**BOBER PETERSON & KOBY**

**SAR/abs**

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