

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SHANE STREET, *Applicant*

vs.

**JD2 INCORPORATED;
FEDERAL INSURANCE COMPANY C/O GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ16197947 (IWADR00959)
Sacramento District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration of this case on January 7, 2025 in order to further study the issues raised in this matter.

Defendant JD2 Incorporated, insured by Federal Insurance Company c/o Gallagher Bassett (defendant), petitioned for reconsideration of the Findings and Award (F&A), issued and served by the workers' compensation arbitrator (WCA) on September 24, 2024. In that decision, the WCA found that applicant, while employed as an ironworker from June [16]¹, 2020 to June 16, 2021, sustained industrial injury to his cervical spine, thoracic spine, lumbar spine, bilateral shoulders, elbow and wrists, with the issue of injury to his respiratory system deferred. The WCA further found applicant's knowledge and first date of disability of his cumulative trauma pursuant to Labor Code² section 5412 was June 17, 2021. Finally, the WCA found and awarded applicant temporary total disability (TTD) for the period June 17, 2021 through June 15, 2023, at a rate to be adjusted by the parties.

Petitioner contends that the WCA erred in her determination of the date of injury per section 5412 and that the evidence supports a finding that the date of injury should be July 23, 2012 to July 23, 2013.³ Petitioner further contends the submitted medical reporting is not substantial

¹ Findings of Fact number 1 in the F&A finds the period of injurious exposure to be June 6, 2020 to June 16, 2021, but this appears to be a typographical error based upon the F&A, Opinion and Report.

² All further references are to the Labor Code unless otherwise noted.

³ Section 5412 states: "The date of injury in cases of occupational diseases or cumulative injuries is the *date* upon which the employee first suffered disability therefrom and either know, or in the exercise of reasonable diligence

evidence and does not support a finding of injury arising out of and in the course of employment (AOE/COE). Petitioner also argues that the WCA's deferral of the respiratory claim of applicant is prejudicial to defendant, as applicant has had sufficient time to develop his claim for his respiratory and lung issues, but failed to do so.

Previously, we had sent this matter back to the WCA as stated in our Opinion and Order Granting Reconsideration and Decision after Reconsideration (Opinion) dated August 12, 2024, in which we returned the case back to the WCA for further proceedings. We noted at that time the existing record was lacking proper stipulations, issues, as well as correct identification of the exhibits offered and admitted at trial. However, instead of holding further proceedings with the parties in order to identify the stipulations, issues, and identify and rule on admissibility of the parties' exhibits, the case was resubmitted for decision by the arbitrator after receipt by the WCA of written legal responses to the points raised in our Opinion and Order without creating a record. Thereafter, the WCJ issued the F&A of September 24, 2024, for which defendant now seeks reconsideration.

On January 7, 2025, we granted defendant's Petition for Reconsideration and issued an Order to set this matter for a Status Conference before a workers' compensation administrative law judge (WCJ) at the Appeals Board.

After the issuance of the January 7, 2025 Opinion, the parties attended said Status Conference. Thereafter, stipulations, issues, and exhibits relevant to determination of the disputed issues in this case were identified and agreed upon by the parties with the assistance of the Appeals Board WCJ. Further, the parties requested the Appeals Board return this matter to the WCA for further proceedings and a hearing in accordance with the agreed upon stipulations, issues and proposed documentation.

should have known, that such disability was caused by his present or prior employment.” (Cal. Lab. Code § 5412, *Italics added.*) Thus, the date of injury per section 5412 is as to a specific day and is distinguishable from the period of industrial exposure, or the period of liability per section 5500.5.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the September 24, 2024 Findings and Award issued by the WCA is **RESCINDED** and that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCA as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 26, 2026

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

**SHANE STREET
EASON & TAMBORNINI
WAI, CONNOR & HAMIDZADEH
WOOLVERTON, WOOLVERSON & WOLSEY
MELISSA C. BROWN, ARBITRATOR (IWADR)**

LAS/bp

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