WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

TY WILSON ROBINSON, *Applicant*

vs.

CITY OF STOCKTON, permissibly self-insured;
administered by ATHENS ADMINISTRATORS CONCORD, *Defendant*

Adjudication Number: ADJ17872414
Oakland District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact (Findings) of July 27, 2026, wherein the workers' compensation judge (WCJ) found in relevant part that the Petition for Increased Benefits pursuant to Labor Code[1] section 132a was not filed within the deadline of one year of the date of termination and the claim is barred. Applicant contends that the section 132a petition should have been found timely under the equitable tolling doctrine and that the WCJ failed to address equitable tolling in the Opinion on Decision.

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.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based on our review of the record, and for the reasons discussed below, we will deny applicant's Petition for Reconsideration.

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

I.

Petitions for reconsideration filed on or after July 14, 2026, are subject to section 5909, which states 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 September 10. 2026, and 60 days from the date of transmission is November 9, 2026. This decision is issued by or on November 9, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on September 10. 2026, and the case was transmitted to the Appeals Board on September 10. 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 September 10. 2026.

II.

The WCJ provided the following discussion in the Report:

> The applicant filed an Application for Adjudication on June 21, 2023, claiming a CT January 2022 to August 11, 2022 injury for stress and injury to the psyche. The claim was denied by defendants.
>
> With respect to the underlying Worker's Compensation case, that matter was heard at trial and a Findings in Award was issued on November 18, 2025. Among other issues, it was determined that there was industrial injury AOE/COE to her psyche.
>
> The applicant thereafter filed a Petition for increased benefits under Labor Code § 132a on February 23, 2026. In the 132a Petition, the basis for such Petition was essentially the same issues alleged, addressed and decided upon in the previous trial with respect to injury AOE/COE.
>
> Regarding the 132a Petition filed on February 23, 2026, this issue was set for trial on May 28, 2026, concerning the threshold issue of statute of limitations of the Petition for increased benefits under Labor Code § 132a. Additional issues were raised by the applicant including, WCAB jurisdiction, equitable tolling, delayed discovery, and continuing violation of previous court orders or court requests were listed as issues as well.
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> The matter proceeded to trial on May 28, 2026 and no witnesses were presented and the matter was submitted on the record. A Findings of Fact and Opinion on Decision was issued and the Applicant filed Petition for Reconsideration and Defendant filed an answer thereto.

III
DISCUSSION

Decisions by the Appeals Board must be supported by substantial evidence. (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].)

Regarding the statute of limitations for filing a 132a Petition, the controlling Labor Code section states the following:

> A petition for penalties for discrimination under LC 132a "may not be commenced more than one year from the date of the discriminatory act or the date of termination of the employee" (LC 132a(4)). The petition must

be filed within one year of either the date of the last discriminatory act or the date of termination.

(Lab. Code § 132a (4).)

In this case, the 132a Petition was filed over 3 and ½ years from the date the applicant was terminated from her job on August 11, 2022. It is clear from the above Labor Code section that a Petition under 132A must be filed within one year of the date of the discriminatory act or the date of termination of the employee and therefore, the applicant needed to file it within one year of August 11, 2022, the date she was terminated from her employment.

Based on the facts of this case, "the date of the discriminatory act or the date of termination of the employee" is clear is this case, namely August 11, 2022, and, therefore, the filing was correctly deemed untimely and barred by the statute of limitations per Labor Code section 132[a].

While the applicant raises collateral estoppel as an issue, this concept is not relevant nor applicable to the statute of limitations issue with respect to filing a 132a Petition. In this case, the trial and resulting decision issued in her underlying cumulative trauma case through August 11, 2022, did not alter the requirement to file a timely 132a Petition, as mandated by the above referenced section. Thus, the one year statute of limitations is not altered or extended to a later date, simply because the applicant has moved forward with the underlying case, or even if she has filed or is exercising her right to pursue an appeal of the underlying case or another cause of action.

With respect to the issues raised by the applicant of delayed discovery and continuing violation of previous court orders or court requests, these issues do not impact nor alter the requirement of Labor Code section 132a, that the Petition is to be filed within one year from the date of the discriminatory act or the date of termination of the employee. Again, those issues were at play and addressed in the underlying case and do not alter, impact nor extend the statute of limitations in this matter.

Based on the foregoing, the Petition for 132a benefits was untimely, defendants have shown the Petition was not filed within one year of the termination as required by Labor Code section 132a and therefore the Petition is barred by the statue on limitations and the court has no jurisdiction over that claim.

III.

Applicant claims that her section 132a petition should not be barred by the statute of limitations as the deadline should be tolled under the doctrine of equitable tolling. Section 132a provides that

> Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim for compensation with his or her employer or an application for adjudication, or because the employee has received a rating, award, or settlement, is guilty of a misdemeanor and the employee's compensation shall be increased by one–half, but in no event more than ten thousand dollars ($10,000), together with costs and expenses not in excess of two hundred fifty dollars ($250). Any such employee shall also be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.

(Lab. Code, § 132a(1).)

Section 132a further provides that

> Proceedings for increased compensation as provided in paragraph (1), or for reinstatement and reimbursement for lost wages and work benefits, are to be instituted by filing an appropriate petition with the appeals board, but these proceedings may not be commenced more than one year from the discriminatory act or date of termination of the employee. The appeals board is vested with full power, authority, and jurisdiction to try and determine finally all matters specified in this section subject only to judicial review, except that the appeals board shall have no jurisdiction to try and determine a misdemeanor charge.

(Lab. Code, § 132a.)

"Application of the doctrine of equitable tolling requires timely notice, and lack of prejudice, to the defendant, and reasonable and good faith conduct on the part of the plaintiff." (*Addison v. State* (1978) 21 Cal.3d 313, 319; see also *Brome v. Dept. of the California Highway Patrol* (2020) 44 Cal.App.5th 786, 795[85 Cal.Comp.Cases 103].)

> Broadly speaking, the doctrine applies "'[w]hen an injured person has several legal remedies and, reasonably and in good faith, pursues one.'" (*Elkins v. Derby* [(1974)] 12 Cal.3d [410,] 414 [39 Cal.Comp.Cases 624], quoting *Myers v. County of Orange* (1970) 6 Cal.App.3d 626, 634 [86 Cal.Rptr. 198].) Thus, it may apply where one action stands to lessen the harm that is the subject of a potential second action; where administrative remedies must be exhausted before a second action can proceed; or where a first action, embarked upon in good faith, is found to be defective for some reason. (See *Collier v. City of Pasadena* (1983) 142 Cal.App.3d 917, 923 [191 Cal. Rptr. 681].)

(*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 100; see also *Brome v. Dept. of the California Highway Patrol* (2020) 44 Cal.App.5th 786, 794-795 [85 Cal.Comp.Cases 103].)

Equitable tolling is not available to applicant for the filing of her section 132a petition. Applicant was not reasonably pursuing one of several legal options; applicant has only pursued

her workers' compensation claim in the workers' compensation system. There are no other administrative remedies that must be exhausted. A petition pursuant to section 132a is heard in the same forum and is supplemental to the workers' compensation case itself. (*City of Moorpark v. Superior Court of Ventura County* (1998) 63 Cal.Comp.Cases 944, 953 ["But, even assuming an employee's rights under section 132a are 'right[s] incidental' to 'the recovery of compensation,' Labor Code section 5300[] merely establishes the Workers' Compensation Appeals Board as the exclusive forum for pursuing a section 132a claim…"].)

The case of *Brome*, *supra*, 44 Cal.App.5th 786, illustrates when equitable tolling is available to workers. In *Brome*, other officers subjected the injured worker, an openly gay police officer, to derogatory and homophobic comments and refused to provide him with backup assistance during enforcement stops in the field as well as other unfavorable behavior. (*Id*. at pp. 791-792.) He subsequently went on medical leave, filed a workers' compensation claim based on work-related stress, was successful in his workers' compensation claim, and took industrial disability retirement, ending his employment with the police department in February 2016. (*Id*. at p. 792.) He then filed an administrative complaint with the Department of Fair Housing and Employment and a lawsuit pursuant to the California Fair Employment and Housing Act (FEHA) approximately seven months later, which was beyond the deadline for filing such a claim. (*Id*. at p, 793.) The Court of Appeal held that the filing of his workers' compensation claim equitably tolled the one-year deadline for filing his discrimination claim with the Department of Fair Employment and Housing. (*Id*. at p. 794.) The Court of Appeal found that the requirements of equitable tolling were met: the workers' compensation claim put the employer on notice of the potential discrimination claim; equitable tolling would not prejudice the employer; and the injured worker exhibited good faith and reasonable conduct. (*Id*. at pp. 795-798.)

The *Brome* case demonstrates how equitable tolling can be used when an injured worker has two separate cases in two distinct forums. In the instant case, applicant has a single workers' compensation case in a single forum, the workers' compensation system, and by way of her section 132a petition is seeking relief available in that system. Therefore, equitable tolling is not available to applicant, and her section 132a claim is barred by the statute of limitations.

Accordingly, we will deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 6, 2026

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

TY WILSON ROBINSON
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EMPLOYMENT DEVELOPMENT DEPARTMENT

JMR/*pm*

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