

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

ALVIN HILLIARD, *Applicant*

vs.

COUNTY OF LOS ANGELES, *Permissibly Self-Insured, Defendant*

**Adjudication Number: ADJ17708321
Van Nuys District Office**

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

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of March 21, 2024, wherein it was found that applicant's claim is not barred by the statute of limitations. In this matter, applicant claims that while employed on October 28, 2021 as a detention officer, he sustained industrial injury to the respiratory system and in the form of COVID-19.

Defendant contends that the WCJ erred in finding that the claim was not barred by the statute of limitations. We have received an answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

As explained below, we will grant reconsideration, rescind the WCJ's decision and return this matter to the trial level for further proceedings and decision in order for the WCJ to render a clear and certain decision on all matters at issue and to explain the basis behind the decision as required by Labor Code section 5313 and *Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc).

Applicant testified at trial that:

He thinks he got COVID working in the cubicle with a co-worker who was coughing. He doesn't recall how long after he was next to the co-worker coughing and the COVID symptoms. It was probably several days or a week or two.

When he found out he had COVID, he presumed it was a possibility it happened

at work. He presumed it because his supervisor told him his co-worker had it and that he should go get tested.

(Minutes of Hearing and Summary of Evidence of January 17, 2024 trial at p. 5.) Applicant testified that “He was probably diagnosed with COVID-19 around October 28, 2021.” (Minutes of Hearing and Summary of Evidence of January 17, 2024 trial at p. 4.)

Applicant filed a DWC-1 claim form with the employer on May 3, 2023 and an Application for Adjudication of Claim on May 17, 2023.

In the Opinion on Decision, the WCJ notes that the proper statute of limitations is one year from the date of injury. (Opinion on Decision at pp. 1-2.) However, the WCJ did not specify what the date of injury was in this case. The WCJ writes in the Opinion on Decision that, “The date of injury for the purposes of the statute of limitations is defined by Labor Code §§ 5411 and 5412” (Opinion on Decision at p. 2), but the WCJ does not determine or explain which of these code sections is applicable to this case. The WCJ states that “if the employee suffers a specific injury but the effects of the injury are not felt until sometime after the injury, there is conflicting case law as to whether the limitations period commences on the date of injury, or at the point when the employee manifests symptoms and understands the relationship between the disability and the employment.” The WCJ found that this “latent injury theory” was applicable to this case, but did not cite to any of the competing case law, including any case law supporting the theory. While the WCJ apparently held that the date of injury was the date where “there is a consequence from the injury allowing a claim for compensation along with knowledge of the connection to employment” (Opinion on Decision at p. 3), there is no analysis of when this took place in the current case.

Labor Code section 5313 mandates that a WCJ specify “the reasons or grounds upon which the determination was made.” As explained in our en banc decision in *Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), “The WCJ is ... required to prepare an opinion on decision, setting forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on. (Lab. Code § 5313.) The opinion enables the parties, and the [Appeals] Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful. (See *Evans v. Workers’ Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal. Comp. Cases 350].) For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.”

Here, we the WCJ must completely analyze the above issues. In the further proceedings, the WCJ should determine whether Labor Code section 5411 or 5412 applies to this case (see, e.g. *Johnson v. Industrial Accil Com.* (1958) 157 Cal.App.2d 838, 839-841 [23 Cal.Comp.Cases 54]; *Young v. City of Ventura Fire Dept.* (2011) 2011 Cal. Wrk. Comp. P.D. LEXIS 408 [Appeals Bd. panel]) and analyze under the relevant law and facts of this case what applicant's date of injury was.

We note that in the Report, the WCJ pivots the rationale behind the finding to stating that the statute of limitations was tolled because applicant was not given proper notice of his eligibility for workers' compensation benefits. In the further proceedings, the parties should be heard on the issue of whether defendant had an obligation to provide applicant with a DWC-1 claim form, whether that duty was breached, and if so, when applicant obtained actual knowledge of his workers' compensation rights. (See generally *Honeywell v. Workers' Comp. Appeals Bd. (Wagner)* (2005) 35 Cal.4th 24, 35 [70 Cal.Comp.Cases 97], citing *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57, 64–65 [50 Cal.Comp.Cases 411].)

We take no position on the ultimate resolution of any of these issues.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings and Order of March 21, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of March 21, 2024 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 14, 2024

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

**ALVIN HILLIARD
GOLDSCHID, SILVER & SPINDEL
MORGAN & LEAHY**

DW/oo

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