WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CARMEN CASTILLO, *Applicant*

vs.

WALT DISNEY PARKS AND RESORTS U.S., INC., Permissibly Self-Insured, *Defendant*

Adjudication Number: ADJ17394446
(Anaheim District Office)

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of April 29, 2024, wherein it was found that applicant's claim is barred by the statute of limitations. In this matter, applicant claims that while employed on February 12, 2018 as a laundry production person, applicant sustained industrial injury to the back.

Applicant contends that the WCJ erred in finding that the claim was 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 find that the WCJ erred in finding that applicant's claim was barred by the statute of limitations. We therefore grant reconsideration, rescind the WCJ's decision, and issue a new decision reflecting that applicant's claim is not barred by the statute of limitations.

At the March 25, 2024 trial, applicant testified that she received a ride to work from Katty Artiaga, who she referred to in her testimony as her "lead supervisor." (Minutes of Hearing and Summary of Evidence of March 25, 2024 trial at p. 5.) On the morning of February 12, 2018, during her commute to work, applicant fell in the employer owned parking lot at the Disneyland Hotel. Applicant testified that Ms. Artiaga witnessed the fall. Applicant completed her shift but began to develop pain the next day. On her next day off, on February 15, 2018, applicant saw her doctor, who took her off work. Applicant testified that she sent her off-work slip to Ms. Artiaga, with the understanding that Ms. Artiaga would fax it to her manager. She told Ms. Artiaga that

she was injured as a result of the slip and fall accident. (Minutes of Hearing and Summary of Evidence of March 25, 2024 trial at pp. 6, 8.)

Ms. Artiaga testified that she was walking alongside the applicant at the employer's parking lot, heard a yell, and turned her head and saw the applicant on the ground. She testified that she helped the applicant get up off the ground. (Minutes of Hearing and Summary of Evidence of March 25, 2024 trial at pp. 9-10.) Ms. Artiaga testified that she has been an employee at Disneyland for 40 years and identified herself as "applicant's lead." (Minutes of Hearing and Summary of Evidence of March 25, 2024 trial at p. 9.)

Ms. Artiaga testified that the applicant forwarded her an off-work slip from her doctor, and that she knew that applicant's symptoms were a result of the fall. She testified that applicant discussed a surgery that took place in 2018, and that she reported to her superiors Miriam and Humberto that applicant was to have a surgery necessitated by her fall. (Minutes of Hearing and Summary of Evidence of March 25, 2024 trial at pp. 9, 10.) Ms. Artiaga testified that at least by September 2018 she reported to Miriam and Humberto that applicant was to receive surgery as a result of the fall, but that Miriam told her that the medical treatment was not caused by the fall. (Minutes of Hearing and Summary of Evidence of March 25, 2024 trial at p. 9.)

Miriam Bonilla, who identified herself in her testimony as Textile Service Manager, testified on behalf of the defendant. Ms. Bonilla testified that Ms. Artiaga's job title was "Production Lead." Ms. Bonilla testified that "she did not recall" whether applicant reported her slip and fall and did not recall Ms. Artiaga reporting the injury. According to the Summary of Evidence, "When asked about whether she recalled having a conversation with Ms. Artiaga about the applicant's surgery, she responded that she is not allowed to discuss medical issues with other employees." (Minutes of Hearing and Summary of Evidence of March 25, 2024 trial at p. 11.)

The running of the statute of limitations is an affirmative defense, and the burden of proving it is on the party opposing the claim. (Lab. Code, § 5409; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57, 67, fn. 8 [50 Cal.Comp.Cases 411].) The burden is on defendant to show when the statute of limitations began to run, "starting from any and all three points designated [in Labor Code section 5405]." (*Colonial Ins. Co. v. Industrial Acc. Com. (Nickles)* (1945) 27 Cal.2d 437, 441 [10 Cal.Comp.Cases 321].) The three points designated in section 5405 are date of injury (Lab. Code, § 5405, subd. (a)); the last payment of disability indemnity (Lab. Code, § 5405, subd. (b)); and the last date on which medical treatment benefits

were furnished (Lab. Code, § 5405, subd. (c).) In this case, it appears that applicant was never provided with disability indemnity or medical treatment. Accordingly, absent any tolling, the relevant date for the running of the statute of limitations is the February 12, 2018 date of injury.

"[A]s a general rule, where a claimant asserts exemptions, exceptions, or other matters which will avoid the statute of limitations, the burden is on the claimant to produce evidence sufficient to prove such avoidance." *(Permanente Medical Group v. Workers' Comp. Appeals Bd. (Williams)* (1985) 171 Cal.App.3d 1171, 1184 [50 Cal.Comp.Cases 491].) One such exemption or exception is that the statute is tolled by an employer's failure to notify an injured employee of a potential right to benefits, as required by Labor Code section 5401(a). (*Martin*, supra, 39 Cal.3d at p. 60.) Pursuant to Labor Code section 5401, within one day of receiving notice of the applicant's injury, defendant was required to send the applicant a DWC-1 form which apprises the injured worker of his or her potential eligibility for workers' compensation benefits under California law. (Labor Code, § 5401, subd. (a).) The Supreme Court has held that "the remedy for breach of an employer's duty to notify is a tolling of the statute of limitations if the employee, without that tolling, is prejudiced by the breach." (*Martin, supra,* 39 Cal.3d at p. 64.)

Thus, when applicant asserts that the statute is tolled based on the breach of the duty to provide the employee with a DWC-1 form, applicant has the duty of showing that defendant had sufficient notice of injury to provide applicant with a claim form. The duty then shifts to defendant to show that the claim form was sent to the applicant or that applicant had actual knowledge of his workers' compensation rights. (*Martin, supra*, 39 Cal.3d at pp. 60, 65; *Sidders v. Workers' Comp. Appeals Bd.* (1988) 205 Cal.App.3d 613, 622 [53 Cal.Comp.Cases 445].) Once the employer has provided the applicant with a claim form, or applicant gains the requisite actual knowledge of his rights, the tolling period ends. (*Martin, supra*, 39 Cal.3d at p. 65.)

It appears uncontested that applicant was not provided with a DWC-1 form. Thus, the issue is whether defendant had sufficient notice of injury to be charged with the duty to provide a DWC-1 form. Labor Code sections 5401(a) and 5402(a), when read together, state that defendant is to provide a DWC-1 form within one day of obtaining "Knowledge of an injury, obtained from any source, on the part of an employer, the employer's managing agent, superintendent, foreman, or other person in authority, or knowledge of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts…." (Lab. Code, § 5402, subd. (a).)

We note that knowledge is imputed to the employer if knowledge is possessed by a broad category of "employer's managing agent, superintendent, **foreman, or other person in authority**." (Emphasis added.) Foreman is defined by Merriam-Webster dictionary as "a chief and often specially trained worker ***who works with and usually leads a gang or crew***." ("Foreman" <https://www.merriam-webster.com/dictionary/foreman> [as of July 15, 2024] [emphasis added.]). The inclusion of foreman and "other person in authority" evinces an intent for this category to be defined broadly, and Mr. Artiaga's position as "production lead" fits within this broad definition.

However, even if Ms. Artiaga's witnessing of the incident in and of itself did not constitute knowledge of injury or claim of injury, Ms. Artiaga testified that she told Textile Service Manager Ms. Bonilla of the fall and of the surgery caused by the fall by either August or September of 2018. Based on this testimony, Ms. Bonilla was apprised of an injury or claim of injury within a year of the incident and was thus required to provide applicant with a DWC-1 form. Failure to provide this form tolled the statute of limitations as of the time of the breach of duty. While Ms. Bonilla testified that she did "not remember" the applicant or Ms. Artiaga reporting the injury, she did not directly contradict Ms. Artiaga's testimony. Although the WCJ minimizes Ms. Artiaga's testimony that she reported the injury because "Ms. Artiaga is not a physician and cannot determine the basis for the surgery" (Report at p. 4), section 5402 does not require certainty of industrial injury but rather knowledge of injury or "of the assertion of a claim of injury sufficient to afford opportunity to the employer to make an investigation into the facts." "The Legislature has not provided that an employer must, at the risk of having the injury presumed compensable, begin investigating liability whenever an injury comes to its attention, but rather that the employer must at that point give the employee the information and means by which a claim *may* be formally made." (*Honeywell v. Workers' Comp. Appeals Bd.* (2005) 35 Cal.4th 24, 33 [70 Cal.Comp.Cases 97].)

Here, defendant had sufficient notice of injury or claim of injury to give rise to a duty to provide applicant with a DWC-1 claim form. It's failure to do so tolled the statute of limitations. We therefore grant reconsideration, rescind the WCJ's decision, and issue a new decision reflecting that applicant's claim is not barred by the statute of limitations.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Order of April 29, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of April 29, 2024 is **RESCINDED** and that the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. CARMEN CASTILLO, age 65 on the date of injury, while employed on 02-12-2018 as a laundry production person, at Anaheim, California, by WALT DISNEY PARKS AND RESORTS U.S., INC., permissibly self-insured, sustained injury arising out of and occurring in the course of employment to the back.

2. Applicant's earnings at the time of injury were $762.29 per week producing a temporary disability rate of $508.19 per week and a permanent disability indemnity rate per code.

3. Applicant was not provided with at DWC-1 form after receiving notice of applicant's injury or claim of injury, and thus the statute of limitations on applicant's claim was tolled.

4. Applicant's claim is not barred by the statute of limitations.

5. All other issues are deferred, with jurisdiction reserved.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 15, 2024

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

CARMEN CASTILLO
CHRISTOPHER CONGLETON
WALL, McCORMICK & BAROLDI

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