WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DEMETRIC EVANS, *Applicant*

vs.

SAN FRANCISCO 49ERS and
SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendants*

Adjudication Number: ADJ8035633
Anaheim District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant Subsequent Injuries Trust Fund (SIBTF) seeks reconsideration of the Findings of Fact issued on July 3, 2024, wherein the workers' compensation administrative law judge (WCJ) found that applicant's petition for benefits is timely.

Defendant contends that the record establishes that the petition for subsequent injuries benefits is untimely.

We received an Answer.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have reviewed the contents of the Petition, the Answer, and the Report. Based upon our review of the record, and for the reasons discussed below, we will deny the Petition.

FACTUAL BACKGROUND

On April 16, 2020, applicant filed a petition for subsequent injuries benefits, alleging that prior to the cumulative injury he sustained during the period of April 27, 2001 through January 5, 2011, he had a preexisting permanent disability resulting from a prior work injury to the brain. (Petition for SIBTF Benefits, April 16, 2020, pp. 2-3.)

On April 10, 2024, the matter proceeded to trial on the issue of whether applicant timely filed his claim for subsequent injuries benefits. (Minutes of Hearing and Summary of Evidence, April 10, 2024, p. 2:17.)

At trial, the WCJ admitted exhibits entitled Report of Dr. Weiss dated July 14, 2015, and Report of Dr. Weiss dated May 9, 2016, into evidence. (*Id*., p. 2:25.)

The Report of Dr. Weiss dated July 14, 2015, includes the following:

CALCULATED TOTAL WHOLE PERSON IMPAIRMENT RELATIVE TO ALL BODY PARTS

Combining 14% impairment of the whole person relative to the spine, 5% impairment of the whole person relative to the right upper extremity, 8% impairment of the whole person relative to the left upper extremity, 8% impairment of the whole person relative to the right lower extremity, 6% impairment of the whole person relative to the left lower extremity, utilizing the Combined Values Chart, page 604, 34% impairment of the whole person. Adding 3% whole person impairment due to chronic pain *37% impairment of the whole person*.
(Ex. 2, Report of Dr. Weiss, July 14, 2015, p. 34.)

The Report of Dr. Weiss dated May 9, 2016, includes the following:

Petition for Approval of Compromise Settlement
12/14/08 left ring finger 28% of left hand. 10/28/07 right middle finger 2% of right hand. 10/10/07 right knee 18% of lower extremity. 12/3/06 right middle finger 10% of hand. 1/14/06 right ring finger 6% of right hand. 10/30/05 left shoulder 25% of left upper extremity. Claimant evaluated by Dr. Charles Jackson, former team physician, who prepared a report dated 10/23/09 assigning the following permanent partial disability ratings:

12/ 14/08 15% of left middle finger; 10/28/07 11 % of right middle finger; 10/ 10/07 18% of right lower extremity due to right knee; 1/14/06 15% of right ring finger; 12/3/06 11 % of right middle finger; 10/30/05 left shoulder 9% of left upper extremity. Awarded $65,000.
. . .
My review of these additional medical records reveals the claimant received a prior disability award from the State of Virginia for multiple specific injuries suffered to both hands, left shoulder, and right knee suffered during the course of his employment with the Washington Redskins.
(Ex. 4, Report of Dr. Weiss, May 9, 2016, p. 4.)

The WCJ also admitted an exhibit entitled Compromise and Release (C&R) dated October 6, 2016, into evidence. (Minutes of Hearing and Summary of Evidence, April 10, 2024, p. 4:6.)

The C&R dated October 6, 2016 provides for settlement of applicant's claim of cumulative injury to the head, upper extremity, lower extremity, musculoskeletal system, and multiple other body parts during the period of April 27, 2001 through January 5, 2011. (Ex. B, Compromise and Release, October 6, 2016, p. 3.)

It further provides that the following additional body parts be included in the settlement:

LISTING OF ADDITIONAL BODY PARTS

Brain (and all related conditions)
Upper extremities: (All) hands, arms, elbows, wrists, fingers, thumbs
Head-Post traumatic head/brain syndrome, post traumatic headaches
Neck
Lower extremities: (All) legs, ankles, feet, toes, buttocks
Sleep disturbances
Internal/Circulatory (entire systems)
Teeth
Jaw
Psyche/psychological
Hips
Entire musculo-skeletal system
(*Id.,* p. 4.)

It also provides:

THIS SETTLEMENT IS BASED UPON THE FINDINGS OF AME STEPHEN WEISS AND THE OPINIONS SET FORTH IN HIS REPORTING DATED JULY l4, 2015 AND MAY 9, 2016.
(*Id*., p. 7.)

In the Report, the WCJ states:

[Applicant's cumulative injury claim] for the period of April 27, 2001 through January 5, 2011 due to his employment as a professional football player with the San Francisco 49ers . . . was settled by way of Compromise and Release on October 6, 2016 in the amount of $135,000.00. In 2018, a new cumulative trauma claim alleging brain injury was filed on behalf of the Applicant (ADJ11165670). The second case was dismissed on May 21, 2018 as the Applicant had already settled all of his claims related to his football career by way of the Compromise and Release in the instant case. The Order Dismissing Case in ADJ11165670 was never appealed. On April 16, 2020, Applicant filed an Application for Subsequent Injuries Fund Benefits.
. . .
Petitioner asserts that . . . the Applicant knew, or reasonably should have known, as to potential eligibility for SIBTF benefits at various points in the proceedings in his case for normal benefits because he was represented by counsel and such representation imputes knowledge to the Applicant.

Since the theme of actual or imputed knowledge runs throughout Petitioner's arguments, it will be addressed first.

Petitioner argues that, because the Applicant was represented by counsel at the time that the underlying case for ordinary benefits was resolved by way of Compromise and Release (October 2016), the Applicant is charged with the knowledge of his potential entitlement to SIBTF benefits. Petitioner cites the Court of Appeals decision in Herman v. Los Angeles County Metropolitan Transportation Authority (1999) 71 Cal.App.4th 819 for the proposition that knowledge of an attorney is

imputed to his client even when the client lacks actual knowledge of the imputed fact.

While this recitation of the principles of Agency is discussed in Herman(supra), Petitioner fails to point out that the Court of Appeals in that case overturned the trial Court's demurrer because the Statute of Limitations at issue (California.Code of Civil Procedure section 1094.6 [f]) required service on a "party" without including the party's attorney.

The Court in Herman cites the holding in Harte v. United Benefit Life Ins. Co. (1967) 66 Cal. 2d 148, 153 which found that:

"The uncommunicated knowledge of an agent is not imputed to the principal for the purpose of determining whether he acted in good faith since the principal's good faith must be determined on the basis of facts of which he had actual knowledge."

The Court of Appeals in Herman concluded that, without service on Mr. Herman directly, the 90 day time limit never commenced.

In the instant case, Mr. Evans is an "Applicant" and a "Party" as defined in Title 8, California Code of Regulations section 10205(d) and (aa) (respectively). In 2016, the applicable sections governing service on the parties were Title 8, California Code of Regulations sections 10500 and 10505 (respectively). The record reveals that, on October 6, 2016, there was a Mandatory Settlement Conference in which there was no appearance by Applicant's counsel and Defendants were presenting a Compromise and Release to the Court for approval. Defense counsel appeared to obtain the Order Approving and was designated to serve the documents (presumably the Order Approving and the Minutes of Hearing) by the Judge [Minutes of Hearing October 16, 2016/ EAMS DOC ID# 61688551]. Title 8. California Code of Regulations section 10505 (b) would have required service by mail on all parties (unless a predesignated alternative method of service was agreed upon) and sub-section (d) of the same regulation required service on persons listed on the official address record. Mr. Evans was a "Party" and was on the official address record, but no evidence was submitted by Petitioner to establish service of the Order Approving or the Minutes of Hearing on the Applicant.

Petitioner asserts that the Application for SIBTF benefits was untimely because the Applicant knew, or reasonably should have known, at the time of the report issued by Agreed Medical Evaluator, Dr. Stephen Weiss, on July 14, 2015, that the Doctor was assigning 37% Whole Person Impairment to the Applicant's orthopedic injuries.

Title 8. California Code of Regulations section 10608 (a)(4)(A)(applicable in 2015/2016) required service of the medical reports on the injured worker. The Applicant testified at Trial that he did not recall Dr. Weiss and that he never saw the reports issued by Dr. Weiss [MOH/SOE April 10, 2024 page 5, lines 6-8].

Petitioner did not submit evidence establishing proof of service of Dr. Weiss' reports on the Applicant.

As to Petitioner's argument that the Applicant knew or reasonably should have known to his potential entitlement to SIBTF benefits within five years from the date of industrial injury, they state at page 8, lines 7-13 of the Petition for Reconsideration, that the Applicant received a prior permanent disability award from the State of Virginia in the amount of $65,000.00 for injuries to the upper and lower extremities.

. . .

The testimonial record reveals that the Applicant received a lump sum payment for his injuries sustained with the Washington Redskins but couldn't recall the amount [MOH/SOE April 10, 2024 page 4; lines 24-25 and page-5; lines 1-2] The evidentiary record does not contain the settlement documents from the State of Virginia.

. . .

Further, the Applicant testified at Trial that he received a lump sum settlement ($135,000.00) for his injuries sustained with the 49ers but that he doesn't know what the workers' compensation benefit schedule is in California and doesn't know how much of that settlement was for disability and how much was for future medical treatment. [MOH/SOE page 6; lines 2-6].

. . .

Neither the Compromise and Release nor the Order Approving in this matter recite specific levels of disability for the Applicant. As the undersigned noted in the Opinion on Decision, the Minutes of Hearing from October 6, 2016 [EAMS DOC ID# 61688511] bears a notation from the Conference Judge stating "C+R $135k. NFL case-per AME, 51% after apport."

Petitioner argues, on page 9 of the Petition for Reconsideration, that the Compromise and Release makes reference to the reports of Dr. Weiss' and those reports outline the level of disability against the 49ers. They argue that this information, along with the prior award from the State of Virginia was enough to put the Applicant on notice that he likely qualified for SIF benefits.

As discussed above, the record does not reflect service of the Dr. Weiss' reports, the Order Approving or the Minutes of Hearing from October 6, 2016 on the Applicant. Further, in September of 2023 the Panel of Commissioners in Humphrey v Subsequent Injuries Benefit Trust Fund ADJ7016841 determined that a Compromise and Release -even one that describes levels of disability in the settlement document- is not a finding by the Board of permanent disability. The Commissioners stated [at page 4]:

"Moreover, the Appeals Board's power to determine the adequacy of a Compromise and Release and issue an award based upon the release or compromise agreement is not finding of permanent disability (section 5002; Cal. Code Regs title 8 section 10700). A finding of adequacy is not the same as a finding of permanent disability. (sections 4660, 5002; Cal. Code Regs., title 8 section 10700)"

This panel decision, while not binding, is persuasive.
. . .
In the instant case, there is no proof that the Applicant was served with the medical reports of Dr. Weiss, which was required by the regulations previously cited. There is no proof that the Applicant was served with the Order Approving and the Minutes of Hearing from October 6, 2016 as required by the regulations previously cited. The service of all of these documents is required (service on a party) so Petitioner's reliance on the general principal of Agency and imputed knowledge discussed in Herman (supra) is misplaced. The specific finding by the Court of Appeals in Herman is more appropriate. If there is a specific directive to serve a party to commence a countdown on a statute of limitations and that service is not undertaken, the statute of limitations isn't triggered.

The Applicant testified at Trial that the first time he learned of potential SIBTF benefits was at the Superbowl in 2020 [MOH/SOE page 5, lines 13-16]. The SIBTF Application was filed April 16, 2020 [Defendant's Exhibit A/EAMSDOC ID# 32170486]

There has been 1) no "board's finding on the issue of permanent disability that the Fund has probable liability" (Talcott) that would trigger a reasonable time therefrom to file for SIBTF benefits, and 2) no proof of service of required documents on the Applicant that are critical to develop an understanding to potential entitlement to SIBTF benefits. Lastly, the undersigned considered the discussion by the Supreme Court in Fruehauf Corp. v. Workmens' Comp. App. Bd (1968) 68 Cal. 2d. 569 in which the Court states:

"This rule is in keeping with the doctrine that limitations provisions in the workmen's compensation law must be liberally construed in favor of employees unless otherwise compelled by the language of the statute and that statutes of limitations should not be interpreted in a manner resulting in a right being lost before it accrues."
(Report, pp. 1-7.)

DISCUSSION
I.

Former Labor Code 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, Labor Code 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 Labor Code 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 August 13, 2024, and 60 days from the date of transmission is October 14, 2024. This decision is issued by or on October 14, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 August 13, 2024, and the case was transmitted to the Appeals Board on August 13, 2024. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 13, 2024.

II.

Defendant contends that the record establishes that the petition for subsequent injuries benefits is untimely because the petition was not filed either within five years of the date of

cumulative injury or within a reasonable time after applicant knew or reasonably should have known that there was a substantial likelihood of entitlement to SIBTF benefits.

We observe that the burden of proof rests upon the party holding the affirmative of the issue, and all parties shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence. (Lab. Code § 5705; *Lantz v. Workers' Comp. Appeals Bd*. (2014) 226 Cal.App.4th 298, 313 [79 Cal.Comp.Cases 488]; *Hand Rehabilitation Center v. Workers' Comp. Appeals Bd*. (*Obernier*) (1995) 34 Cal.App.4th 1204 [60 Cal.Comp.Cases 289].) "Preponderance of the evidence" is defined by section 3202.5 as the "evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence." (Lab. Code § 3202.5.)

In this regard, there are four Supreme Court cases that provide guidance for establishing that an applicant failed to timely file a SIBTF claim. (*Subsequent Injuries Fund v. Workmens' Comp. Appeals Bd*. (*Talcott*) (1970) 2 Cal.3d 56, 65 [35 Cal.Comp.Cases 80]; *Subsequent Injuries Fund v. Workmens' Comp. Appeals Bd*. (*Pullum*) (1970) 2 Cal.3d 78 [35 Cal.Comp.Cases 96]; *Subsequent Injuries Fund v. Workmens' Comp. Appeals Bd.* (*Woodburn*) (1970) 2 Cal.3d 81 [35 Cal.Comp.Cases 98]; *Subsequent Injuries Fund v. Workmens' Comp. Appeals Bd.* (*Baca*) (1970) 2 Cal.3d 74 [35 Cal.Comp.Cases 94].) The Supreme Court in *Talcott*, the seminal case on this issue, provided:

> We should, in the absence of statutory direction and to avoid an injustice, prevent the barring of an applicant's claim against the Fund before it arises. Therefore, we hold that where, prior to the expiration of five years from the date of injury, an applicant does not know and could not reasonably be deemed to know that there will be substantial likelihood he will become entitled to subsequent injuries benefits, his application against the Fund will not be barred—even if he has applied for normal benefits against his employer—if he files a proceeding against the Fund within a reasonable time **after he learns from the board's findings** on the issue of permanent disability that the Fund has **probable liability**.
> (*Talcott*, *supra*, 2 Cal. 3d at p. 65 [Emphasis added].)

We interpret the holding in *Talcott* to mean that if applicant knew or could reasonably be deemed to know that there will be a substantial likelihood of entitlement to subsequent injuries benefits before the expiration of five years from the date of injury, then the limitation period to file a SIBTF claim is five years from the date of injury. However, if applicant did not know and could

not reasonably be deemed to know that there was a substantial likelihood of entitlement to subsequent injuries benefits before the expiration of five years from the date of injury, then the limitation period to file a SIBTF claim is a reasonable time after applicant learns from the WCAB's findings on the issue of permanent disability that SIBTF has probable liability. (*Talcott*, *supra*; see also *Adams v. Subsequent Injuries Benefits Trust Fund* (June 22, 2020, ADJ7479135) [2020 Cal. Wrk. Comp. P.D. LEXIS 216].)

As to *Talcott's* first criterion, defendant contends that applicant knew or could reasonably be deemed to know that there would be a substantial likelihood of entitlement to subsequent injuries benefits within five years of January 5, 2011, because (1) Dr. Weiss's July 14, 2015 report indicated that he sustained 37 percent WPI resulting from cumulative injury to the spine, right upper extremity, left upper extremity, right lower extremity, and left lower extremity (with an add-on for chronic pain) during the period of April 27, 2001 through January 5, 2011; and (2) applicant had already received an award of $65,000.00 from the State of Virginia for permanent disability resulting from specific injuries to both hands, the left shoulder, and the right knee. (Petition, p. 8:1-8; Ex. 2, Report of Dr. Weiss, July 14, 2015, p. 34; Ex. 4, Report of Dr. Weiss, May 9, 2016, p. 4.)

However, *Talcott* requires notice in the form of "board[] findings on the issue of permanent disability that the [SIBTF] has probable liability"; and, in the record before us, there are no findings as to permanent disability resulting from applicant's cumulative injury or specific injuries because the claims of injury were settled by C&R and Compromise Settlement, respectively. (*Talcott*, *supra*., at p. 65; Report, pp. 2, 4; Ex. 4, Report of Dr. Weiss, May 9, 2016, p. 4; see also Ex. B, Compromise and Release, October 6, 2016, p. 3.)

Hence, the record is insufficient to establish that findings of the WCAB or the State of Virginia put applicant on notice that there was a substantial likelihood of entitlement to subsequent injuries benefits within five years of his cumulative injury.

In addition, as the WCJ states in the Report, the record fails to show that applicant was served with (1) Dr. Weiss's reporting that he sustained 37 percent WPI as a result of cumulative injury; and (2) medical records subsequently reviewed by Dr. Weiss which indicated that applicant sustained permanent disability resulting from specific injuries claims while employed in the State of Virginia. (Report, p. 4.)

Hence, the record is insufficient to establish that applicant was on notice of medical reporting which potentially could support findings of the WCAB or the State of Virginia on the

issue of permanent disability that could in turn put applicant on notice that there was a substantial likelihood of entitlement to subsequent injuries benefits.

Accordingly, we are unable to discern support for defendant's argument that applicant knew or reasonably could have known that there was a substantial likelihood of his entitlement to subsequent injuries benefits within five years of his cumulative injury.

As to *Talcott's* second criterion, defendant contends that applicant did not file the April 6, 2020 petition for subsequent injuries benefits within a reasonable time after he knew or should have known that there was a substantial likelihood of entitlement to such benefits. Specifically, defendant argues that since applicant did not file the petition for subsequent injuries benefits until more than 3 years and 6 months after he resolved his cumulative injury claim on October 6, 2016, the petition for subsequent injuries benefits cannot be deemed to have been filed within a reasonable time. (Petition, p. 9:6-8.)

Labor Code section 4751 provides:

> If an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, he shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article; provided, that either (a) the previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of total, or (b) the permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of total. (Lab. Code § 4751.)

In *Ferguson v. Industrial Acc. Com*. (1958) 50 Cal.2d 469 [23 Cal.Comp.Cases 108], the Supreme Court held that the "previous disability or impairment" contemplated by section 4751 "'must be actually 'labor disabling,' and that such disablement, rather than 'employer knowledge,' is the pertinent factor to be considered in determining whether the employee is entitled to subsequent injuries payments under the terms of section 4751." (*Ferguson*, *supra*, at p. 477.) The

Court further noted that "'the prior injury under most statutes should be one which, if industrial, would be independently capable of supporting an award. It need not, of course, be reflected in actual disability in the form of loss of earnings [as this court has already held in *Smith v. Industrial Acc. Com.* (1955) 44 Cal.2d 364, 367 [288 P.2d 64]], but if it is not, it should at least be of a kind which could ground an award of permanent partial disability....'" (*Ferguson*, *supra*, (quoting Larson's Workmen's Compensation Law (1952) § 59.33, vol. 2, p. 63).)

Under these authorities, then, defendant must establish that applicant knew or should have known that he had a labor disabling injury before he sustained subsequent cumulative injury over the period of April 27, 2001 through January 5, 2011, and failed to file the petition for subsequent injuries benefits within a reasonable time of obtaining such knowledge.

Here, because applicant asserts that he had a permanent partial disability resulting from a prior work injury to the brain which when combined with the permanent disability resulting from his cumulative injury entitles him to subsequent injuries benefits, defendant must establish when applicant knew or should have known of his labor disabling brain injury and that applicant failed to file the petition for subsequent injuries benefits within a reasonable time thereafter. (Petition for SIBTF Benefits, April 16, 2020, pp. 2-3.)

But defendant cites no evidence, and we are aware of none, to suggest that applicant was aware of a permanent partial disability resulting from a work injury to the brain prior to the cumulative injury of April 27, 2001 through January 5, 2011 until at least 2020, when he learned he could file the petition for subsequent injuries benefits. (Report, p. 7.) Notably, the WCJ deemed applicant's testimony that he did not learn of his claim for subsequent injuries benefits until he attended the 2020 Super Bowl credible, and we accord this determination great weight because the WCJ had the opportunity to observe the witness's demeanor at trial. (Report, pp. 6-7; *Garza v. Worker's Comp. Appeals Bd*. (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500].)

Moreover, the record lacks evidence that applicant sustained a permanent partial disability resulting from an injury to the brain prior the April 27, 2001 through January 5, 2011 period of cumulative injury. Rather, the only evidence of permanent partial disability resulting from a work injury sustained before 2011 concerns applicant's left middle finger, right middle finger, right knee, right middle finger, right ring finger, and left shoulder. (Ex. 4, Report of Dr. Weiss, May 9, 2016, p. 4.)

Additionally, although applicant alleged that he sustained a cumulative injury to the brain in 2018, he did not claim that the brain injury resulted in a permanent partial disability prior to the

cumulative injury of April 27, 2001 through January 5, 2011, and the claim was therefore dismissed under the terms of the C&R. (Report, pp. 1-2; Ex. B, Compromise and Release, October 6, 2016, pp. 3-4.)

Hence, because the record fails to show that applicant was aware of a permanent partial disability resulting from a work injury to the brain prior to the cumulative injury of April 27, 2001 through January 5, 2011, and because the record fails to show that applicant was on notice of (1) findings on the issue of permanent disability indicating that he would likely be entitled to subsequent injuries benefits; (2) Dr. Weiss's reporting indicating that he sustained 37 percent WPI as a result of the cumulative injury and medical records reviewed by Dr. Weiss indicating that applicant suffered permanent disability resulting from specific injuries to the hands, the left shoulder, and the right knee; or (3) the October 6, 2016 minutes of hearing note indicating that applicant was 51 percent disabled after apportionment, the record is insufficient to establish that applicant knew or should have known that he had a substantial likelihood of entitlement to subsequent injuries benefits and failed to file the petition for subsequent injuries benefits within a reasonable time. (Report, pp. 1-6; Lab. Code § 5951 (providing that appellate review is limited to review of the record certified by the Appeals Board); Lab. Code § 5952 (providing "Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence").)

Accordingly, we are unable to discern merit to defendant's argument that applicant failed to file the April 16, 2020 petition for subsequent injuries benefits within a reasonable time after he knew or should have known that he had a likelihood of entitlement such benefits.

Accordingly, we will deny the Petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact issued on July 3, 2024 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 14, 2024

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

DEMETRIC EVANS
MANGOSING LAW GROUP
DEPARTMENT OF INDUSTRIAL RELATIONS – OFFICE OF THE DIRECTOR

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