WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MINGMING WU, ***Applicant***

vs.

CALIFORNIA CHARTER SCHOOLS JOINT POWERS AUTHORITY, Permissibly Self-Insured, ***Defendant***

Adjudication Number: ADJ14840331
Oakland District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of March 25, 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 April 16, 2019 as a substitute teacher, she sustained industrial injury to the head, neck, back, brain, right ankle, ribs, feet, stomach and in the forms of hernia and incontinence.

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

As explained below, we will deny the defendant's Petition.

Applicant sustained her alleged injury on April 16, 2019 and filed her completed DWC-1 claim form with her employer on April 23, 2016. On July 16, 2019 applicant was sent a "Notice Regarding Temporary Total Disability Benefits Denial" by the employer's workers' compensation administrator stating that "Although liability for your workers' compensation injury has been accepted, I cannot pay you temporary disability benefits as of 4/17/19 because we do not have any medical documentation which supports need for temporary disability." The following day, on July 17, 2019, applicant was sent a letter advising her that her "recent Workers' Compensation claim has been accepted for benefits." In the letter, applicant was advised, "We will pay for medical care that is reasonably required to cure or relieve effects from your injury."

For reasons that are difficult to discern from the record, but also not material to the issue before us, despite the approval, applicant was either not provided with or did not seek (or some combination thereof) medical care. It appears undisputed that defendant has not paid for any medical care.

On September 19, 2019, employer's workers' compensation administrator sent applicant a letter stating:

> In reviewing your file it appears you have recovered from your injury. If you are claiming disability or need further medical attention, please contact this office as soon as possible.
>
> Pursuant to State Law you may lose your benefits by your failure to act. You have five (5) years from the date of the injury or one (1) year from the date of last benefit to file for new and further benefits before the Workers' Compensation Appeals Board.

Following this letter, the file contains several emails where applicant was advised that medical treatment with specific providers had been authorized, such as Dr. Chen on November 4, 2019 and Emeryville Occupational Medicine on December 23, 2019. Applicant apparently did not receive care from these providers.

On June 23, 2020, applicant was sent another letter with the same language as the September 19, 2019 letter :

> In reviewing your file it appears you have recovered from your injury. If you are claiming disability or need further medical attention, please contact this office as soon as possible.
>
> Pursuant to State Law you may lose your benefits by your failure to act. You have five (5) years from the date of the injury or one (1) year from the date of last benefit to file for new and further benefits before the Workers' Compensation Appeals Board.

Although applicant was told in emails from defense counsel on September 3, 2020, March 16, 2021 and May 16, 2021 that her claim was denied, we were unable to locate a formal denial (let alone one in compliance with Administrative Rule 9812(i)) in the record.

On June 30, 2021, applicant filed her Application for Adjudication of Claim.

We find that the five-year statute of limitation of Labor Code section 5410 applies to this case, and thus the June 30, 2021 filing of the Application was well within the limitations period.

In *McDaniel v. Workers' Comp. Appeals Bd.* (1990) 218 Cal.App.3d 1011 [55 Cal.Comp.Cases 72], the Court of Appeal held that when a defendant provides medical treatment benefits knowing of a potential claim for workers' compensation benefits, the provision of treatment tolls the one-year limitation period of Labor Code section 5405(c) and triggers the five year period of Labor Code section 5410, running from the date of injury. Although *McDaniel* dealt with the normal situation that medical treatment was actually provided, and payment was advanced by the employer or insurer to the medical provider, the *McDaniel* court explained the purpose of the rule as follows:

> The legislative purpose behind the tolling provision of section 5410 "is to prevent a potential claimant from being misled by an employer's voluntary acts which reasonably indicate an acceptance of responsibility for the employee's injury." [Citation.] As long as the employer's conduct reasonably suggests that the filing of a claim is unnecessary, the tolling of the statutory time period is entirely proper and in accord with the benefit extension principles of section 5410 and section 5405, subdivisions (b) and (c). [Citation.]

In coming to its holding, the *McDaniel* court relied on *Standard Rectifier Corp. v. Workers' Comp. Appeals Bd. (Whiddon)* (1966) 65 Cal.2d 287, 290-291 [31 Cal.Comp.Cases 340] where it was held that the "rule as established by the cases is that before an employee is entitled to the advantage of the five-year period for claiming benefits for new and further disability under section 5410, he must have been furnished workmen's compensation benefits by the employer either voluntarily or pursuant to a commission award."[1]

We believe that although actual payment was not made, the facts of the instant case are sufficient to bring it with the rule announced in *McDaniel* and *Whiddon*. By accepting liability for medical treatment and by authorizing treatment by specific providers, defendant's conduct suggested to the applicant that the filing of an application was not necessary, and thus the statute of limitations was extended to five years. Indeed, in *Bailey v. Department of Transportation* (2018) 2018 Cal. Wrk. Comp. P.D. LEXIS 610, *11 (Appeals Board panel), an Appeals Board panel held that an employer's "expressed intent to pay for medical care" was sufficient to extend the statute of limitations.

[1] In *Whiddon* it was held that first aid provided by the employer with knowledge of an industrial injury was sufficient to extend the statute of limitations to the five-year statute. We need not decide here whether subsequent legislative enactments have altered the viability of the specific holding in *Whiddon*.

Under *McDaniel*, only once the "potential claimant has been **fully informed** that the employer and its carrier disclaim compensation liability for an industrial injury" does the statute revert to one year, running from the date of the denial. (*McDaniel*, supra, 218 Cal.App.3d at p. 1017 [emphasis added].)

Here, applicant was never sent formal notice in compliance with Rule 9812(i) (Cal. Code Regs., tit. 8, § 9812, subd. (i)) that defendant was completely disclaiming liability for the industrial injury, and thus the statute of limitations never reverted to one year. Although defense counsel did ultimately tell applicant in emails that her claim was "denied," these informal denials did not contain the language required by Rule 9812(i). In any case, it appears that applicant's Application was filed within one year of these so-called denials.

Defendant's Notices of September 19, 2019 and June 23, 2020 appear to acknowledge that the 5-year statute of limitations applied to applicant's claim of injury.

In any case, even if the five-year statute was not applicable in this case, defendant would be estopped to claim otherwise as a result of the September 19, 2019 and the June 23, 2020 notices telling the applicant that she had "five (5) years from the date of the injury or one (1) year from the date of last benefit" to file with the WCAB. An employer and its insurer are estopped to plead the statute of limitations when the actions or misrepresentations of either induce the employee to refrain from filing a claim until after the statute of limitations has run." (*McGee Street Productions v. Workers' Comp. Appeals Bd. (Peterson)* (2003) 108 Cal.App.4th 717, 726 [68 Cal.Comp.Cases 708].) As the Supreme Court explained in *Benner v. Industrial Acc. Comm.* (1945) 26 Cal.2d 346, 349-350 [10 Cal.Comp.Cases 110], "An estoppel may arise although there was no designed fraud on the part of the person sought to be estopped."

Since we find that the Application was filed within the limitations period (and in any case defendant would be estopped from arguing otherwise), we deny the defendant's Petition.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings and Order of March 25, 2024 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ _KATHERINE A. ZALEWSKI, CHAIR____

I CONCUR,

/s/ _CRAIG SNELLINGS, COMMISSIONER_____

/s/ _JOSEPH V. CAPURRO, 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.

MINGMING WU
VINCENT MARLETTA
HANNA, BROPHY, MacLEAN, McALEER & JENSEN
FRANCO MUNOZ

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