WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DAVID REYNOSO, *Applicant*

vs.

JB POINDEXTER AND COMPANY, INC., doing business as TRUCK ACCESSORIES GROUP, LLC; XL INSURANCE OF AMERICA, administered by GALLAGHER BASSETT SERVICES, INC., *Defendants*

Adjudication Number: ADJ16909714, ADJ20101471
Sacramento District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact, Awards and Orders (F&O) issued on February 10, 2025, wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that (1) applicant was employed by defendant as an industrial maintenance mechanic on January 13, 2018, occupational group number 470, when he suffered an industrial injury to his neck including his cervical spine; (2) applicant was shown to require further medical care to cure or relieve the effects of his injury; (3) applicant was shown to have 18% permanent disability as a result of his industrial injury; (4) the appropriate rate of permanent disability indemnity is $290.00 per week; (5) the appropriate date for commencement of permanent disability indemnity payments is June 17, 2024; and (6) applicant's attorney provided valuable services on applicant's claim.

The WCJ awarded applicant (1) further medical care; and (2) $18,995.00 in permanent disability indemnity, payable at $290.00 per week commencing on June 17, 2024, less $2,849.25 payable to applicant's attorney, with defendant entitled to a credit for permanent disability indemnity advances and jurisdiction reserved to the WCJ in the event of a dispute.

Defendant contends that the WCJ erroneously (1) failed to consolidate case number ADJ16909714 with case number ADJ20101471; (2) found that applicant sustained injury to the cervical spine resulting in permanent disability of 18%; (3) declined to admit exhibits

in evidence; and (4) failed to find that applicant's claim is untimely under Labor Code section 5410.[1]

We did not receive an Answer.

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

We received a supplemental pleading from defendant labeled as a reply to the Report.[2]

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

FACTUAL BACKGROUND

On January 23, 2025, the matter proceeded to trial on the following issues:

1. Nature and extent of the injury including the cervical spine.
2. The employee has claimed earnings of $1,152.00 per week. The employer has claimed earnings of $824.00 per week based on the wage statement.
3. Permanent disability and apportionment.
4. Occupational group number claimed with Employee alleging 470 and the employer alleging 370.
5. Need for medical treatment.
6. Liability for self-procured medical treatment.
7. Applicant's attorney's fee.
8. Whether the medical reporting of PQME Manijeh Ryan, M.D., is substantial medical evidence or admissible.

Defendant contends the cause and nature of the diagnosed condition of a spinal fracture is outside her expertise. Her opinions on the apportionment of the injury is baseless. The matter was originally a medical-only claim. The applicant was found permanent and stationary in 2018. No objection to Dr. Leefeldt's opinion was ever issued. Therefore, the medical reporting of Dr. Ryan is not admissible pursuant to Labor Code 4601 and 4602. (The Court states 4061and 4062 are appropriate for medical-legal reports.)

9. Defendant has requested that applicant attorney bring the applicant's current employer into the matter based on the medical opinion that applicant's current employer is partially causing the applicant's current pain and complaints. Therefore, this matter is not ready for trial.

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[1] Unless otherwise stated, all further statutory references are to the Labor Code.

[2] We do not accept defendant's supplemental pleading because defendant did not seek leave to file it as required by the WCAB Rule 10964, which provides as follows: "When a petition for reconsideration, removal or disqualification has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board. Supplemental petitions or pleadings or responses other than the answer, except as provided by this rule, shall neither be accepted nor deemed filed for any purpose and shall not be acknowledged or returned to the filing party." (Cal. Code Regs., tit. 8, § 10964.)

10. Statute of limitations expired for permanent disability.
When asked by the Court, defendant is not aware nor states a specific code section or legal basis for the statute of limitations expired for permanent disability. Applicant attorney objects to Issues 8, 9 and 10 on the grounds that they are statements and not Issues.
All other Issues are deferred.
(Minutes of Hearing and Summary of Evidence, January 23, 2025, pp. 2:20-3:18.)

The parties stipulated that on January 13, 2018, while employed as an industrial maintenance mechanic, applicant sustained injury arising out of and in the course of employment to his neck in the form of a neck strain and claims to have sustained injury to the cervical spine. (*Id*., p. 2:7-11.)

In the Report, the WCJ states:

> David Reynoso (Applicant) was thirty-five (35) years old and employed as an Industrial Maintenance Mechanic, Occupational Group Number 4 70, by Truck Accessories Group LLC (Employer) on January 13, 2018, when he suffered an industrial injury to his neck including his cervical spine. Employer was immediately aware of Applicant's industrial and provided medical treatment.
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> Applicant was evaluated for his industrial injury by PQME Dr. Manijeh Ryan M.D. Dr. Ryan examined Applicant on April 23, 2023, and June 17, 2024. Dr. Ryan issued reports dated April 23, 2023, November 17, 2023, and July 17, 2024. Dr. Ryan was deposed on September 13, 2023. (App. Ex. 1, 2 & 3, Def. Ex. A) Dr. Ryan's first report documents review of medical records establishing Applicant's first treatment occurred on January 13, 2018, where an x-ray was performed, and a CT scan was recommended by Dr. Glenn Hofer at Sutter Health.
>
> Dr. Ryan gave her expert medical opinion that Applicant's C6 fracture results in 8% Whole Person Impairment based on an AMA Guides Table 15-5 cervical DRE with an additional 3% for cervicogenic headaches. AMA Guides Table 18-1 and section 18.3d provide for a 3% WPI increase for the headaches. The result is 11% WPI as a result of Applicant's industrial injury.
>
> Dr. Ryan gave her expert medical opinion that the fracture was caused by the specific injury on January 13, 2018, where industrial mixing blades struck Applicant in the neck knocking him off a ladder onto the ground where he was stricken in the legs by the lower mixing blade and apportioned all of the disability to the industrial injury.
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> . . .
>
> **THERE IS NO EVIDENCE SUPPORTING CONSOLIDATION OF THE PRESENT CASE (ADJ16909714) WITH THE CLAIM FILED BY THE DEFENDANT (ADJ20101471)**

Procedurally, Applicant's Attorney filed a Declaration of Readiness to Proceed on October 31, 2024 and Defendant did not file an Objection. A Mandatory Settlement Conference was held on October 28, 2024 and Discovery was Ordered closed as the parties were unable to complete the Pre-Trial Conference Statement. The matter was set for trial at the conference held on November 27, 2024. Defendant filed an Application for Adjudication of Claim on November 13, 2024 creating ADJ20101471. This Application asserts Dignity Health Mercy General Hospital as the employer. Applicant credibly testified he works for Dignity Health Medical Foundation which is a different entity. (Def. Ex. P, MOH-SOE Pg. 8) No evidence was submitted at trial establishing Applicant actually works for the employer identified in Defendant's Exhibit P. Defendant filed a claim against the wrong entity and no evidence was submitted at trial that applicant is suffering an injury with his current employer. Defendant's filing of a new Application for Adjudication of Claim without medical support against an unrelated entity is not a proper remedy for its failure to object to the Declaration of Readiness to Proceed.[fn]

There is a Constitutional mandate to provide substantial justice in an expeditious manner. Applicant's injury in ADJ16909714 is already more than seven years old and there is no reason to further delay the litigation.

PQME DR. MANIJEH RYAN'S REPORTING WAS FOUND TO BE SUBSTANTIAL MEDICAL EVIDENCE AS SHE EXPLAINED HOW AND WHY SHE REACHED HER EXPERT MEDICAL AND FURTHER DEVELOPMENT OF THE RECORD IS NOT REQUIRED

"[A] a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc). Dr. Ryan's reporting clearly explains how she reached her expert medical opinion that Applicant's C6 fracture results in 8% Whole Person Impairment based on an AMA Guides Table 15-5 cervical DRE with an additional 3% for cervicogenic headaches. AMA Guides Table 18-1 and section 18.3d provide for a 3% WPI increase for the headaches. (OOD Pg. 3 - 4) Applicant was struck in his head, neck and shoulder area by a large industrial mixing blade that knocked him off a ladder, into the wall of the mixing tank and then down to the floor where he was struck by the lower mixing blade. There is no evidence of any other event that could have caused the facture in Applicant's C-6 vertebrae. Applicant credibly testified at trial that he started working with Dignity Health Medical Foundation in 2020 and his symptoms have remained the same at his new employment other than improving with treatment with Dr. Shin. (MOH-SOE Pg. 7 - 10)

DEFENDANT HAS NOT ESTABLISHED IT WAS DENIED DUE PROCESS

Procedurally, two Mandatory Settlement Conferences were held because the parties were unable to complete the Pre-Trial Conference Statement at the first MSC. The PTCS was completed and served on November 25, 2024 with an Order that exhibits be properly filed 20 days or more before the first day of trial. Defendant filed its exhibits on January 22, 2025, which was the day before the trial. Defendant failed to file some of the exhibits it listed, and these were identified in the Minutes of Hearing-Summary of Evidence issued February 5, 2025. Defendant did not file any request to resubmit the exhibits it failed to properly file.

Applicant's Objection to Defendant's Proposed Exhibit H, the deposition transcript of David Reynoso dated March 22, 2023 was sustained as Mr. Reynoso testified credibly at trial and no impeachment by prior testimony was done at trial.

Due process requires an opportunity to present issues to an unbiased observer. Petitioner has not established it was denied the opportunity to prepare the PTCS, file exhibits in a timely manner or bias on the part of the trial judge.

Defendant presented no evidence to the PQME or at trial of any injury other than the accepted industrial injury to Applicant's neck that could cause the fracture of the C-6 vertebrae that has been identified by Dr. Shin and the PQME. The first treating physician selected by the employer actually recommended a CT scan which was not pursued by the employers second selected treating physician. Defendant provided no evidence that Applicant was properly advised regarding his right to select a new physician or to pursue a medical-legal evaluation.

DEFENDANT DID NOT ESTABLISH ANY AFFIRMATIVE DEFENSE BY A PREPONDERANCE OF THE EVIDENCE

The party holding the affirmative on an issue bears the burden of proving it by a preponderance of the evidence.[fn] The Petition inaccurately states that Defendant's are not required to provide case law to support a statutory defense. Defendant holds the affirmative on affirmative defenses and must first prove that an affirmative defense exists and that it is applicable to the facts of a case. Defendant asserted a "Statute of Limitation expired for permanent disability" in the Pre-Trial Conference Statement and at trial. Prior to and at trial Defendant did not assert any actual statute to support this defense nor did it reference any case law that indicates one exists. The Petition asserts for the first time that Labor Code Section 5410 provides the statutory basis.

. . .

In this case the facts are that Applicant's date of injury was January 13, 2018 and the Application for Adjudication of Claim was filed on November 4, 2022. By Defendant's argument, Applicant would have until January 13, 2023 to request additional benefits. Applicant's Attorney filed the first Declaration of readiness to Proceed to Expedited Hearing on November 28, 2022 and a second declaration of Readiness to Proceed to Expedited Hearing on January 6, 2023. Defendant did not assert Applicant's claim was barred based on an untimely filing of the Application for Adjudication of Claim. Defendant is still currently providing treatment with Dr. Shin as the Primary Treating Physician.

. . .

Labor Code 5410 does not bar the Application for benefits as it was filed within five years of the date of injury. . . . Defendant's claim that there is non-statutory Statute of Limitation on permanent disability is not supported by any law or facts of this case.

. . .

CONCLUSION

Applicant's credible testimony and the medical records on file clearly establish Applicant was involved in an accepted industrial injury that resulted in a cervical fracture at his C-6 level. The cervical fracture is being treated by Dr. Carl Shin as the Primary Treating Physician and has been evaluated by Dr. Ryan as the Qualified Medical Evaluator. There is no evidence of any other event or injury that could cause a fracture of Applicant's cervical spine. Dr. Ryan gave her expert medical opinion that Applicant's cervical fracture resulted in 11% WPI that adjusts to 18% permanent partial disability. (OOD Pg. 3- 5) Neither Defendant's failure to properly file exhibits nor Defendant's filing of an Application against the wrong entity justify further delaying the Permanent Disability Indemnity payments to Applicant.

There is no Statute of Limitation on permanent disability as asserted by Defendant. There is no evidence supporting consolidation of cases. Defendant was not denied due process based on its failure to file exhibits. Dr. Ryan's reporting is substantial evidence on the issues of permanent disability and apportionment. Therefore, the Petition should be denied.
(Report, pp. 2-5.)

DISCUSSION

I.

Former Labor Code section 5909[3] provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date

[3] Unless otherwise stated, all further statutory references are to the Labor Code.

of filing. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part:

> (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 February 24, 2025, and 60 days from the date of transmission is April 25, 2025. This decision is issued by April 25, 2025, 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 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 February 24, 2025, and the case was transmitted to the Appeals Board on February 24, 2025. 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 February 24, 2025.

II.

Defendant first contends that the WCJ erroneously failed to consolidate case number ADJ16909714 with case number ADJ20101471, which was filed by defendant.

As stated in the Report, the record lacks evidence that applicant has been employed by the entity against which defendant asserted the claim in ADJ20101471 or was injured at any time after January 13, 2018. It follows that the record is without grounds for consolidation of the cases.

Defendant next contends that the WCJ erroneously found that applicant sustained injury to the cervical spine resulting in permanent disability of 18%.

As stated in the Report, PQME Dr. Ryan adequately explained the grounds on which she found that applicant sustained a fracture of the C-6 vertebrae injury and rated the resulting disability. It follows that the argument that the record lacked substantial medical evidence to support the finding that applicant sustained injury to the cervical spine is without merit.

Defendant next contends that the WCJ erroneously declined to admit exhibits in evidence.

As stated in the Report, defendant failed to timely file exhibits for trial and failed to establish grounds for applicant's deposition transcript to be admitted in evidence notwithstanding that he appeared as a witness at trial. The record thus lacks grounds to conclude that defendant was denied notice and an opportunity to be heard. It follows that the argument that the WCJ failed to admit defendant's exhibits is without support.

Lastly, defendant argues that the WCJ erroneously failed to find that applicant's claim is untimely under Labor Code section 5410.

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. (§ 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." (§ 3202.5.)

As stated in the Report, defendant asserted at trial that the application for adjudication was untimely because it sought permanent disability benefits. When the WCJ requested that defendant provide authority to establish its right to assert this defense, defendant responded that it knew of no code section or legal basis for the defense. (Minutes of Hearing and Summary of Evidence, January 23, 2025, pp. 2:20-3:18.)

Because defendant did not raise at trial the issue of whether the application for adjudication was untimely under section 5410, the issue was waived. (See *U.S. Auto Stores v. Workers' Comp. Appeals Bd*. (*Brenner*) (1971) 4 Cal.3d 469 [36 Cal.Comp.Cases 173]; *Los Angeles Unified Sch. Dist. v Workers' Comp. Appeals Bd*. (*Henry*) (2001) 66 Cal.Comp.Cases 1220 (writ den.); *Hollingsworth v. Workers' Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 715 (writ den.).)

Nevertheless, we will address the record evidence on the issue of whether the application for adjudication may be barred as untimely by applicable law.

Section 5405 provides:

> The period within which proceedings may be commenced for the collection of the benefits provided by Article 2 (commencing with Section 4600) or Article 3 (commencing with Section 4650), or both, of Chapter 2 of Part 2 is one year from any of the following:
>
> (a) The date of injury.
>
> (b) The expiration of any period covered by payment under Article 3 (commencing with Section 4650) of Chapter 2 of Part 2.
>
> (c) The last date on which any benefits provided for in Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 were furnished.
> (§ 5405.)1

Further, section 5410 provides:

> Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Section 5407.
> (§ 5410.)

Under *McDaniel v. Workers' Comp. Appeals Bd*., (1990) 218 Cal.App.3d 1011 [55 Cal.Comp.Cases 72]:

> If an employer or its insurance carrier, knowing of a potential claim, furnishes medical treatment or advances sums for a purpose bearing a clear relationship to an industrial injury, the one-year limitation under section 5405, subdivision (a), is tolled. (citations) Once the one-year limitation is tolled by the voluntary furnishing of benefits, the five-year rule of section 5410 is in turn triggered. (citation) In other words, after the voluntary furnishing of benefits, including medical treatment, section 5410 extends the period within which an original proceeding may be instituted from one to five years. (citations).
> (*McDaniel*, *supra*, at pp. 1016 - 1017 (citations omitted); see also *Standard Rectifier Corp. v. Workmen's Comp. Appeals Bd.* (*Whiddon*) (1966) 65 Cal.2d. 287 [31 Cal.Comp.Cases 340]; *Sanchez v. Workers' Comp. Appeals Bd*. (1990) 217 Cal.App.3d 346 [55 Cal.Comp.Cases 179].)

Here, defendant accepted applicant's claim and provided him with medical treatment—and continues to provide such treatment. (Report, pp. 4-5.) Therefore, there was no need to file an application invoking the jurisdiction of the Appeals Board within the one-year period provided by section 5405, and the statutory period thereunder is tolled.

Furthermore, pursuant to section 5410, applicant maintained the right to institute proceedings for "new and further disability." Once defendant provided applicant with workers' compensation benefits such as medical treatment, the provisions of section 5410 were activated, allowing applicant up to five years from the date of injury to institute proceedings for the collection of benefits.

Here, as stated in the Report, the application was filed within the five-year period provided by section 5410.

Hence, we conclude that had defendant not waived its statute of limitations defense, it would have failed meet its burden of proving that the claim was untimely.

Accordingly, we will deny the Petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact, Awards and Orders issued on February 10, 2025 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 25, 2025

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

DAVID REYNOSO
VELILLA LAW FIRM
COLEMAN, CHAVEZ & ASSOCIATES, LLP

SRO/*bp*

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