WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JEANETTE LIRA, *Applicant*

vs.

**COTTAGE HEALTH SYSTEM, PSI, administered by GALLAGHER BASSETT;
SANSUM SANTA BARBARA MEDICAL;
ZURICH AMERICAN INSURANCE COMPANY, *Defendants***

Adjudication Numbers: ADJ9198656; ADJ9192994
Santa Barbara District Office

OPINION AND ORDERS DENYING PETITION FOR RECONSIDERATION; GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendants Cottage Health System, permissibly self-insured (Cottage Health) and Zurich American Insurance Company (Zurich), both seek reconsideration of the April 9, 2025 Joint Findings and Award (F&A), wherein the workers' compensation administrative law judge (PWCJ) found that applicant, while employed as a phlebotomist from March 19, 2001 to January 3, 2011, sustained industrial injury to her bilateral upper extremities, neck gastrointestinal system and in the form of complex regional pain syndrome (CRPS). The PWCJ found in relevant part that the date of injury pursuant to Labor Code[1] section 5412 was January 6, 2007, and that the period of liability under section 5500.5 was January 6, 2006 to January 6, 2007. The PWCJ issued an award assessing liability as against Cottage Health.

Cottage Health contends that based on the Findings of Fact, the appropriate employer during the period of liability was Sansum Santa Barbara Medical, insured by Zurich.

Zurich contends that applicant sustained more than one injury, and in the alternative, that if there was but a single injury, compensation is barred by the statute of limitations.

We have received an answer from applicant. The PWCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that Cottage Health's

[1] All further references are to the Labor Code unless otherwise noted.

Petition be granted to amend the award to reflect Zurich as the liable party, and that we deny Zurich's petition.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the PWCJ with respect thereto. Based on our review of the record, and for the reasons stated in the PWCJ's report and Opinion on Decision, both of which we adopt and incorporate, we will grant reconsideration, amend the PWCJ's decision as recommended in the report, and otherwise affirm the decision of April 9, 2025.

Former 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, 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 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 May 7, 2025, and 60 days from the date of transmission is Sunday, July 6, 2025. The next business day that is 60 days from the date of transmission is July 7, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on July 7, 2025, so that we have timely acted on the petition as required by section 5909(a).

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 May 7, 2025, and the case was transmitted to the Appeals Board on May 7, 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 May 7, 2025.

Cottage Health avers the PWCJ inadvertently listed it as the employer and thus the liable party rather than Sansum San Barbara Medical, insured by Zurich American Insurance Company. The PWCJ determined the period of liability under section 5500.5 to be January 6, 2006 to January 6, 2007. (Finding of Fact No. 3.) During this interval, applicant was employed solely by Sansum Santa Barbara Medical. (Minutes of Hearing and Summary of Evidence, dated June 19, 2024, at p. 6:18.) We therefore concur with the PWCJ's recommendation as set forth in the Report that we amend the Award for evident clerical error. Consequently, we will grant Cottage Health's petition and amend the F&A to reflect that Sansum Santa Barbara Medical, insured by Zurich American Insurance Company is liable for the claimed injury.

For its part, Zurich contends the evidentiary record supports the existence of two or more separate injuries. However, the issue of the nature and number of injuries was specifically raised by the parties and decided in our January 6, 2025 Opinion and Decision After Reconsideration (ODAR). Therein, we discussed the relevant legal and evidentiary standards for determining the nature and number of injuries sustained by applicant and agreed with the PWCJ that applicant sustained a single cumulative injury from March 19, 2001 to January 3, 2011. (ODAR, at pp. 5-8.)

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr,*

McClellan, Ingersoll, Thompson & Horn (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury AOE/COE, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd.* (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [210 Cal. Rptr. 3d 101, 81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.)

Here, as the PWCJ notes in the Report, our January 6, 2025 ODAR addressed and decided the issue of the nature and number of the injuries sustained by applicant, and no party timely sought reconsideration or appellate review of that decision. As such, our determination that applicant sustained a single cumulative injury is now final. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068 [65 Cal.Comp.Cases 650].)

To the extent that Zurich also now raises the running of the statute of limitations of section 5405 for the first time, we agree with the PWCJ's observation that the affirmative defense is not timely raised. (Lab. Code, § 5409 ["The running of the period of limitations prescribed by this chapter is an affirmative defense and operates to bar the remedy and not to extinguish the right of the employee. Such defense may be waived. Failure to present such defense prior to the submission of the cause for decision is a sufficient waiver."]; see also *Memorial Hospital Assoc. v. Workers' Comp. Appeals Bd.* (*Caldwell*) (1995) 60 Cal.Comp.Cases 779 (writ denied) [statute of limitations waived by failing to raise the defense at mandatory settlement conference]; *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1265 [54 Cal.Comp.Cases 145, 148]) [issue not raised at trial level is waived].) Even were this not the case, we observe that applicant continued to receive authorized medical treatment and indemnity through 2013 when she filed the instant applications. (See, e.g., Ex. 11, report of AME Chester Hasday, M.D., dated November 11, 2019, at pp. 4, 57.) As such, we find Zurich's arguments regarding the applicability of the statute of limitations to be unpersuasive. (See Lab. Code, § 5405(b)-(c).)

Accordingly, we will deny Zurich's petition in its entirety but grant Cottage Health's petition and amend the Award to reflect that the liable party is Sansum Santa Barbara Medical, insured by Zurich American Insurance Company.

For the foregoing reasons,

IT IS ORDERED that Zurich American Insurance Company's Petition for Reconsideration is **DENIED**.

IT IS FURTHER ORDERED that Cottage Health System's Petition for Reconsideration of the decision of April 9, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of April 9, 2025 is **AFFIRMED** except that it is **AMENDED** as follows:

JOINT AWARD

This Award is made in favor of **Jeanette Lira** against **Sansum Santa Barbara Medical**, insured by **Zurich American Insurance Company**, as follows:

a. Date of injury as provided in Finding number 2;

b. Defendant liability as provided in Finding number 3.

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

July 7, 2025

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

JEANETTE LIRA
RANDMAA & BUIE
MAVREDAKIS PHILLIPS
SINGERMAN LAW

SAR/abs

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

JOINT REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION AND NOTICE OF TRANSMITTAL

FACTS

Applicant was hired by Sansum in or about March 19, 2001 to perform the duties of a full time (40 hours per week) Lab Assistant II, working at the Pacific Diagnostic Lab facility (Sansum -PDL). After receiving her Phlebotomy Technician certificate, applicant was promoted to Phlebotomy Technician II.

On July 21, 2003, applicant received treatment from Dr. Ruth for the condition of carpal tunnel syndrome. Applicant was found to be temporarily partially disabled (TPD) for the right elbow.

Surgery was performed on January 26, 2007 to the right elbow and radial wrist. Applicant was taken off of work following the surgery, was subsequently found TPD, and was returned to part time work.

Over time, Dr. Ruth returned applicant to full-time work performing full work duties. Approximately seven (7) months later, Dr. Ruth opined applicant's work hours needed to be reduced, and then on January 15, 2009, found applicant to be temporarily totally disabled (TTD).

On January 26, 2009, the employer changed her status from a regular full-time employee to a per diem 8/40 employee due to the different work hours due to her industrial injury.

Applicant underwent right thumb CMC joint and a radial wrist revision surgery (de Quervain's release revision) on February 13, 2009. Again, she was TTD and then returned to full duty work without restriction.

Dr. Ruth found her permanent and stationary (P&S) and provided PD for the thumb only.

In 2010 applicant's condition worsened and was now experiencing problems with her neck and upper extremities.

Applicant initially filed a claim for workers' compensation benefits against Sansum Santa Barbara Medical (Sansum).

Sansum PDL was sold to Cottage Health System (Cottage). As a result of the sale, applicant's employment ended with Sansum on July 31, 2009, and began with Cottage on August 1, 2009. She was still employed as a full-time (40-hour work week) phlebotomist at an hourly rate of $20.00 per hour.

In 2011, applicant returned to Dr. Ruth due to increased pain and complaints to her bilateral hands, wrists, and upper extremities. Based on his evaluation and applicant's complaints, Dr. Ruth reduced her work hours to four (4) hours per day. Then, Dr. Ruth took applicant permanently off work on April 28, 2011. Applicant has not returned to work.

Since her last day at work, applicant has undergone eight (8) surgeries. Six (6) right medical nerve surgeries, and a cervical spine fusion.

On January 20, 2017, Robert Hullander, M.D., in the capacity of a secondary treating physician, opined applicant suffers from a complex regional pain syndrome of the right upper limb.

Chester Hasday, M.D., was selected by all parties to perform an evaluation and report as an Agreed Medical Examiner (AME). Dr. Hasday has authored six (6) medical reports and has been deposed on three (3) occasions.

An Opinion on Decision and Findings of Fact and Award were served providing, inter alia, there was only one continuous trauma injury (that the continuous trauma injuries were inextricably intertwined), applicant's earning capacity was $800.00 per week, and finding applicant to be permanently totally disabled (100%), without apportionment.

Sansum filed a Petition for Reconsideration arguing the WCJ issued two (2) decisions finding applicant to be 100% PTD.

Cottage filed a Petition for Reconsideration contending there were two continuous trauma periods and not just one, the injuries were not found by any doctor to be inextricably intertwined, and the WCJ erred in finding $800.00 to be applicant's average weekly wage.

The WCAB issued its own Joint Findings of Fact which affirmed the WCJ's decision on permanent disability, apportionment, etc., including the finding of one continuous trauma period.

The WCAB remanded the matter back to the WCJ solely to determine the date of injury pursuant to Labor Code § 5412 and Labor Code § 5500.5.

A Findings of Fact and Award issued on April 9, 2025, opined the date of injury pursuant to Labor Code § 5412 was January 6, 2007, with the last year of injurious exposure pursuant to Labor Code § 5500.5 was January 6, 2006.

DISCUSSION

It should be noted that the Opinion on Decision clearly states the basis for each issue decided. All medical reporting, transcript and documentary evidence relied upon is clearly identified. However, to the extent that the Opinion on Decision may seem skeletal, pursuant to Smales v. WCAB (1980) 45 CCC 1026, this Report and Recommendation cures those defects.

Defendant Gallagher Basset wrote a letter to the WCJ advising him of the incorrect defendant having been identified in the Findings of Fact and Award. No action was taken by the WCJ, and then Defendant Gallagher Bassett filed a formal Petition for Reconsideration averring the same point.

First, there are two continuous trauma periods; and secondly, the claim is barred by the Statute of Limitations.

First of all, there was a clerical error by the WCJ; for he wrote in his Findings of Fact and Award the party responsible was Cottage Health Systems, PSI adjusted by Gallagher Bassett…" It should read, "Sansum Santa Barbara Medical, Zurich American Insurance Company."

Either the WCAB should amend the WCJ's decision to reflect the correct defendant, or remand it back for the WCJ to issue it.

As to defendant, Zurich's, contentions, first of all, Zurich did not file a Petition for Reconsideration or file a writ with the appellate court to challenge the WCAB's decision of January 6, 2025. This is a final decision and subject to be disturbed except for a lack of jurisdiction, which was not alleged here. There is no reason to go back and re-litigate this issue.

The Labor Code § 5412 date of injury was found to be January 6, 2007. This was based on surgery having been performed on January 26, 2007 to the right elbow and radial wrist by Dr. Ruth. Applicant was taken off work following the surgery, was subsequently found TPD, and was returned to part time work. On January 6, 2007, Dr. Ruth performed surgery on applicant's right upper extremity and elbow.

Based on the entry note of January 6, 2007, immediately hereinabove, together with Dr. Hasday's summary of applicant advising him she was TTD and underwent surgery, constitutes the two prongs of applicant's knowledge of the industrial relation of her injury together with disability, with her receiving the payment of temporary disability.

Applicant's knowledge from Dr. Ruth and Dr. Hasday that it was industrially related coupled with the temporary total disability and temporary partial disability, satisfy the two prongs necessary to establish the date of injury under Labor Code § 5412.

The fact that other conditions, treatment, and/or surgical intervention did not arise until later does not change the date of injury.

Secondly, Zurich raises a Statute of Limitations defense. This is an affirmative defense that was never raised at any time prior to this instant Petition for Reconsideration. Further, the date of injury was determined by the WCJ on April 9, 2025. The claim is not barred.

RECOMMENDATION

For the reasons stated, it is respectfully recommended that Defendant Zurich's Petition for Reconsideration be denied based on the arguments and merits addressed herein and an amended Findings of Fact and Award issue reflecting defendant Zurich as being the responsible party provided, and not Gallagher Bassett.

DATE: May 7, 2025

Scott J. Seiden
Presiding Workers' Compensation
Administrative Law Judge

JOINT OPINION ON DECISION

STIPULATIONS

The stipulations of the parties as set forth in the Minutes of Hearing are accepted as fact.

PROCEDURAL HISTORY

Applicant was employed initially by Sansum Santa Barbara Medical during the period of March 19, 2001 through July 17, 2006, and was employed by Cottage Health System during the period of August 1, 2009 through January 3, 2011. Two separate continuous trauma claim applications were filed.

Following trial, an F&A issued inter alia finding applicant to have sustained one continuous trauma injury and is (100%) permanently totally disabled (PTD).

Following petitions for reconsideration having been filed, the WCAB upheld the WCJ's determinations as to both there only being one long continuous trauma and applicant was PTD.

However, the WCAB remanded the matter back for the WCJ to determine what the date of injury was pursuant to Labor Code § 5412 and the last year of injurious exposure pursuant to Labor Code § 5500.5.

LABOR CODE § 5412

Labor Code § 5412 provides,

> "The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment."

As detailed by AME Chester Hasday, M.D.'s November 25, 2019 medical reporting, applicant's primary private medical provider for a great many years was Sansum Health, with the first records provided dating back to 1981 (starting on page 11).

On page 3 of Dr. Hasday' s report, it states,

> "She recalls that she worked until early 2007, when she was placed on Temporary Total Disability to undergo right arm surgery."

This was not solicited as testimony at the time of trial, nor was it refuted.

Of particular note are the entries staring on page 20, at the bottom documenting right elbow pain. Of particular note is the entry dated 6/2/2006 wherein it states,

> "Patient sustained injuries to epicondylitis elbow due to repetitive motions."

The records dated July 17, 2006 provide,

> "She developed right lateral elbow pain as a resulted of her cumulative repetitive work activities. She began experiencing some symptoms in 8/2005." In that same entry at the bottom it reflects, "APPORTIONMENT: Her injury was 100% apportioned to industrial causes. WS: Temporarily partially disabled."

It is unknown if applicant was working full time or receiving any workers compensation benefits as she was temporarily partially disabled.

However, on 11/06/06 it was noted she was treating with Dr. Ruth, and he indicated she should be on modified work with restrictions. She may work 6 hours a day, using a butterfly needle.

Again, no evidence was submitted if applicant was working modified hours and received disability monies as a result of the industrial injury.

On January 6, 2007, Dr. Ruth performed surgery on applicant's right upper extremity and elbow.

Based on the entry note of January 6, 2007, immediately hereinabove, together with Dr. Hasday's summary of applicant advising him she was TTD and underwent surgery, constitutes the two prongs of applicant's knowledge of the industrial relation of her injury together with disability, with her receiving the payment of temporary disability.

Therefore, pursuant to Labor Code § 5412, the date of injury is January 6, 2007.

LABOR CODE § 5500.5

Labor Code § 5505.5 (a) provides, "Except as otherwise provided in Section 5500.6, liability for occupational disease or cumulative injury claims filed or asserted on or after January 1, 1978, shall be limited to those employers who employed the employee during a period of four years immediately preceding either the date of injury, as determined pursuant to Section 5412, or the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury, whichever occurs first. Commencing January 1, 1979, and thereafter on the first day of January for each of the next two years, the liability period for occupational disease or cumulative injury shall be decreased by one year so that liability is limited in the following manner."

As stated hereinabove, applicant sustained one continuous trauma claim from 2001 – 2011. Her last day of industrial exposure was 2010 – 2011.

However, as found hereinabove, since the date of injury pursuant to Labor Code § 5412 was found to be January 6, 2007, then the liability for the injury is limited to any employer during the period of January 6, 2006 through January 6, 2007.

DATE: April 9, 2025

Scott J. Seiden
Presiding Workers' Compensation
Administrative Law Judge