WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

JORGE ARMANDO ALVAREZ GONZALEZ, *Applicant*

vs.

TW SERVICES, INC.; TECHNOLOGY INSURANCE COMPANY, INC., *Defendants*

Adjudication Number: ADJ20023103
Oakland District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant Technology Insurance Company seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award[1] of September 19, 2025, wherein it was found that "[while] employed during the period of October 1, 2023 to October 1, 2024, as a Lumper, occupational group number deferred, by TW Services, Inc., [applicant] sustained injury arising out of and in the course of employment to abdomen, groin and hernia." It was also found that applicant's claim was not barred as a post-termination claim pursuant to Labor Code section 3600(a)(10) and that the "applicant is not barred from benefits per Labor Code section 3700."

Although defendant's contentions are not a model of clarity, it appears that defendant contends that the WCJ erred in failing to make any findings regarding the "date of injury." It appears that defendant also claims that the WCJ erred in finding industrial causation. We have not received an answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant the defendant's Petition, rescind the WCJ's decision, and return this matter to the trial level for further development of the record, proceedings, and decision.

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[1] Despite being captioned as a Findings and Award, the decision did not contain an Award.

Preliminarily, we note that 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.
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> (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 October 24, 2025 and 60 days from the date of transmission is Tuesday, December 23, 2025. This decision is issued by or on December 23, 2025, so 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 October 24, 2025, and the case was transmitted to the Appeals Board on October 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 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 October 24, 2025.

Turning to the merits, the decision in this case was based on the applicant's testimony at trial and on January 2021 hospital records documenting surgery for a hiatal hernia and a left inguinal hernia. Applicant testified at trial that his job duties included unloading items from trailers and trucks onto a pallet and that he would sometimes have to lift items up to 80 pounds. He testified that he would unload up to 60 trucks per day. (Minutes of Hearing and Summary of Evidence of July 23, 2025 trial.) However, besides testifying that he underwent surgery in 2020 or 2021, which was when he first sought treatment, and that he was experiencing symptoms for eight to ten months before seeking treatment, applicant did not offer any specifics as to when he experienced injurious exposure, or the extent that this continued after his surgery.

The record also contained hospital records from San Joaquin General Hospital showing that applicant received treatment at the emergency room on January 26, 2021 for bacterial infection as well as for hernias, and underwent surgery for the hernias on January 27, 2021, before being discharged on January 29, 2021. However, these records did not contain any discussion of the history of the condition or of any possible industrial contribution.

Although we appreciate that applicant worked a physically demanding job and that lay understanding of hernias is that they are precipitated by physical stress, a finding of an industrially caused cumulative injury in this matter must be based on competent expert evidence.

All findings of the WCAB must be based on substantial evidence. (*Le Vesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 [Appeals Bd. en banc].) As the Court of Appeal wrote in *E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687], "In order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. [Citation.] Also, a medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. [Citation.] Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. [Citation.]"

"Expert testimony is necessary 'where the truth is occult and can be found only by resorting to the sciences.' [Citation.]" (*Peter Kiewit Sons v. Ind. Acc. Com.* (*McLaughlin*) (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].) A decision must be based on legally competent evidence, not on the WCAB's lay belief regarding matters requiring an expert opinion. (*City & County of San Francisco v. Ind. Acc. Comm. (Murdock)* (1953) 117 Cal.App.2d 455, 460 [18 Cal.Comp.Cases 103]; *Bstanding v. Workers' Comp. Appeals Bd.* (1977) 68 Cal.App.3d 988, 996 [42 Cal.Comp.Cases 114].)

Additionally, in order to ascribe liability to the correct carriers and/or employers, the liability period of the cumulative injury must be established pursuant to Labor Code section 5500.5. Labor Code section 5500.5(a) states, "liability for occupational disease or cumulative injury claims … shall be limited to those employers who employed the employee during a period of [one year] 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." Thus, in order to evaluate the section 5500.5 liability period, a history must be taken to detail any periods of industrial exposure. Additionally, since the section 5500.5 period is based on the earlier of the cessation of industrial exposure and the Labor Code section 5412 date of injury, the section 5412 date of injury must be established.

Labor Code section 5412 establishes the date of injury in cumulative injury cases as "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." (Lab. Code, § 5412.) "A 'disability' under the Workmen's Compensation Law connotes an inability to work." (*Herrera v. Workmen's Comp. Appeals Bd.* (1969) 71 Cal.2d 254, 257 [34 Cal.Comp.Cases 382].) In *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998 [69 Cal.Comp.Cases 579], the Court of Appeal made clear that neither medical treatment nor modified work restrictions without wage loss, in and of themselves, are sufficient to constitute "disability" for purposes of Labor Code section 5412. As explained in *Rodarte*, Labor Code section 5412 requires compensable disability, either temporary or permanent. Permanent disability is not compensable until it is ratable. Except in the case of insidious, progressive diseases, a disability is not ratable until it is permanent and stationary.

(*Chavira v. Workers' Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 473 [56 Cal.Comp.Cases 631].)

With regard to the date that an injured worker "knew, or in the exercise of reasonable diligence, should have known" that a disability was industrial, although every case must be determined on its own facts, in *City of Fresno v. Workers' Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 472 [50 Cal.Comp.Cases 53], the Court of Appeal advised, "An employee clearly may be held to be aware that his or her disability was caused by the employment when so advised by a physician. Generally, until he receives such medical advice, he is not chargeable with knowledge of his condition and its relation to his work…"

It appears that in this case, the WCJ accepted the pled dates of exposure without engaging the analysis outlined above. We note that, in the Petition, defendant also speaks of the "time of injury." However, the concept of "time of injury" may be distinct from the "date of injury" depending on the context. (See generally *Van Voorhis v. Workmen's Comp. Appeals Bd.* (1974) 37 Cal.App.3d 81 [39 Cal.Comp.Cases 81].)

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue. The WCAB has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that mandate, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further development of the record, analysis and decision on all issues, including the issues outlined above. We express no opinion on the ultimate resolution of this matter.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings and Award of September 19, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of September 19, 2025 is hereby **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLING, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 23, 2025

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

JORGE ARMANDO GONZALEZ ALVAREZ
CHRISTINA LOPEZ
RICHARD GREEN

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