WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JUAN JOSE MARTINEZ, *Applicant*

vs.

LOS ANGELES DEPARTMENT OF WATER AND POWER, permissibly self-insured, *Defendants*

Adjudication Numbers: ADJ18722627, ADJ9073360
Long Beach District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the "Findings, Awards, and Orders" (F&A) issued on July 14, 2025. The workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant sustained a cumulative injury while employed by defendant as a rough carpenter/form builder, occupational group number 481, during the period of January 4, 2018 through January 4, 2019 to his right wrist, back, right knee, and right ankle. The WCJ found that the claim was not barred by the statute of limitations outlined in Labor Code section 5405[1], that the reports of panel qualified medical evaluator (PQME) Jonathan Frank, M.D., were substantial evidence, and that defendant's exhibit I was not admissible. The WCJ found that applicant's injury caused permanent disability of 44% after apportionment payable at $290.00 per week starting January 3, 2021 and caused the need for future medical treatment.

Defendant argues in pertinent part that the date of injury pursuant to section 5412 here is January 11, 2019 when applicant first suffered disability and knew or should have known that his employment was a cause of his injury; that the finding of fact should not have included a finding for the full back, but rather just the low back; that the evidence does not support a finding that the

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

occupational group number is 481; that the evidence does not support a starting date for permanent disability on January 3, 2021; and that Defense Exhibit I is admissible.

We did not receive an answer from applicant. The WCJ issued a Report and Recommendation (Report) recommending a grant of the Petition for the limited purpose of amending the Findings of Fact to list "low back" instead of "back."

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and as discussed below, we will grant the Petition for Reconsideration, amend the F&A to find that applicant sustained injury to his low back and remove the date that permanent disability payments begin, and otherwise affirm the decision of July 14, 2025.

FACTS

As set forth in WCJ's Report:

> The applicant worked as a carpenter building forms for concrete for various structures and related work. He did this type of work for LADWP from April 22, 2014, through January 4, 2018 (Ex. C p. 7-8) and for prior employers, doing that type of work for around 30 years total (Minutes p. 5). LADWP was his employer through the full final year of industrial exposure, which is the claimed cumulative trauma period and appropriate under Labor Code §5500.5.
>
> He testified that aches, pains, bruises and abrasions were a constant in that type of work and reporting all of this regular discomfort would put his job in jeopardy (Minutes p. 5 l. 10-14). He also described a day in 2016 when he developed low back pain late in the workday that was intense enough that he stopped at the Emergency Room on the way home, but he could not recall any specific occurrence during that day that caused the pain. He had some back pain most days, usually worse at the end of the day, but did not miss any time from work due to back pain until he left work in January 2019, to have back surgery (Minutes p. 5 l. 16 – p. 6 l. 2).
>
> He left work at LADWP to have back surgery in January 2019 and did not return to work after that. He subsequently had knee surgery, as well. All of his treatment was through Kaiser.
>
> He had a prior specific injury claim, when he fell from a ladder and broke his heel and ankle. That was his only other Workers' Compensation claim (Minutes p. 7 l.6-7, p. 8 l. 6-7, 19-22).
>
> He testified that he did not realize he could suffer an injury through cumulative trauma and could file a claim for that type of injury until he saw an

advertisement in late 2023 or early 2024 (Minutes p. 7 l. 21 – p. 8 l. 2). He filed his claim within about a month after he saw the advertisement.

(Report, p. 2)

At trial, defendant sought to have Exhibit I, and Insurance Services Office (ISO) report dated June 26, 2024 admitted. Applicant objected as "lacking foundation or not authenticated." (MOH/SOE, 05/19/2025, 4:1-3).

DISCUSSION

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:

> (2) 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 August 15, 2025 and 60 days from the date of transmission is October 14, 2025. This decision is issued by or on October 14, 2025 so that we have timely acted on the petition as required by section 5909(a).

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 15, 2025,[2] and the case was transmitted to the Appeals Board on August 15, 2025. Service of the Report and transmission

[2] We note that when the Report was served on August 15, 2025, the WCJ failed to serve the injured worker. We will use the original date of the Report with respect to our discussion of section 5909.

of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on August 15, 2025.

II

The running of the statute of limitations is an affirmative defense, and the burden of proving it is on the party opposing the claim. (Lab. Code, § 5409; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Martin*) (1985) 39 Cal.3d 57, 67, fn. 8 [50 Cal.Comp.Cases 411].) The burden is on defendant to show when the statute of limitations began to run, "starting from any and all three points designated [in Labor Code section 5405]." (*Colonial Ins. Co. v. Industrial Acc. Com.* (*Nickles*) (1945) 27 Cal.2d 437, 441 [10 Cal.Comp.Cases 321].) The three points designated in section 5405 are date of injury (Lab. Code, § 5405, subd. (a)); the last payment of disability indemnity (Lab. Code, § 5405, subd. (b)); and the last date on which medical treatment benefits were furnished (Lab. Code, § 5405, subd. (c).) In this case, it appears that the applicant was not provided with disability indemnity or medical treatment. Thus, the relevant date for statute of limitations purposes is the date of injury.

The date of injury for a cumulative injury as defined by section 5412 is the 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." Whether an employee knew or should have known their disability was industrially caused is a question of fact. (*City of Fresno v. Workers' Comp. Appeals Bd*. (*Johnson*) (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53]; *Nielsen v. Workers' Comp.* Appeals Bd. (1985) 164 Cal.App.3d 918, 927 [50 Cal.Comp.Cases 104]; *Chambers v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal.2d 556, 559 [33 Cal.Comp.Cases 722].)

For the purposes of section 5412, disability is either temporary or permanent. (*State Compensation Insurance Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (2004) 119 Cal.App.4th 998, 1002-1004, 1005-1006 [69 Cal.Comp.Cases 579]; *Chavira v. Workers' Comp. Appeals Bd*. (1991) 253 Cal.App.3d 463, 474 [56 Cal.Comp.Cases 631].) Disability has been defined as "an impairment of bodily functions which results in the impairment of earnings capacity." (*J.T. Thorp v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 327, 336 [49 Cal.Comp.Cases 224].)

An employer has the burden of proving that an employee knew or should have known that

their disability was industrially caused. (*Johnson, supra*, at p. 471, citing *Chambers*, *supra*, 69 Cal. 2d at p. 559.) In general, an employee is not charged with knowledge that their disability is job-related without medical evidence to that effect. (*Johnson*, *supra*, at p. 473; *Newton v. Workers' Comp. Appeals Bd.* (1993) 17 Cal.App.4th 147, 156, fn. 16 [58 Cal.Comp.Cases 395].) This burden is not sustained merely by a showing that the employee knew he had some symptoms. (*Johnson*, *supra*, at p. 471.) This is because "the medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters." (*Peter Kiewit Sons v. Industrial Acci. Com.* (*McLaughlin*) (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188].)

Defendant contends, "applicant had temporary disability in the course of receiving treatment for his orthopedic injuries and specifically related to the low back surgery in January 2019." (Petition, 5:14-16). Based on the record, we agree with the WCJ that this is likely the first date of compensable disability for the purposes of section 5412.

With respect to the knowledge requirement, defendant contends that applicant knew or should have known that the injury was industrial because his symptoms came on at work, he knew his job was strenuous, and he received work restrictions and stopped working, and because of his prior workers' compensation experience. (Petition, 7:18-27).

Like the WCJ, we are not persuaded that applicant had the requisite knowledge sufficient to commence the running of the statute of limitations. The first *medical opinion* in the record finding an industrial injury is the report of Dr. Iseke dated February 9, 2024. (Joint 1, p. 41). While applicant may have noticed increasing aches and pains, we also observe that an employee's suspicion that an injury is work-related is typically insufficient to establish the date of injury on a cumulative injury without medical advice. (*Johnson*, *supra*, 163 Cal.App.3d at p. 473.) Thus, the record does not contain sufficient evidence to establish that applicant was informed that his work caused his injury. (See *County of San Bernardino v. Workers' Comp. Appeals Bd.* (*Nelson-Watkins*) (2018) 83 Cal.Comp.Cases 1282, 1285-1286 (writ denied) [applicant's correlation of symptoms with work exposures insufficient to establish knowledge her condition was caused by employment]; *Hughes Aircraft Company v. Workers' Comp. Appeals Bd.* (*Zimmerman*) (1993) 58 Cal.Comp.Cases 220 (writ den.) [general medical advice that work stress was depleting applicant's immune system insufficient to confer knowledge for purposes of section 5412]; see also *Zenith Insurance Co. v. Workers' Comp. Appeals Bd.* (*Yanos*) (2010) 75 Cal.Comp.Cases 1303, 1305-1306 (writ denied) [statute of limitations does not begin to run prior to applicant's knowledge she had sustained a cumulative trauma and that

injury was work-related].)

Further, the fact that applicant had prior claims is irrelevant to determining knowledge for a separate cumulative claim. The record does not demonstrate that applicant possessed an understanding of the nature of a cumulative injury, or had the experience, background or training necessary to recognize a relationship between his work activities and a cumulative injury. (*Johnson, supra*, at p. 473; *Chambers v. Workers' Comp. Appeals Bd.*, *supra*, at p. 559). Defendant did not offer any evidence that applicant, who worked in a non-medical position, had any specialized training that would render him capable of having medical knowledge that his disability was caused by a cumulative injury.

As such, the date of injury pursuant to section 5412, is no earlier than the date that applicant saw the advertisement on television, which applicant's unrebutted testimony indicated was the beginning of 2024. (MOH/SOE, 8:20-22.) The WCJ found applicant's testimony to be fully credible and we have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id*.) Therefore, the claim is not barred by section 5405.

With respect to the start date for payment of permanent disability, since the issue of temporary disability was deferred, it was premature to determine the start date. Thus, we will amend Finding of Fact 3 to remove the January 3, 2021 start date. However, since defendant concedes that compensable temporary disability began following surgery in January of 2019, it is likely that temporary disability will be payable. As such, we recommend that defendant begin advancing permanent disability pursuant to its obligations in section 4650(b)(1) and (b)(2) accordingly.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of July 14, 2025is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of July 14, 2025 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

1. JUAN JOSE MARTINEZ, while employed during the period up to January 4, 2019 in Los Angeles, California, as a rough carpenter/form builder, Occupation Group Number 481, by LOS ANGELES DEPARTMENT OF WATER AND POWER, Permissibly Self-Insured and Self-Administered, sustained injury arising out of and occurring in the course of employment to his right wrist, **low back**, right knee and right ankle.

***

3. Applicant's injury caused permanent disability of 44% after apportionment, entitling applicant to 229 weeks of disability indemnity payable at the rate of $290.00 per week in the total sum of $66,410.00.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 14, 2025

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

JUAN JOSE MARTINEZ
ACUMEN LAW
BEACH CITIES LEGAL CENTER

TF/md

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

REPORT AND RECOMMENDATION OF THE WORKERS' COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION AND NOTICE OF TRANSMITTAL

I. INTRODUCTION

The primary issue at trial in this case was whether the applicant's claim was timely, as it was filed about five years after the end of the claimed cumulative trauma period, which was when the applicant was last employed by Los Angeles Department of Water and Power (LADWP). After considering the evidence submitted at trial, including the applicant's trial and deposition testimony, this WCJ found that the applicant reasonably did not know that he had suffered an injury from cumulative trauma from his work at LADWP, and that he filed his claim approximately a month after he learned that he might have suffered that type of injury, before he even had medical confirmation of the injury, so the filing was within the Statute of Limitations.

Defendant filed a timely Petition for Reconsideration ("Petition") disputing that finding, along with the finding of injury to "the back" (without qualification) instead of to the "low back" or "lumbar spine," the finding that the applicable Occupational Group Number is 481, that the start date for permanent disability is January 3, 2021, and the exclusion of Defendant's Exhibit I, which was stated to be an ISO report.

The recommendation is that the Petition for Reconsideration be denied except as to the finding regarding "the back." Although that was stated without qualification in the listing of body parts in the issues presented for trial (Minutes and Summary of Evidence, "Minutes," p. 2 l. 16), it would be appropriate based on the medical reports presented at trial to amend Finding of Fact 1 to state "low back" instead of just "back."

II. FACTS

The applicant worked as a carpenter building forms for concrete for various structures and related work. He did this type of work for LADWP from April 22, 2014, through January 4, 2018 (Ex. C p. 7-8) and for prior employers, doing that type of work for around 30 years total (Minutes p. 5). LADWP was his employer through the full final year of industrial exposure, which is the claimed cumulative trauma period and appropriate under Labor Code §5500.5.

He testified that aches, pains, bruises and abrasions were a constant in that type of work and reporting all of this regular discomfort would put his job in jeopardy (Minutes p. 5 l. 10-14). He also described a day in 2016 when he developed low back pain late in the work day that was intense enough that he stopped at the Emergency Room on the way home, but he could not recall any specific occurrence during that day that caused the pain. He had some back pain most days, usually worse at the end of the day, but did not miss any time from work due to back pain until he left work in January 2019, to have back surgery (Minutes p. 5 l. 16 – p. 6 l. 2).

He left work at LADWP to have back surgery in January 2019, and did not return to work after that. He subsequently had knee surgery, as well. All of his treatment was through Kaiser.

He had a prior specific injury claim, when he fell from a ladder and broke his heel and ankle. That was his only other Workers' Compensation claim (Minutes p. 7 l.6-7, p. 8 l. 6-7, 19-22).

He testified that he did not realize he could suffer an injury through cumulative trauma and could file a claim for that type of injury until he saw an advertisement in late 2023 or early 2024 (Minutes p. 7 l. 21 – p. 8 l. 2). He filed his claim within about a month after he saw the advertisement.

III.
DISCUSSION

A. The Applicant's Claim Should Not Be Barred by the Statute of Limitations

The applicant spent approximately thirty years working as a construction worker. There is no evidence in this proceeding that he has any type of medical training or other background that would give him medical knowledge or understanding of injury processes. While he had a prior Workers' Compensation case, it was for a specific injury (a fall from a ladder), and there is no indication that he was ever told in connection with that injury or at any other time through the end of his employment with LADWP, that he could suffer injury through cumulative trauma.

This WCJ found the applicant to be a credible witness during the trial, and that the level of sophistication shown in his testimony was consistent with his background. Review of his full deposition transcript (Ex. C) and the medical histories given by QME Dr. Jonathan Frank (Ex. Jt. 1 & Jt. 2) and treating doctor, Dr. Harold Iseke (Ex. A & B) showed that what he said on the stand was consistent with those sources. There were discrepancies, as one would reasonably expect from different accounts given at different times and responding to different questioners, but they were minor compared to the areas of consistency. If all of the accounts had been exactly the same, there would reasonably have been a question of whether he was speaking from a memorized script rather than from memory, but that was not a concern here. Regarding his account of learning about cumulative trauma injuries through an advertisement, which Defense Counsel says was given for the first time at trial, it does not appear that he was asked during his deposition for any details on what caused him to realize that he might have such a claim, so it is not surprising he did not mention it during the deposition. Similarly, there is nothing in the medical histories that indicates he was asked specifically about what caused him to think that he might have suffered cumulative trauma injury.

The applicant received his back treatment, including surgery, and his knee treatment through Kaiser (Minutes p. 7 l. 8-20). The only records from Kaiser that was submitted at trial were Exhibits G, a single page related to an episode of sciatica in 2016, and H, a single page that seemed to consist of parts of two different reports, neither of them complete enough to be helpful. There was no evidence submitted at trial showing that anyone at Kaiser discussed whether or not the applicant's job duties at LADWP caused him injury over time with him and, per his testimony, he did not treat anywhere else for those conditions.

> Whether an employee knew or should have known his disability was industrially caused is a question of fact….The burden of proving that the employee knew or should have known rests with the employer. This burden is not sustained merely by a showing that the employee knew he had some symptoms…The Labor Code is to be liberally construed for the protection of persons injured in the course of their employment…If statutes of limitation are subject to conflicting interpretations, one beneficial and the other detrimental to the employee, section 3202 requires that they be construed favorably to the employee.
> (*City of Fresno v. WCAB* (1985) 163 Cal.App.3d 467, 471; see also cited authorities)

The *Fresno* court considered a number of prior cases that weighed these factors, noting that in several cases, "the courts have concluded that until the applicant receives medical advice of the relationship between his disability and his employment the statute of limitations does not begin to run," and in at least one case the court "concluded that the applicant's belief that his disability was job related does not trigger the statute of limitations unless that belief was based on a medical opinion." (Id. 472-3). Based on all that they reviewed, the *Fresno* court stated:

> We glean from these authorities the rule that an applicant will not be charged with knowledge that his disability is job related without medical advice to that effect unless the nature of the disability and applicant's training, intelligence and qualifications are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability. (Id. 473)

Under the evidence presented here, the applicant worked with daily discomfort that he accepted as an inescapable part of his job but did not recognize as causing him actual injury and that did not cause him to lose any time from work (see, e.g., Minutes p. 4 l. 16 – p. 6 l. 2). He had apparently worked with that discomfort from the heavy nature of the work he was doing for all or most of the thirty years he did that kind of work. As noted above, there is no evidence that he had any medical knowledge or other expertise that would help him recognize for himself that, over time, this continuing discomfort was causing him cumulative trauma injury. There is no evidence that any of the doctors he saw for anything related to the body parts included in this claim discussed possible contribution of his work activities to conditions he developed in any of those areas until after his claim was filed. Injuries he had in the past, such as his past Workers' Compensation claim, were from discrete, identifiable incidents, i.e. specific injuries, and his testimony was consistent with an understanding that an injury required a connection to a specific, identifiable incident or action (see, e.g., Minutes p. 5 l. 18-19, p. 6 l. 2-3, 16-18, p. 8 l. 19-22).

The facts here are significantly different from those described in *Nielson v. WCAB* (1985) 164 Cal.App.3d 918, discussed in the Petition. There, the applicant did not have pain from doing the heavy work of his usual duties as a welder. He was engaged at the time of injury in an activity that was outside his usual job duties, disassembling and reassembling bottle racks, and he developed pain in his left leg after doing that work for about a week. He told his supervisor that he thought it was from kickboxing with a friend the previous weekend. He then called in sick to work because of increased pain in the leg and saw a doctor, telling him that it was either due to bending at work

or kickboxing with friends. He treated with a second doctor, then saw Dr. Lay, who did a CT scan, diagnosed nerve root impingement and told him it was caused by lifting at work (Id. 924-925).

Although Mr. Nielson testified that he thought from his first day off work that the condition was from working on the bottle racks, he did not actually make a claim or file the Application for more than a year after Dr. Lay confirmed that the condition was industrial (*Nielson*, 926). Procedurally, as the WCJ in that case had decided against the applicant on the Statute of Limitations issue and that decision was upheld by the Board, the Court of Appeal could only have overturned the decision if it found there was no substantial evidence to support it, a heavier burden than required to affirm it.

Unlike *Nielson*, Mr. Martinez did not develop unusual and persistent pain in a short period while working on an unusual project for his employer, he did not suspect that he might have sustained an industrial injury when he went off work in January, 2019, to have his back surgery, and no doctor advised him that he had suffered industrial injury until after he filed his Application. Under the factors discussed in *Fresno*, he reasonably did not know he suffered, or might have suffered, an industrial cumulative trauma injury until he learned about cumulative trauma injuries from the advertisement approximately a month before he filed his Application. Under these cases and for the reasons stated in the Opinion on Decision, his claim should not be barred by the statute of limitations.

The Petition includes several arguments related to this issue, but they all essentially are based on the defense position that the applicant should have known from the nature of his work and his various aches and pains while working that he had suffered cumulative trauma injury much earlier than he testified that he did. Some arguments include references to testimony the applicant gave in his deposition or at trial that he, at the time of the testimony, thought that different aspects of his work had caused him injury, but they do not take into account the fact that the applicant was testifying about his understanding and belief at the time of his testimony, after he had learned about cumulative trauma, had talked to attorneys and others about it might apply to his situation, and had also discussed it with doctors, not his understanding before all of that happened.

It should also be noted that the employer knew the nature of the applicant's ongoing job duties and also knew that he had back surgery in January 2019, and did not return to work after that. If the connection between his job duties and his back condition was as clear as claimed in the Petition, Defendant would most likely have served him with a DWC-1 form to start the statute of limitations running, but there is no evidence that they did so.

Based on the evidence submitted in this case, the applicant's claim should not be barred by the statute of limitations.

B. The Evidence Supports Injury to the Low Back

When the parties stated their issues for trial, they included the back as one of the disputed body parts, without any limitation (Minutes p. 2 Issue 2). The Petition raises the issue that the findings in the medical reports are of injury to the low back or lumbar spine, which is accurate. It would therefore be appropriate to amend Finding of Fact 1 by changing the word "back" to "low back."

C. The Occupational Group Number Should be 481

At trial, Applicant's Attorney asserted that the applicant should be classified as a "concrete form worker," which he said was Group Number 480. Defendant asserted that he should be classified as a "carpenter, Group Number 380" (Minutes p. 2). After evaluating the applicable Group Numbers, this WCJ determined that the one that best fit the description of the applicant's job duties as described in the medical histories and in his testimony was actually Group Number 381. This was largely because the specific job types that the current PDRS shows as within that Group specifically include "Form Builder" and "Carpenter, rough," both of which more closely match the applicant's job description than the other carpenter categories listed.

There is no listing in the PDRS for "concrete form worker." The only "carpenter" category in Group 480 is "carpenter helper," and the only jobs listed in that group related to concrete are "concrete mixer," "cementer, oilwell," "paving stone finisher," "cement mason," "cement sprayer, nozzle," "cement, vibrator" and "cement mason," none of which seem to be good matches for the applicant's actual job activities.

Considering the most applicable jobs listed in each of these Occupation Groups and comparing them to the applicant's job duties as shown by the evidence presented at trial, Group 481 was a better fit than either of the groups asserted by the parties. The Opinion on Decision discusses the job duties as shown in the evidence in more detail, and that full discussion will not be repeated here.

D. Exhibit I was Properly Excluded as Evidence

Exhibit I was identified on the Exhibit List as an ISO Report. It consists of four pages with no caption or other identifying information other than the statement "Search by CITY OF LOS ANGELES" at the top of the first and third pages. The first and third pages seem to be the initial pages of two-page documents, each related to a different claim, two claims total (not three as stated in the Petition), for "Dates of Loss" 4/16/1999 and 11/3/1999. The first gives no indication of what injury, if any, might be involved, the second indicates a sprained ankle. There is no indication in EAMS that Workers' Compensation claims were filed for either of those dates of possible injury.

This type of document does not fit within the classes of documents identified as admissible in Workers' Compensation proceedings with reduced foundation requirements that are listed in Section 5703, and there are concerns about its reliability.

There is no information with this document, and none provided through other exhibits or through testimony, that would establish this exhibit as providing reliable information on issues at trial. The applicant's attorney objected to this exhibit as lacking proper foundation or authentication (Minutes p. 4 l.1-2). Examination of this exhibit convinced this WCJ that the objection was well taken, and that a foundation was needed to establish that this exhibit was reliable enough to be admitted. Such a foundation should include explaining when, how and why this particular "ISO Report" was generated, when ISO reports in general are generated and what they are generally used for, what triggers reporting of an incident to the entity maintaining the records ISO Reports

are based on, what that entity is and how it maintains its records, what steps are taken to make sure the information provided on incidents is reliable, and whether the information on a particular incident report is updated after the initial report. Without an adequate foundation, Exhibit I cannot be substantial evidence on any issue and it was properly excluded from admission as evidence.

While, in general, Workers' Compensation proceedings have more relaxed standards than Superior Court on many types of evidence submitted for consideration, even items listed in Section 5703 must meet certain standards to be admitted, some indicated in that section and some in other code sections, regulations or case law, such as the need for medical reports to address apportionment. There is nothing in the statutes or regulations governing Workers' Compensation matters that requires that the Workers' Compensation Appeals Board admit unreliable documents into evidence; forgery is not the only allowed basis for finding documents unreliable.

It should be noted that the Exhibit I on file here did not include any reference to the June 3, 2011, date of injury that is discussed in the Petition as included in that exhibit. It may be that the version of Exhibit I that is on file is incomplete, but there is no dispute that the applicant had that 2011 injury, as he testified about it, WCAB records related to it were admitted as evidence (Exhibits D, E and F), and it was considered by QME Dr. Frank in his evaluation of the applicant. If the ISO report as to that injury discussed in the Petition is as cursory as the others shown in Exhibit I as filed, it is unlikely that it would provide any information regarding that injury that is not already in evidence.

E. Date for the Start of Permanent Disability Payments

Unfortunately, the reasoning for the start date for permanent disability stated in the Findings and Award, January 3, 2021, was inadvertently omitted from the Opinion on Decision. The parties deferred the issue of temporary disability, and this date was based on an informal determination that the latest date temporary disability payments could end would be 104 weeks after the start of the applicant's disability when he went off work to have his lumbar surgery. Since, even if he is determined to be entitled to the full 104 weeks of temporary disability, those benefits would end before the MMI date found by QME Dr. Frank, June 3, 2024, and as the applicant did not return to work, it is well-established that permanent disability payments would start with the end of the temporary disability payments.

Since the full amount of the permanent disability found would already be payable when calculated from the latest date payments could start, there is no need to retain jurisdiction over the start date for permanent disability payments based on what is ultimately determined as to temporary disability.

IV.
RECOMMENDATIONS

That the Petition for Reconsideration be denied for the reasons discussed above and in the Opinion on Decision, but that Finding of Fact 1 be modified to change "back" to "low back."

This matter was transmitted to the Recon Unit on 08.15.2025

DATE: August 15, 2025

Barbara Toy
WORKERS' COMPENSATION JUDGE