WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MATHEW BRABO (deceased),
ABBEY CREWS-BRABO, SLOANE BRABO, EMERSON CREWS, *Applicants*

vs.

CALIFORNIA DEPARTMENT OF FORESTRY REGION IV, legally uninsured and adjusted by STATE COMPENSATION INSURANCE FUND, *Defendant*

Adjudication Number: ADJ15915611
Sacramento District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicants, decedent's dependents, seek reconsideration of the Findings of Fact, Award, Order and Opinion on Decision ("F&O") issued on January 22, 2025, wherein the workers' compensation administrative law judge ("WCJ") dismissed applicants' petition to reopen on the basis that the January 1, 2024 amendments to Labor Code section 4707(c)[1] do not apply to this case because it was resolved prior to January 1, 2024. Applicants contend that the WCJ erred, and that the amendments apply to this case because it was not resolved prior to January 1, 2019.

We received an Answer. We also received a Report and Recommendation on Petition for Reconsideration from the WCJ, recommending that reconsideration be denied.

We have reviewed the Petition, the Answer and the Report, as well as the record. For the reasons discussed below, we will rescind the F&O and substitute a new order finding that applicants are entitled to amend their award pursuant to sections 5803 and 5804, with the precise amount of benefits awardable deferred for determination at the trial level.

FACTUAL BACKGROUND

Applicants filed an Application for Adjudication, seeking workers' compensation benefits in connection with the death of decedent Mathew Brabo, who passed away on February 1, 2022.

[1] Further references are to the Labor Code, unless otherwise stated.

The matter was settled via Stipulations with Request for Award, and an Award issued on December 14, 2022. As part of the stipulations, the parties noted that, pursuant to section 4707, subdivision (a) as it then existed, applicants were not eligible for most workers' compensation death benefits because they received the CalPERS Special Death Benefit. (Stipulations, at p. 3.)

On January 1, 2024, section 4707 was amended to add subdivision (c), which states:

> (c) The limitation prescribed by subdivision (a) does not apply to state safety members, as defined in Section 20400 of the Government Code, peace officers, as defined in Sections 830, 830.1, 830.2, subdivision (e) of Section 830.3, 830.4, and 830.5 of the Penal Code, firefighters for the Department of Forestry and Fire Protection who are members of Bargaining Unit 8 of the Public Employees' Retirement System. This subdivision shall be applied retroactively to January 1, 2019, for injuries not previously claimed or resolved, and shall not supersede any statutes of limitations otherwise provided by the Labor Code.

(§ 4707(c).)

On September 3, 2024, applicants filed a Petition to Reopen, seeking to amend the award to include the death benefits they contend that they are now eligible for in light of the amendments to section 4707.

The matter proceeded to trial on January 6, 2025. The issues for trial were listed as: (1) whether section 4707, subdivision (c) applied to the case; and (2) if so, whether there was good cause to reopen the case for increased death benefits. (Minutes of Hearing / Summary of Evidence (MOH/SOE), 1/6/2025, at p. 2.) No exhibits were introduced, and the matter was taken under submission (*Id.* at p. 3.) The parties submitted trial briefs, and the Minutes of Hearing show the WCJ took judicial notice of the legislative history for section 4707, subdivision (c) that was provided as an attachment to applicants' trial brief. (*Ibid.*)

On January 22, 2025, the WCJ issued his decision, finding that applicants were not eligible for increased death benefits. The appended Opinion on Decision explains that the WCJ's decision rested upon a judgment that the phrase "applied retroactively to January 1, 2019, for injuries not previously claimed or resolved" unambiguously referred to injuries or claims not resolved prior to January 1, 2024, the date of the subdivision's enactment. (*Id.* at p. 4.) Because applicants' claim was resolved on December 14, 2022, before January 1, 2024, the WCJ concluded that applicants were not entitled to increased death benefits under the statute.

This Petition for Reconsideration followed.

DISCUSSION

I.

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.
>
> (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 January 30, 2025 and 60 days from the date of transmission is Monday, March 31, 2025, a holiday. The next business day that is 60 days from the date of transmission is Tuesday, April 1, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).[2] This decision is issued by or on Tuesday, April 1, 2025, so that 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

[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.

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 January 30, 2025, and the case was transmitted to the Appeals Board on January 30, 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 January 30, 2025.

II.

Here, the parties do not contest that decedent was a firefighter under the meaning of subdivision (c). Accordingly, we are presented with a pure question of law: whether death claims brought by eligible applicants that were resolved after January 1, 2019, but prior to January 1, 2024, may be amended to award the increased death benefits now provided for by that subdivision.

The fundamental purpose of statutory interpretation is to ascertain the Legislature's intent in order to effectuate the law's purpose. (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) Interpretation begins "with the plain language of the statute, affording the words of the provision their ordinary and usual meaning and viewing them in their statutory context, because the language employed in the Legislature's enactment generally is the most reliable indicator of legislative intent." (*People v. Watson* (2007) 42 Cal.4th 822, 828.) The plain meaning controls if there is no ambiguity in the statutory language. (*People v. King* (2006) 38 Cal.4th 617, 642.) If, however, the language is susceptible to more than one interpretation, consideration must be given to other factors, such as the purpose of the statute, the legislative history, and public policy. (*Ibid.*) If a statute is amenable to more than one interpretation, the interpretation that leads to a more reasonable result should be followed. (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.)

We are directed to interpret statutory language "consistently with its intended purpose, and harmonized within the statutory framework as a whole." (*Alvarez v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 575, 585 [75 Cal. Comp. Cases 817].) "Statutory language should not be interpreted in isolation, but must be construed in the context of the entire statute of which it is a

part, in order to achieve harmony among the parts." (*Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 903.)

The operative portion of subdivision (c) is the following sentence: "This subdivision shall be applied retroactively to January 1, 2019, for injuries not previously claimed or resolved, and shall not supersede any statutes of limitations otherwise provided by the Labor Code." (§ 4707(c).) The parties express differing interpretations of this sentence. Applicants contend that the clause "for injuries not previously claimed or resolved" refers to injuries not claimed or resolved before January 1, *2019*, the date which immediately precedes it. Defendant, by contrast, asserts that the clause refers to injuries not claimed or resolved before January 1, *2024*, the effective date of the statute.

As an initial matter, we cannot agree with the WCJ that the clause "for injuries not previously claimed or resolved" *unambiguously* refers to claims and injures not resolved prior to the effective date of the statute, rather than prior to January 1, 2019, the date which immediately precedes it. On balance, we find both applicants' and defendant's reading of the statute to be reasonably plausible based solely upon the plain text. The fact that the January 1, 2019 date immediately precedes the dependent clause could suggest that the dependent clause refers to that date. Conversely, if that were the case, it is unclear what purpose the clause would serve – the meaning of the statute would arguably remain the same even if the clause were deleted and the sentence instead simply read: "This subdivision shall be applied retroactively to January 1, 2019, and shall not supersede any statutes of limitations otherwise provided by the Labor Code." Accordingly, one might plausibly also argue that the clause should be read to refer to the date of enactment, to avoid making it mere surplusage.

Happily, it does not appear necessary to definitively resolve this conundrum because, for the reasons outlined below, applicants appear entitled to amend the award to include increased death benefits no matter how the clause in question is interpreted. This is because the Labor Code, in its wisdom, allows for the amendment of an award pursuant to sections 5803 and 5804, as long as five years have not passed from the date of injury and good cause exists for the amendment. (§ 5803, 5804.) Moreover, it is well-established that a change in the law constitutes good cause to amend an award pursuant to section 5803. (*Fireman's Fund Ins. Co. v. Workers' Comp. Appeals Bd.* (2010) 181 Cal.App.4th 752, 768; see also *Brannen v. Workers' Comp. Appeals Bd.* (1996) 46 Cal.App.4th 377, 382.)

Accordingly, even if the clause "for injuries not previously claimed or resolved" is meant to refer to injuries not claimed or resolved prior to January 1, 2024, rather than January 1, 2019, applicants are still entitled to amend their award to reflect the increased benefits due under the statute based upon sections 5803 and 5804. This conclusion is reinforced by the final clause of the sentence, specifying that the subdivision "shall not supersede any statutes of limitations otherwise provided by the Labor Code." Section 5804 contains one such statute of limitations, and the Legislature's reference shows it was cognizant of such statutes of limitations and did not intend to abrogate them.

This conclusion is also bolstered by the fact that the Legislature knows how to specify when it wishes for a change in the law *not* to be grounds for reopening pursuant to sections 5803 and 5804. For example, section 4664 contains explicit guidance in that "the addition of § 4664 made by this act shall apply prospectively from the date of enactment of this act, regardless of the date of injury, unless otherwise specified, *but shall shall not constitute good cause to reopen or rescind, alter, or amend any existing order, decision, or award of the Workers' Compensation Appeals Board*." (§ 4664; Stats. 2004, ch. 34 (SB899) § 47 (emphasis added).) No such guidance was included with the amendment to section 4707.

The legislative history of AB 621, the bill enacting the amendment, also supports this result. As originally introduced, subdivision (c) would simply have stated that its amendment applied "retroactively," without further delineation. (See Assem. Bill 621 (2023-2024 Reg. Session) February 9, 2023.) Subsequently, the Senate amended the bill to include its current language. (See Sen. Amend. To Assem. Bill 621 (2023-2024 Reg. Session) September 8, 2023.)

This choice to limit retroactivity to 5 years from the date of enactment, without modification of existing statutes of limitation, is significant precisely because section 5804 provides five years from the date of injury in which a petition to reopen may be brought. In other words, the Legislature chose to limit retroactivity to exactly the same period that governs filing a petition to reopen.

Accordingly, reading the sentence as a whole, the retroactivity provision seems intended to treat dependents neutrally, whether or not they had previously filed a claim or obtained benefits. The first portion of the sentence governs claims not yet made or not yet resolved, and provides that as to those claims, the provision is retroactive – meaning that as to such claims, the dependents will be entitled to increased benefits (assuming there is no statute of limitations issue). Similarly,

as to those dependents who have already resolved their claims, sections 5803 and 5804 provide a path to amending their awards to reflect the new entitlement to benefits, as long as they act diligently by filing petitions to reopen within 5 years of the date of their injury. In both cases, the key date is January 1, 2019 – because it is explicitly spelled out in the statute as to those who have not yet filed claims or obtained an award, and because for those who have obtained an award, section 5804 limits the period in which to file a petition to reopen to 5 years, meaning that any petitions to reopen with prior dates of injury could not be timely filed on January 1, 2024 when the statutory amendment became effective.

This reading is in turn bolstered by the continued inclusion of an explicit reference to petitions to reopen in the Second Senate Floor Analysis. As noted therein:

> CAL FIRE indicates that it would incur a General Fund cost of $10 million to $24 million to provide the workers' compensation death benefit. However, because of the bill's retroactive provision, the department notes that its costs cannot be fully determined until the number of reopened cases has been identified, as the amount of the benefit increases with the claimant's number of dependents.

(Second Senate Floor Analysis of Assem. Bill No. 621 (2023–2024 Reg. Sess.) September 11, 2023.) The presence of this language even in the Second Floor Analysis – after the amendment including the retroactivity language discussed herein – suggests that the Senate did not intend its amendment to result in foreclosing the right of parties with existing awards to file petitions to reopen pursuant to sections 5803 and 5804 in order to increase benefits, so long as the petition to reopen was timely. Indeed, the only other explanation for the continued inclusion of this language would be that the Senate Analysis simply failed to understand the impact of the amendment – a result we will not lightly reach, especially not in the presence of another reasonable explanation. This language also indicates that defendant itself – as a part of "CAL FIRE" - was aware of the potential for the filing of petitions to reopen based on the amendment to the statute, as has happened in this case.

In short, no matter how the clause "for injuries not previously claimed or resolved" is interpreted, we find that the amendment to section 4707, subdivision (c) as a whole does not abrogate applicants' right to file a petition to reopen in order to amend their 2022 award to include the increased death benefits now allowable by law.

Accordingly, we will rescind the F&O, and substitute a new order finding that applicants are entitled to an amended reward reflecting the benefits now due to them under section 4707, subdivision (c). We will defer the calculation of the benefits due to the trial level.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the January 22, 2025 Findings of Fact, Award, Order and Opinion on Decision is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 22, 2025 Findings of Fact, Award, Order and Opinion on Decision is **RESCINDED**, and the following order **SUBSTITUTED:**

FINDINGS OF FACT

1. On August 29, 2024, the dependents (applicants) filed a petition to reopen for good cause.

2. The August 29, 2024 petition to reopen was timely.

3. Decedent was a member of Bargaining Unit 8 of CalPERS.

4. The statutory exception under Labor Code section 4707(c), allowing the dependents to claim additional workers compensation benefits under Labor Code section 4707, applies to the facts of this case, and there is good cause for the petition to reopen pursuant to Labor Code sections 5803 and 5804.

5. The issue of the amount of additional benefits owed to the dependents under Labor Code section 4707 is deferred.

AWARD

Dependents are entitled to further benefits under Labor Code section 4707. The issue of the calculation of the amount of benefits is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 28, 2025

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

ABBEY CREWS BRABO
SLOANE BRABO (C/O ABBEY CREWS BRABO)
EMERSON CREWS (C/O ABBEY CREWS BRABO)
WHITING COTTER SANTA ANA
SCIF STATE EMPLOYEES SACRAMENTO

AW/*kl*

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