WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MILTON WINSTON, *Applicant*

vs.

ORACLE AMERICA, INC.;
SAFETY NATIONAL INSURANCE, *Defendants*

Adjudication Number: ADJ19198086
Fresno District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Finding of Fact and Order (F&O) issued on May 30, 2025 by the workers' compensation administrative law judge (WCJ) which found in pertinent part that applicant was employed by defendant employer for between 184 days and 210 days at the time of his termination and therefore Labor Code section 3208.3(d) is not a bar to applicant's workers' compensation claim.

Defendant contends that the WCJ erred in his consideration of applicant's first day of employment for purposes of Labor Code section 3208.3(d), as April 6, 2022, when applicant received the defendant employer's laptop and began the pre-onboarding/onboarding process versus April 18, 2022, his first day of paid work. Furthermore, defendant contends that the WCJ erred in relying on the parties' Stipulation that applicant was employed by defendant employer on November 1, 2022.

We have received an Answer from applicant. The WCJ filed an Amended Report and Recommendation (Report) on the Petition for Reconsideration recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the WCJ with respect thereto. Based on our review of the record, the Answer and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will deny reconsideration.

I.

Preliminarily, we note that former Labor Code[1] 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 June 25, 2025 and 60 days from the date of transmission is Sunday, August 24, 2025, a weekend. The next business day that is 60 days from the date of transmission is Monday, August 25, 2025. (See Cal. Code Regs., tit. 8 § 10600(b).)[2] This decision was issued by or on August 25, 2025, so that we have timely acted on the petition as required by section 5909(a).

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

[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 WCJ, the Report was served on June 25, 2025, and the case was transmitted to the Appeals Board on June 25, 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 June 25, 2025.

II.

In addition to the analysis set forth in the WCJ's Report, we observe the following. Section 3208.3(d) provides in pertinent part that "no compensation shall be paid pursuant to this division for a psychiatric injury related to a claim against an employer unless the employee has been employed by that employer for at least six months. The six months of employment need not be continuous." (Lab. Code, § 3208.3(d).)

The Court of Appeal has previously opined that the word "employment" in section 3208.3(d) means "the performance of actual service for the employer." (*Wal-Mart Stores, Inc. v Workers' Comp. Appeals Bd.* (*Garcia*) (2003) 112 Cal.App.4th 1435, 1442 [68 Cal.Comp.Cases 1575].) Section 3208.3(d) specifically provides that the six months of employment "need not be continuous," and cases before and subsequent to *Garcia* have held that the six months of employment can be accrued by actual service both before and after the injury. (See *Los Angeles Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Carpenter*) (2004) 69 Cal.Comp.Cases 1048 (writ den.); *County of San Bernardino v. Workers' Comp. Appeals Bd.* (*Atalla*) (2003) 68 Cal.Comp.Cases 944 (writ den.).)

At trial, applicant testified credibly about the start of his employment as follows:

> He received the [employer's] laptop around 4/6/22, set up his password, Slack account, VPN, and then completed the 60-item checklist. Once that checklist is

> completed, he was ready for online orientation. At that point Zoom was used to go through the online orientation with any new Oracle employee. Applicant's Exhibit 2, a 4/13/22 email, represented the new-hire information. That was the start of the onboarding process.

(MOH/SOE, at p. 3:8-14.)

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*.) In addition to finding the applicant credible, the WCJ also observed that the applicant's testimony was unrebutted. We observe that no witness testified on behalf of defendant about applicant's actual service to the employer or dates of employment.

Regarding applicant's start date, defendant argues that the WCJ erred when he found that applicant was paid for work before April 18, 2022 when he was not, and this work therefore does not constitute "employment" for the purposes of section 3208.3(d). (Petition, at p. 2:10-20.) Again, The Labor Code provides that no compensation for psychiatric injury shall be paid "unless the employee has been employed by that employer ***for at least six months***. ***The six months of employment need not be continuous***." (Lab. Code, § 3208.3(d), emphasis added.) There is no further definition of "continuous employment." Contrary to the argument raised by the defendant, the term "continuous" as used in the statute contains no further qualifications, definitions, or limitations. The statute does not discuss the nature of the employment or the number of hours worked during the six month period. The statute is clear and unambiguous. It simply requires applicant to be employed by the employer for at least six months, which need not be for a continuous or unbroken period. (*Gottschalks Dept. Stores v. Workers' Comp. Appeals Bd. (Garcia)* (1998) 63 Cal.Comp.Cases 315 (writ den.); see also *California Insurance Guarantee Association v. Workers' Comp. Appeals Bd. (Mills)* (2007) 72 Cal.Comp.Cases 1146 (writ den.) [Claim not barred by six month requirement of section 3208.3(d) notwithstanding injured worker's inability to work for two consecutive weeks due to non-industrial pancreatitis].) Defendant has provided no persuasive legal authority for its interpretation of section 3208.3 requiring paid employment and failed to produce any witness at trial to rebut the applicant's credible testimony about the start of his employment in service to defendant employer on April 6, 2022.

Furthermore, common law rules for creation of employment contracts have been rejected in favor of liberal interpretation to extend the benefits of California's workers compensation laws. (*Laeng v WCAB* (*Laeng)* (1972) 6 Cal.3d 771). In *Laeng* the applicant suffered a compensable injury while participating in a tryout and before an offer of work was made. Applicant here was not "trying out" for a job, he was completing the mandatory pre-onboarding tasks and online onboarding before his paid employment began. This brings applicant into the scope of employment.

In *Barragan v. Workers' Comp. Appeals Bd.* (*Barragan*) (1987) 195 Cal.App.3d 637 [52 Cal.Comp.Cases 467], the Court of Appeal explicitly held that "there is a long line of case law establishing the rule that one need not receive actual payment of money or wages in order to be an employee for purposes of the Workers Compensation Act." (*Id.* at p. 649.)[3] In that case, the court found that a nursing student providing unpaid services to a hospital as part of a college externship received sufficient remuneration in the form of training and instruction, and that, as a result, she was not excluded under section 3352(a)(9). (*Id.* at p. 650, citing Lab. Code, § 3352(i), now Lab. Code, § 3352(a)(9), Stats. 2017, ch. 770, § 4, hereinafter "section 3352(a)(9)".) The Court explained that, had the Legislature intended to add training and instruction to the list of excluded remuneration, it knew how to do so. (*Id.* at p. 650.) The Court thus declined to add training and instruction to section 3352(a)(9)'s exclusionary list, given the Legislature's decision not to. (*Id.* at pp. 649-650.) Here, as in *Barragan*, applicant's renumeration took the form of computer set-up, training and instruction mandatory before paid employment began.

Lastly, in *Arriaga v. County of Alameda* (*Arriaga*) (1995) 9 Cal.4th 1055 [60 Cal.Comp.Cases 316], the California Supreme Court also addressed the definition of remuneration under section 3352(a)(9). In that case, the Court held that a person injured while performing community service in lieu of paying a court-imposed fine was not excluded under section 3352(a)(9). (*Id*. at p. 1059.) The Court stated that, for the purposes of section 3352(a)(9), remuneration "need not be in monetary form." (*Id.* at pp. 1064-1065.) The Court explained that, "[i]f in exchange for her work, Arriaga had received money with which to pay her fine, she

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[3] Cf. *Pruitt v. Workmen's Comp. Appeals Bd*. (1968) 261 Cal.App.2d 546 [33 Cal.Comp.Cases 225] ("payment of monetary wages is not a *sine qua non* of employment under workmen's compensation law."); *Chavez v. Sprague* (1962) 209 Cal.App.2d 101, 111 ("The fact that a person is not paid monetary compensation for his services does not prevent him from occupying the status of an employee.")

unquestionably would have received sufficient remuneration. The same result must obtain in this case, where Arriaga simply received credit against the fine instead." (*Id.* at pp. 1064-1065, fn. 7.) The Court concluded that its interpretation of section 3352(a)(9) also complied with the Legislature's command that the Act be liberally construed in favor of awarding workers' compensation. (*Id.* at pp. 1064-1065, citing Lab. Code, § 3202.) In exchange for setting up his password, Slack account, VPN, completing the 60-item checklist and orientation, applicant was able to begin paid employment.

III.

Next, the Appeals Board has previously addressed the question of who bears the burden of proving whether an employee has the requisite six months of employment under section 3208.3(d). Specifically, in *CIGA v. Workers' Comp. Appeals Bd.* (*Avila*) (2004) 69 Cal.Comp.Cases 1323 (writ den.), the Appeals Board found that defendant had waived the issue of whether the evidence established the six-month requirement by not raising it until seeking reconsideration. Nonetheless, the Appeals Board held that even if the issue were not waived, it was defendant's burden to raise and establish the applicability of the six-month employment requirement. (See also *Garcia v. Reynolds Packing Co.* (January 31, 2018, ADJ9226212) [2018 Cal. Wrk. Comp. P.D. LEXIS 29] [panel held that defendant holds the burden of proof to show applicant did not work for defendant for at least six months].)[4]

Section 5705 states that the "burden of proof rests upon the party or lien claimant holding the affirmative of the issue." (Lab. Code, § 5705.) An affirmative defense is a "defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations in the complaint are true." (Black's Law Dict. (10th ed. 2014) p. 509, col. 2.) Defendant is the party that will raise the issue of whether applicant was employed for the requisite six months for his psychiatric injury to be compensable. Defendant therefore holds the burden of proof to show that the length of applicant's actual service with defendant is insufficient under section 3208.3(d).

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[4] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc).) Here, we refer to *Garcia* because it considered a similar issue.

Furthermore, as discussed in *Garcia*:

> Assigning the burden of proof to defendant is also appropriate from a practical perspective because defendant is more likely to have documentary evidence showing applicant's period of employment, e.g., timesheets, wage records, paystubs, etc. Employers are statutorily obligated to maintain wage records for employees for a minimum of three years. (§ 226(a).) The *Avila* panel acknowledged that defendant is "the custodian of records pertaining to Applicant's employment and was, therefore, in the better position to present substantial evidence concerning the length of Applicant's employment." (*Avila*, *supra*, at pp. 1325-1326.)

(*Garcia*, *supra*, at pp. *11-12.)

Thus, it is defendant's burden of proof to show that the length of applicant's actual service with defendant is insufficient under section 3208.3(d). At trial, defendant submitted applicant's personnel file as evidence. (Exhibit A.)[5] The personnel file shows applicant's assignment from April 18, 2022 through July 21, 2023, for Hospitality-Resources On Prem-ORCL USA as an Implementation Consultant Full Time-Regular, Salary Basis: Hourly. (Exhibit A at p. 1-2.) It is unclear if applicant's employment continued through July 21, 2023; again, defendant employer offered no explanation or witness testimony at trial. The personnel file further contains a summary of Earnings/Taxes/Benefits effective dates from April 29, 2022 – October 14, 2022 (*Id*. at pp. 27-35); Timecard Details from April 18, 2022 – October 7, 2022; (*Id*. at pp. 64-95); and paycheck stubs from April 29, 2022 – October 14, 2022. (*Id.* at pp. 99-124.) Hence, defendant has proved the employment period for which applicant was paid, however, paid work is not a requirement of the Labor Code or case precedent. The personnel file is woefully bereft of information regarding applicant's receipt/responsibility for defendant employer's laptop received April 6, 2022, computer access, mandatory completion 60-item checklist before onboarding, and the mandatory completion of online onboarding which began on April 13, 2022. In any event, defendant did not meet its burden of proof to show that the length of applicant's actual service with defendant is insufficient under section 3208.3(d) because it did not show applicant's work beginning April 6, 2022 was not in its service.

[5] Defendant's submitted two additional Exhibits, Notices of Denial of Claim for Workers' Compensation Benefits dated January 12, 2024 and April 5, 2024. (Exhibits B and C.)

IV.

Furthermore, stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd.* (*Weatherall*) (2000) 77 Cal. App.4th 1114, 1121 [65 Cal.Comp.Cases 1]).) As defined in *Weatherall*, "A stipulation is 'An agreement between opposing counsel...ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,' and serves 'to obviate need for proof or to narrow range of litigable issues' in a legal proceeding." (*Id*. at p. 1119, citations omitted.) "Good cause" to set aside stipulations depends on the facts and the circumstances of each case and includes mutual mistake of fact, duress, fraud, undue influence, and procedural irregularities. (*Johnson v. Workers' Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 975 [35 Cal.Comp.Cases 362]; *Santa Maria Bonita School District v. Workers' Comp. Appeals Bd.* (2002) 67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Workers' comp Appeals Bd. (Dowdle)* (1997) 62 Cal.Comp.Cases 1691, 1692 (writ den.); *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170 [50 Cal.Comp.Cases 311].) However, when "there is no mistake but merely a lack of full knowledge of the facts, which…is due to the failure of a party to exercise due diligence to ascertain them, there is no proper ground for relief." (*Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856, 866 [44 Cal.Comp.Cases 798] quoting *Harris v. Spinall Auto Sales, Inc.* (1966) 240 Cal.App.2d 447.)

Here, defendant requests to be relieved from a stipulation. Therefore, defendant has the burden of proof to show why they should be relieved. Defendant contends that the employment stipulation in the pre-trial conference statement (PTCS) is factually correct in that applicant remained an "employee" of defendant employer in that there was no formal separation of employment as of November 1, 2022 but this stipulation did not account for the requirements of section 3208.3(d) and should not be relied upon. (Petition, at p. 7:24-26.) It must be observed, this was not merely a stipulation on the PTCS, but also a Stipulation by the parties the Minutes of Hearing Summary of Evidence at p. 2:3-4. Defendant offers the following explanation:

> The stipulation that Applicant remained an 'employee' on 11/1/2022 reflected only the absence of a formal separation—not a concession that he rendered any service after 10/6/2022. The issue of employment on the Pre-Trial Conference Statement is generally understood relate to the definition under Labor Code Section 3351 and was not a stipulation amongst the parties of "actual service" per Labor Code Section 3208.3(d). Defendant is not contesting that there was no

> employment relationship as of this date and marking "allegedly employed" would have been inaccurate in this context. It would have risked inadvertently raising an additional issue for trial in that defendant was also contesting whether an employment relationship even existed with Mr. Winston in reference to Labor Code Section 3351, requiring an entirely different analysis.

(Petition, at pp. 7-8:24-6.)

Defendant fails to provide any evidence that the issue of employment on the PTCS is generally limited to the definition under section 3351 and was not a stipulation amongst the parties of "actual service" per section 3208.3(d). Then, at trial defendant stipulated that applicant was employed on November 1, 2022. Inappropriately, on Reconsideration, defendant is attempting to manipulate a Stipulation by the parties away from its plain meaning to limited meaning. At trial, defendant had every opportunity to clarify the employment stipulation via employer witness testimony or presentation of documentary evidence or information. Defendant offered no witness testimony. Additionally, as previously discussed in *Garcia*, defendant employer has access to documentary evidence related to the employment yet still provided no documentary evidence about applicant's ongoing but changed employment status on November 1, 2022. Hence, defendant has not met its burden of proof to be relieved of the employment stipulation.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 25, 2025

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

MILTON WINSTON
MITCHELL & POWELL
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN

SL/abs

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

(AMENDED AS TO TRANSMITTAL DATE ONLY)

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION – TRANSMITTAL DATE: 6/25/25

I

INTRODUCTION

1. Applicant's Occupation: Implementation Consultant
   Age at Injury: 45
   Date of Injury: 11/1/22
   Parts of Body Alleged Injured: Psych injury
   Manner in Which Injury Alleged Occurred: Hostile work environment

2. Identity of Petitioner: Defendant
   Timeliness: The Petition was timely filed on 6/20/25
   Verification: The Petition was Verified.

3. Date of Award: 5/30/25

4. Petitioner contends:

   a. That the trial judge used incorrect start and end dates to determine the claimant's employment period for purposes of Labor Code Section 3208.3(d).
   b. That Labor Code Section 3208.3(d) establishes a specific standard or what counts for "employment" that is incorrectly applied such as the end date utilized by the trial judge.
   c. That the Finding of fact that the Applicant was compensated for work prior to 4/18/22 is not supported by the evidence, specifically claimant's testimony.
   d. That the stipulation in the Pre-Trial Conference Statement is factually correct in that the Applicant remained an "employee" of Oracle in that there was no formal separation of employment as of that date.
   e. That the correct period of time for employment is 4/18/22-10/6/22, which is only 172 days and thus does not meet the 6 month threshold to sustain a psych claim for workers' compensation benefits.

II

FACTS

Applicant received a hire letter from Oracle dated 4/1/22. Applicant received his Oracle work laptop by mail around 4/6/22. On 4/6/22 Applicant set up his password, Slack account for internal office communications, the VPN and then completed a 60-item checklist that has been identified as onboarding during trial testimony. Once the checklist was completed Applicant was ready for online orientation.

However, there was a problem with how Applicant was listed in the Oracle database. Applicant could not access SSO. Applicant had to log into SSO to access Oracle. Logging into SSO requires an email and a password. Applicant emailed Oracle about this issue from his personal email account, and the issue was corrected.

Applicant did not know when he started documenting his daily activities for Oracle. Applicant believes he began documenting his daily activities prior to 4/18/22. Applicant was not sure what the onboarding references in the 4/18/22 punch–in referred to. The punch-in was basically a daily activities sheet. (MOH/SOE page 4; 6-9).

Applicant testified he started to receive compensation from Oracle on 4/18/22. Applicant assumed this had to do with more onboarding. Defense Counsel confirmed onboarding referred to completing the checklist, and Applicant responded with "yes." (MOH/SOE page 4; 13-15)

There are 184 days between 4/6/22 and 10/6/22. The Trial Stipulations state Applicant was employed on 11/1/22. There are 210 days between 4/6/22 and 11/1/22.

III

DISCUSSION

The punch-in was Applicant's timecard. Onboarding listed on the 4/18/22 punch-in, which was the first day Applicant started to receive compensation, referred to completing the checklist. Applicant testified he believes he began documenting his daily activities prior to 4/18/22. Applicant also testified he did not create a daily activity sheet or punch-in when the activity was completed but after the fact, before it was due.

This means when Applicant began to receive compensation on 4/18/22 he was paid for services completed prior to 4/18/22. The services listed on the 4/18/22 punch-in were completing the checklist/onboarding. Completing the checklist/onboarding started on 4/6/22. Labor Code section 3202 requires a liberal interpretation of the six-month time frame. Although Applicant left work on 10/6/22, the Trial Stipulations state Applicant was employed on 11/1/22.

There are 184 days between 4/6/22 and 10/6/22. There are 210 days between 4/6/22 and 11/1/22. Applicant's trial testimony was credible and unrebutted. Therefore, Labor Code Section 3208.3 (d) is not a bar to Applicant's workers' compensation claim.

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

6/25/25 /s/ William R McClelland
William R McClelland
Worker's Compensation Judge

Date: 06/26/25

Served on parties as shown on
Official Address Record.