WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

RON IGLESIAS, *Applicant*

vs.

COUNTY OF SANTA CLARA, permissibly self-insured, *Defendant*

Adjudication Numbers: ADJ15198253; ADJ15738939; ADJ18940959
San Jose District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the January 16, 2025 Findings and Order (F&O) pertaining to applicant's claim of cumulative work injury from May 14, 2001 through April 28, 2013 (ADJ18940959) to the bladder, psyche, and diabetes wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that "3) There is no evidence of any knowledge as required by Labor Code section 5412 and therefore the date of injury cannot be established; 4) Without the date of injury, it is not possible … to determine if the claim is barred by the Statute of Limitations; [and] 5) The sole issue raised by the parties in this case is premature and therefore no determination can be made without further evidence/discovery[.]"

Defendant contends that applicant's claim is barred under Labor Code[1] section 5405(a) since "applicant failed to exercise reasonable diligence to obtain the knowledge required by Labor Code section 5412 for more than two years." (Petition for Reconsideration (Petition), p. 2.) Defendant further contends that due to applicant's actions, defendant will suffer "significant prejudice and harm" as defendant will be forced "to incur the costs of at least two, likely three, and possibly more medical specialty evaluations (urology, internal, psyche)." (*Ibid*.)

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

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

Upon issuance of the Report, defendant submitted and requested acceptance of a supplemental petition. Finding good cause, we accept the supplemental petition. (Cal. Code Regs., tit. 8, § 10964(b).)

We have considered the Petition, the Answer, the contents of the Report, the supplemental petition, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition.

FACTS

Applicant claimed that while employed by defendant as plumber during the period from May 14, 2001 through April 28, 2013, he sustained an injury arising out of and in the course of employment (AOE/COE) to his bladder, psyche, and diabetes (ADJ18940959).

Applicant also alleged two specific injury claims to the left knee, bilateral sacroiliac joints, and hips while employed by defendant on January 26, 2017 (ADJ15738939) and December 30, 2020 (ADJ15198253).

The parties retained Dr. Michael Post to serve as the Agreed Medical Examiner (AME) for the specific injury claims (ADJ15738939 and ADJ15198253).

On March 18, 2024, defendant filed a Declaration of Readiness to Proceed (DOR) in the cumulative injury claim (ADJ18940959) on the issue of the applicability of the statute of limitations defense under section 5405(a). DORs were also filed in the specific injury claims (ADJ15738939 and ADJ15198253) on all issues, including injury AOE/COE, permanent disability, apportionment, need for future medical, temporary disability, applicant's right to a supplemental job displacement voucher, and attorney's fees.

On May 8, 2024, defendant issued a denial in the cumulative injury claim (ADJ18940959) due to lack of medical evidence of injury. (Exhibit V.)

On October 29, 2024, the parties proceeded to trial on all three claims. At trial, applicant testified that he underwent bladder surgery in 2015 and was told he had bladder cancer but was not notified of the cause. (Minutes of Hearing and Summary of Evidence (MOH & SOE), p. 11.)

He further testified that he was given a list of potentially hazardous "contact items" including "glues, primers, and solvents," but did not believe the list was discussed with his doctor. (*Ibid*.)

With respect to his diabetes, applicant testified that "he was initially diagnosed" by the County and "had already been working for the County for a while when he was diagnosed." However, he did "not know if his diabetes got worse because of his employment." (MOH & SOE, p. 15.)

On January 16, 2025, the WCJ issued a Findings and Order in ADJ18940959 wherein the WCJ found, in relevant part, that "3) There is no evidence of any knowledge as required by Labor Code section 5412 and therefore the date of injury cannot be established; 4) Without the date of injury, it is not possible … to determine if the claim is barred by the Statute of Limitations; [and] 5) The sole issue raised by the parties in this case is premature and therefore no determination can be made without further evidence/discovery[.]"

DISCUSSION

I.

Preliminarily, former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected under the Events tab 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 February 18, 2025, and 60 days from the date of transmission is Saturday, April 19, 2025. The next business day that is 60 days from the date of transmission is Monday, April 21, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision was issued by or on April 21, 2025, so that we have timely acted on the petition as required by section 5909(a).

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 shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on February 18, 2025, and the case was transmitted to the Appeals Board on February 18, 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 February 18, 2025.

II.

We also find it relevant here to discuss the distinction between a petition for reconsideration and a petition for removal. A petition for reconsideration is taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order is defined as one that determines "any substantive right or liability of those involved in the case" or a "threshold" issue fundamental to a claim for benefits. (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43Cal.Comp.Cases 661]; *Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold

[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.

issues include, but are not limited to, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, at 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final'"]; *Rymer*, *supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer*, *supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, and other similar issues.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Bd. en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd*. (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the January 16, 2025 F&O includes threshold findings as well as findings on interlocutory issues. Defendant, however, "only seeks clarification of an interlocutory issue, specifically Findings of Fact [numbers 3-5] in ADJ18940959." (Petition, p. 1.) As such, we will apply the removal standard for our review. (See *Gaona, supra*.)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd*. (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

Defendant argues that "significant prejudice and harm" will be suffered as defendant will be forced "to incur the costs of at least two, likely three, and possibly more medical specialty evaluations (urology, internal, psyche)" because of applicant's failure "to exercise reasonable diligence" in obtaining "the knowledge required by Labor Code section 5412." (Petition, p. 2.) Potential discovery costs, however, are not proper grounds for a grant of removal. Further, we are not persuaded that significant prejudice or irreparable harm would result if removal was denied and/or that reconsideration would not be an adequate remedy.

III.

Assuming arguendo that defendant provided proper grounds for removal, we note that statute of limitations is an affirmative defense upon which the defendant carries the burden of proof. (Lab. Code, § 5409.) This means defendant must provide evidence which establishes 1) the date of the cumulative injury per statutory and case law, and 2) that applicant filed the claim more than one year after this date. Section 5405(a) states in relevant part that: "[t]he period within which proceedings may be commenced for the collection of the benefits…is one year from any of the following: [¶] (a) The date of injury." (Lab. Code, § 5405(a).)

Section 3208.1(b) defines a cumulative injury as "repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment." (Lab. Code, § 3208.1(b).) Section 3208.1(b) further provides that "[t]he date of a cumulative injury shall be the date determined under Section 5412." (*Ibid*.)

Section 5412 states, in relevant part, that the date of injury for cumulative injury and occupational disease cases 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." (Lab. Code, § 5412.) Pursuant to *City of Fresno v. Workers' Comp. Appeals Bd.* (*Johnson*) (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53], "[w]hether an employee knew or should have known his disability was industrially caused is a question of fact." The employer has the burden of proving that the employee knew or should have known their disability was industrially caused. (*Johnson*, *supra*, at p. 471, citing *Chambers v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 556, 559 [33 Cal.Comp.Cases 722].) That burden is not met merely by showing the employee knew they had some symptoms. (*Ibid*.) Generally speaking, an employee is not charged with knowledge that their disability is job-related without medical advice to that effect, unless given "the nature of the disability and the applicant's training, intelligence and qualifications," they should have recognized the relationship. (*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].) "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 Acc. Com.* (*McLaughlin*) (1965) 234 Cal.App.2d 831, 839 [30 Cal.Comp.Cases 188].) "Thus, the determination of knowledge is an inherently fact-based inquiry, requiring an individualized analysis in each case." (*Raya v. County of Riverside* (2024) 89 Cal.Comp.Cases 993, 1006.)

Defendant argues that applicant's claim is barred under section 5405(a) since "applicant failed to exercise reasonable diligence to obtain the knowledge required by Labor Code section 5412 for more than two years." (Petition, p. 2.) As noted above, however, it is defendant's burden under section 5405(a) to provide evidence establishing the date of the cumulative injury per statutory and case law, and that applicant filed the claim more than one year thereafter. Pursuant to section 5412, the date for a cumulative injury is the date when applicant first suffered disability and either knew, or should have known, the disability was caused by work. (Lab. Code, § 5412.)

There is nothing within the current evidentiary record, however, which proves that applicant knew or should have known his disability was industrially caused. Defendant alleges that "both parties had records clearly documenting Applicant's bladder cancer and diabetes no later than the 03/21/2022 receipt of AME Dr. Post's initial report dated 02/23/2022." (Petition, p. 7.) Defendant further alleges that records detailing applicant's "conditions and treatment – including psychiatric issues – were received from Kaiser no later than May 2022." (*Ibid*.) The reports from Dr. Post and Kaiser, however, do not indicate that applicant's bladder cancer, diabetes, and psyche

issues were work related. As noted above, defendant's burden is not met by a mere showing that applicant knew he had symptoms, and as highlighted by the WCJ in his Report, "[a]pplicant readily admits he knew he had bladder cancer since he had surgery in 2015 and that he was diagnosed with diabetes since he was placed on medication. However, there was never any discussion with any doctor about industrial causation nor was there any opinion of industrial connection. Applicant was not asked why he is now pursuing his claim, or why he did not pursue it earlier." (Report, p. 4.) Further, there is nothing within the record which indicates that applicant had any specific training, background, or experience which would have enabled him to identify a cumulative injury or discern the industrial nature of his disability.

Based upon the current record, we therefore agree with the WCJ that the parties need to "undertake [further] discovery" as the record does not contain evidence necessary for determination of an injury date pursuant to section 5412, and without this date, it is impossible to proceed with a section 5405(a) inquiry. (Report, p. 5.) As explained in *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton*, *supra*, at pp. 473, 475.) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Id.* at p. 475.) This "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

It is also well established that the Appeals Board has the discretionary authority to develop the record when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 9 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) Under both the California and United States Constitutions, all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [97 Cal Rptr. 2d 852, 65 Cal.Comp.Cases 805].) A fair hearing is "… one of 'the rudiments of fair play' assured to every litigant …" (*Id.* at p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission … must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at p. 577.) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses, introduce and inspect exhibits, and offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker*, *supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com.* (*Baskin*) (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Accordingly, defendant's Petition is denied.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the January 16, 2025 Findings and Order in ADJ18940959 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 18, 2025

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

RON IGLESIAS
LAW OFFICE OF GRETCHEN A. PETERSON
OFFICE OF THE COUNTY COUNSEL

RL/*cs*

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