WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ALLISON JUNG, *Applicant*

vs.

MT. DIABLO UNIFIED SCHOOL DISTRICT, permissibly self-insured; administered by LWP CLAIMS SOLUTIONS, INC., *Defendants*

Adjudication Number: ADJ16040226
Oakland District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A) issued on September 26, 2025 wherein the workers' compensation administrative law judge (WCJ) found that while employed by defendant as a teacher during the period ending February 16, 2023, applicant sustained injury arising out of and in the course of employment (AOE/COE) to the "low back with referred pain to the bilateral feet" and awarded applicant "[f]uture medical treatment reasonably required to cure or relieve from the effects of the injury herein." (F&A, pp. 1-2.) The WCJ held that applicant's case was not barred by the statute of limitations based upon the Labor Code[1] section 5412 date of injury as well as medical reporting from Qualified Medical Evaluator, Paul McBride, M.D. (*Id*. at p. 2.)

Defendant contends that based upon the evidence, applicant's claim is barred by the statute of limitations and should be found non-compensable. (Petition for Reconsideration (Petition), p. 7.) Applicant further contends that applicant failed to meet her burden of proof in establishing injury AOE/COE as the reporting of Dr. McBride is not substantial medical evidence. (*Id*. at p. 4.)

We have received an Answer from applicant. The WCJ who originally issued the F&A was unavailable to prepare the Report and Recommendation on Petition for Reconsideration (Report). As such, the Presiding Workers Compensation Judge (PWCJ) prepared the Report, pursuant to

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

WCAB Rule 10962 (Cal. Code Regs, tit. 8, § 10962), and recommended denial of defendant's Petition.

We have considered the Petition, the Answer, and we have reviewed the record in this matter. For the reasons discussed below, and based upon the Report of the PWCJ, which we adopt and incorporate herein, we will deny the Petition.

FACTS

Applicant filed an Application for Adjudication claiming that, while employed by defendant as a teacher during the period from June 12, 2013, through June 12, 2014, she sustained injury AOE/COE to the lumbar spine.

The parties proceeded with discovery and retained Dr. McBride as the QME. Dr. McBride evaluated applicant on one occasion and issued two reports dated December 12, 2024, and March 19, 2025.

In his initial report, Dr. McBride opined that as a result of applicant's employment, she sustained "a cumulative trauma to her lumbosacral region" with the following diagnoses: a history of lumbar surgery; possible lumbar disc injury with radiculopathy; and lumbosacral sprain. (Exhibit Y, pp. 5-6.) In his subsequent report, he noted that applicant was not yet permanent and stationary but nonetheless issued a provisional impairment rating of 13% whole person impairment using DRE category III for the lumbar spine. (Exhibit Z, p. 2.) He noted that the subject injury was separate and distinct from her prior 1994 injury to the lumbar spine. (*Ibid*.)

On April 9, 2025, applicant filed a Declaration of Readiness to Proceed to a priority conference. The matter was ultimately set for trial on August 12, 2025, on the issues of injury AOE/COE; applicability of the statute of limitations defense; and whether the reports of Dr. McBride constitute substantial medical evidence.

On September 26, 2025, the WCJ issued an F&A wherein she found, in relevant part, that while employed by defendant as a teacher during the period ending February 16, 2023, applicant sustained injury AOE/COE to the "low back with referred pain to the bilateral feet" and awarded applicant "[f]uture medical treatment reasonably required to cure or relieve from the effects of the injury herein." (F&A, pp. 1-2.) The WCJ further found that applicant's case was not barred by the statute of limitations based upon a section 5412 date of injury of February 16, 2023, as well as medical reporting from Dr. McBride. (*Id*. at p. 2.)

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 November 7, 2025, and 60 days from the date of transmission is January 6, 2025. This decision was issued by or on January 6, 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 and Recommendation shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on November 7, 2025, and the case was transmitted to the Appeals Board on November 7, 2025. Service of the Report and transmission 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 Labor Code 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 November 7, 2025.

II.

Turning now to the merits of the Petition, defendant contends that applicant's claim should be barred by the statute of limitations. (Petition, p. 7.)

The statute of limitations is an affirmative defense upon which the defendant carries the burden of proof. (Lab. Code, § 5409.) 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 claims that applicant should have known as early as 2014 that her injury was the result of her employment with defendant based upon reporting by Dr. Candell, applicant's primary care physician, who allegedly indicated in multiple reports that "applicant's pain and/or symptoms are exacerbated by her ongoing work." (Petition, pp. 5-6.) It is well established that if a subsequent strain aggravates and thereby causes worsening of a prior injury, it may be considered a new and distinct injury. However, if the subsequent strain is a mere exacerbation, it is considered a recurrence of the original injury rather than a separate and distinct injury. For the purposes of workers' compensation, an aggravation causes temporary or permanent disability thereby entitling applicant to benefits, whereas an exacerbation does not. (See *City of Los Angeles v. Workers' Comp. Appeals Bd.* (*Clark*) (2017) 82 Cal.Comp.Cases 1404 (writ denied).]

Defendant admits that applicant's prior flare-ups, detailed in "extensive" visits during the 2004-2014 period, were exacerbations rather than aggravations. (Petition, pp. 5-6.) Evidence of such exacerbations, however, is not evidence of knowledge of an injury and there is nothing in the record which indicates otherwise. Further, applicant has no specific training, background, or experience which would enable her to identify a cumulative injury or discern the industrial nature of her disability.

Lastly, as stated by the WCJ in her Opinion on Decision (OOD):

> Defendant contends that Applicant knew of should have known of the additional injury when she retired due to her medical condition as her worsening back and impending surgery led her to retire and experience an immediate loss of earnings capacity. However, cumulative trauma in workers' compensation is a term of art, and the reports in existence in 2014 are insufficient to notify a lay person that a new injury has occurred. Importantly, Dr. McIvor's report states the opposite. She testified that she does not know the legal difference between an exacerbation and an aggravation. (MOH/SOE at 10/10-11.) Applicant would not have known from the medical evidence in 2014 that she had suffered a new injury.

> Knowledge in this case must therefore be when she consulted with her current attorney Mr. Smith at Weltin Law. Her attorney filed an Application for Adjudication in this case on 04-13-2022. An Amended Application was filed on 09-21-2022, using a cumulative trauma date ending on 06-12-2014. The first medical opinion supporting the existence of a cumulative trauma was that of Dr. McBrides's report of 02-16-2023. As such, the date of injury under Labor Code section 5412 is cumulative trauma ending 02-16-2023. The statute of limitation does not apply to this case.
>
> (OOD, p. 10.)

Based upon the foregoing and our review of the evidentiary record, we agree with the PWCJ that applicant's case is not barred by the statute of limitations.

III.

Defendant further contends that applicant failed to carry her burden in establishing injury AOE/COE because the reporting of Dr. McBride is "cursory" and "short of substantial medical evidence[.]" (Petition, p. 4.)

Section 3202.5 states, in relevant part, that parties are to "meet the evidentiary burden of proof on all issues by a preponderance of the evidence. Pursuant to section 5705, the burden of proof rests upon the party holding the affirmative of the issue. The burden therefore rests with the applicant (or lien claimant, who steps into the shoes of the applicant). To meet this burden, the applicant must provide substantial evidence of injury AOE/COE. Any medical opinion proffered as substantial evidence, however, must be framed in terms of reasonable medical probability, be based on pertinent facts, an adequate examination, and history, set forth reasoning in support of its conclusions, and not be speculative. (*E.L. Yeager v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) "[A] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (citations) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citations)" (*Gatten*, *supra*, at p. 928.) "A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits.

(citation)" (*Kyle v. Workers' Comp. Appeals Bd* (*City and County of San Francisco*) (1987) 195 Cal.App.3d 614, 621.)

Here, based upon our review of the evidentiary record, including the QME reports of Dr. McBride, we agree with the WCJ that Dr. McBride obtained a thorough history of the injury, and completed a comprehensive examination of applicant and review of applicable medical records. (Report, p. 7.) Further, his opinions are well-reasoned and not based upon surmise, speculation, conjecture, or guess. We remind defendant that although the onus is on applicant to provide substantial evidence of injury AOE/COE, the "burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1701 [58 Cal.Comp.Cases 313].) Further, once this burden has been met, the burden shifts to defendant to provide evidence in rebuttal. Although defendant references reporting by Dr. Candell, no real contradictory evidence has been presented herein. The record overwhelmingly supports a finding of industrial causation. Accordingly, we agree with the PWCJ that applicant has met her burden in establishing substantial medical evidence of injury AOE/COE to the lumbar spine with a continuing need for future medical treatment.

Accordingly, defendant's Petition is denied.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued on September 26, 2025, is **DENIED.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 6, 2026

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

ALLISON JUNG
WELTIN, STREB & WELTIN, LLP
D'ANDRE LAW LLP

RL/*cs*

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

INTRODUCTION

Defendant filed its Petition for Reconsideration timely from the Findings and Award of September 26, 2025, which found the applicant, a teacher, sustained an injury arising out of and in the course of employment with Mt. Diablo Unified School District (MDUSD), to her back with referred pain to bilateral feet for a period ending on June 12, 2014, and found her case not barred by the Statute of Limitations. MDUSD contends in substance that QME report of Paul McBride, DC, opining applicant sustained an industrial cumulative trauma injury is not substantial evidence, that the report of Robert McIvor, M.D. concluding applicant applicant's physical condition results from natural progression of prior back injury is substantial evidence and that applicant knew or should have known her increased low back symptoms were related to her teaching activities with MDUSD.

Applicant filed her Answer to Petition for Reconsideration on November 5, 2025. Applicant asserts that finding of industrial causation is justified by medical reports of Dr. McBride, Dr. Johnson and Dr. Candell and that defendant presented no evidence showing applicant should have known her disability was caused by her employment.

The Workers' Compensation Judge (WCJ) is not available to prepare the Report and Recommendation. Per §10962 of Rules and Practice Procedure of the Workers' Compensation Appeals Board, the Presiding Workers' Compensation shall prepare and serve the report.

STATEMENT OF FACT

Trial took place on August 12, 2025. Issues were injury arising out of and in the course of employment, statute of limitations and whether the medical reports from the qualified medical examiner (QME), Paul McBride, DC, are substantial evidence. Applicant, Allison Wells Jung, was the only witness at trial.

Applicant sustained an injury to her low back while working as a kindergarten teacher for Mt. Diablo Unified School District on 05-17-1994 in case number ADJ3186238. She slipped and fell moving heavy tables in her classroom., (Minutes of Hearing/Summary of Evidence dated 08-12-2025, hereinafter "MOH/SOE," at pp. 6/lines 12-25.) The claim was accepted, and she continues to receive medical treatment. (MOH/SOE at 7/ 5-11.)

Applicant continued working as a teacher for Mt. Diablo Unified School District after her injury in 1994, in a "job-share" position (MOH/SOE at 7/24). Applicant's job-share position was

less than full time. (MOH/SOE at 12/12-18.) It was one position shared by two teachers. Therefore, when Applicant was on duty, she was the teacher in the classroom and was required to perform all teacher duties. Applicant worked in a job share for most of her career with the employer school district until her retirement in 2014.

Applicant testified that she performed all the duties of her job, which had physical demands. Because tables, cubby shelves, and countertops in the kindergarten classroom were low for the children, she needed to bend often. (MOH/SOE at 8/5-18.) There was circle time on the floor. (Id.) She testified that she would lift daily and lower up to 32 chairs off desks. (Id.) She estimated that 50% of her time or more involved bending or getting down on the same level as the children. (Id.) She performed the same work from 1996 through 2014. (Id., at 12/12-18.) At some point, she was provided with a swivel chair which she used for circle time and when referring to the board on the wall. (Id., at 8/19-20; 12/1-3; 12/8-11.) Applicant retired from this job in spring or summer of 2014 because she felt that she could not keep up with the children and surgery was scheduled in September of that year.
(Id., 12/22-25.)

After the 1994 injury, her back was never the same. She had constant low back pain and experienced frequent flare-ups.(MOH/SOE 11 at 8-11 and 8 at 5-6, 18-19) and missed time off work approximately seven days per year. She believed it would hurt to do bending, twisting and lifting for the rest of her life. (MOH at 9/21-22,24-25). Her baseline level of pain was 3-4 increasing to 9 when she had a flare-up. (MOH/SOE 9/1-4). Around 2010 or 2011, new symptoms of pain down her legs, tightness in the IT bands, buttock and low back pain arose to where she could hardly walk. (MOH/SOE 9 at 9-13) Her low back surgery relieved the sciatica and buttock pain but experienced new radiculopathy as well as issues with her back, feet, toes, lack of movement and temperature.(MOH/SOE 11 at 15-19)

Applicant attributed all her problems to her 1994 injury and believed Dr. McIvor said so. She did not know the term cumulative trauma until she met her attorney who explained repetitive movement can increase and deteriorate the body. She does not know the difference between exacerbation and aggravation in workers' compensation. (MOH/SOE 10 at1-11).

Dr McBride submitted four reports dated 02/16/2023, 03/29/2024, 12/12/2024 and 03/19/2025. In the first QME report of 02-16-2023, Dr. McBride notes, and the record shows, that Applicant had laminectomy lumbar surgery with Dr. Randall on 09-15-2014 and then on 09-24-

2014, she presented to the emergency room with "progressive right sided neuropathic pain that feels like burning and tingling" among other symptoms. (Ex. W at 7.) According to Dr. McBride, Applicant's condition worsened over time, and he concluded that "it is medically probable that she suffered a cumulative trauma." (Id., at 6). In his reports of 03/29/2024, he reviewed enumerated medical records and opined causation was set forth in 02/16 2023 report (Ex. W).

In his report of 12-12-2024, admitted as Exhibit Y, Dr. McBride requested to review the reports by the current treating physician, Dr. Matthew Johnson. and opined:

> It is my opinion, based on the information available, history of injury, initial examination, medical records, and lack of any other evidence to the contrary that this patient's injury arose out of employment, and was caused by employment. (Id., at pg 6.)

The QME's final report dated 03-19-2025 is admitted as Exhibit Z. Therein, Dr. McBride affirms a new injury:

> The examiner has stated that Ms. Wells Jung has suffered acumulative trauma injury due to her work as an elementary school teacher. It is the medical opinion of this examiner that the cumulative injury is clear and distinct from her specific injury in 1994. (Page 2)

Robert McIvor, M.D. was the QME reporting in ADJ3186238. In his report dated November 23,1996, admitted as Exhibit C, he opined the applicant sustained a lumbar strain with intervertebral disc injury, L5-S1 and wrote:

> Whereas Ms. Lyons has had occasional problems with the lower back in the past, her primary difficulty seems to relate to the injury of May 17, 1994 and its residual. She has been identified as having a cervical disc bulge at LS-S1 which has intermittently involved her Sl nerve root with sciatic-type pain into the right leg, Fortunately, this has pretty well diminished now and her problem is in all probability -elated to the mechanical malfunction about the LS-S1 disc.(Pg 4)

Dr. McIvor evaluated applicant prior to her surgery in 2014, and submitted reports dated 06/11/2014 and 11/20/2014. In his June report (Exhibit B), he finds applicant's current status as degenerated disc at L5-S1, spondylolisthesis at L4-L5 with stenosis and stenosis at L3-L4. Dr. McIvor queried whether applicant's current problem was "a continuation of the original injury, which was presumably at L5-S1, or a new and separate injury, involving L3-L4 and L4-L5. " (Page

4). He noted applicant had ongoing back complaints after the 1994 injury and further there was no way of determining which discs were injured in 1994 "though the x-ray did show L5-S1 as being narrowed and, to some extent, abnormal." Because applicant had ongoing problems since the 1994 injury and "some 20 years later it is impossible to determine which disc in fact is responsible for her current status, though conceivably all three of the lower discs might be involved and symptomatic to one extent or another," absent a discogram. Since applicant was to undergo surgery, a discogram test was not justified. Dr. McIvor opined her current status was an ongoing matter of the original injury.

In his November report (Ex A), Dr. McIvor reviewed additional records noting he was unsure what type of surgery was done and reiterated applicant's condition was an ongoing problem dating back to the May 17, 1994 injury which "simply progressed over the 20 year period since then." Dr. McIvor did not list Dr. Randall's operative report as being received and reviewed.

Matthew Johnson, M.D. is applicant's current primary treating physician.(PTP). In his report of 06/14/2024, he opined:

> Reviewed Dr. McBride's supplemental report. Not felt to be MMI. I agree it is more likely than not that there is a cumulative trauma through the last day of employment in 2014. She was working in Kindergarten Classrooms working with low tables, chairs. Her job entailed moving and stacking chairs daily in her classroom and moving tables. There was repetitive forward bending to help the children with activities and work. She would frequently have to lift children. She had daily "yard duty" and would have to haul 6 metal tricycles to the playground as well as building blocks. She also had to sit frequently for long periods on the floor.
>
> I will issue a separate special report but can state that this is, to a degree of medical probability, an injurious work environment and it is more likely than not that she suffered injury to her low back during the course of her employment and that this amount of injury would meet the California threshold for industrial injury.

Jeffrey Randle, M.D., performed surgery on applicant's back. In his report of May 27, 2014, he reviewed the 12/23/2011 MRI imaging and determined it showed Grade 1 degenerative spondylolisthesis at L4-L5, clear L5 root compression, mild stenosis at L3-4 not likely significant. His diagnostic impression was lumbar stenosis with persistent radicular pain correlating with MRI findings at L4-5. (Exhibit L) The operative report shows he performed a lumbar laminotomy at

L4 on the left with facetetomy and bilateral foraminotomies and lumbar laminotomy at L5 on the left with medial facetectomy (Ex. N).

Brian Candell, M.D., is her primary care physician who, in his April 29, 2014 report, wrote he followed the applicant's progression and deterioration low back problem for 20+ years noting her job teaching is painful to carry out. These job duties involve bending and working with small children on the floor. (Exhibit 2) In his May 22, 2009 report, he noted applicant now had left leg symptoms. (Ex 2).

In her Opinion on Decision of September 26, 2025,The trial judge reasoned:

> Labor Code section 3208.1(b) defines a "cumulative" injury as occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect ofwhich causes any disability or need for medical treatment. A cumulative trauma injury is one that can occur over time with wear and tear on a body part. Cumulative trauma claims to the back are common in California. The unrefuted evidence is that Applicant had a physical job involving bending, stooping, lifting, and twisting, from floor level at least 50% of her workday. That Applicant performed these duties over the course of twenty years after the specific injury is enough time past the specific injury for additional wear and tear to occur.
>
> Applicant testified that she developed new symptoms in 2010 or 2011. As a result, she tried multiple modalities of conservative treatment. In the end, she was surgical in 2014. Dr. Candell's contemporaneous letter in April of 2014 documents the recent changes. All the physicians, even Dr. McIvor, appear to agree that there was a "progression" of symptoms. Dr. McIvor does not offer any explanation as to what caused a drastic deterioration of Applicant's condition or why it occurred two decades after the specific injury. As such, Dr. McIvor's reporting is not substantial medical evidence. Three physicians of four agree Applicant suffered a new, cumulative trauma injury. Accordingly, Applicant suffered a new cumulative trauma due to work duties performed until 2014 (Opinion on Decision, page 9)

DISCUSSION

Labor Code §3202.5 provides all parties "shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence" and preponderance of the evidence is "evidence that,

when weighed with that opposed to it, has more convincing force and the greater probability of truth." Having considered the trial judge's reasoning set forth above, applicant's testimony about new symptoms and the medical reporting by Dr. Candell and Dr. Randall, applicant met her burden of proving she sustained a cumulative trauma injury separate and distinct from the 1994 injury.

Beside the evidentiary record cited above in the trial judge's Opinion on Decision, finding of a separate and distinct injury is supported by. applicant's testimony of experiencing new symptoms is documented by Dr. Candell's May 2009 where he notes applicant now experiencing left leg symptoms. In his Operative Report, Dr. Randall performed surgery at the L4 and L5 disc. Applicant reported relief from the sciatica and buttock pain after surgery. This lends support to finding applicant sustained a separate injury involving the L4-L5 as queried by Dr. McIvor. Dr. McIvor noted it was impossible to determine which disc was responsible for her current status.

Defendant's posits that Dr. McBride's opinion that applicant suffered a cumulative trauma injury is "more cursory and short of substantial evidence than the reporting of Dr. McIvor in 2014." (Petition for Reconsideration pg 4). Defendant does not set forth a basis to find the reporting by Dr. McBride not substantial medical evidence. Dr. McBride "based on the information available, history of injury, initial examination, medical records, and lack of any other evidence to the contrary that this patient's injury arose out of employment, and was caused by employment." Dr. McBride's opinion that applicant sustained a separate and distinct injury from the 1994 injury is supported by Dr. Randall's operative report, Dr. Candell and applicant's testimony.

The Statute of Limitations runs one year from the date of injury. Labor Code §5405. For cumulative injuries, the date of injury is the date the injured employee '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."

Without question, applicant continued to have flare-ups of back pain from the time of her 1994 injury through 2014. The applicant was aware that bending, twisting and stooping would hurt and that she took time off from work because of the flare-ups. However, having symptoms/flare-ups does not, in and of itself, establish knowledge that disability was caused by the employment. She believed her back problems were due to the 1994 specific injury. She did not know about cumulative injury until she met with her attorney who explained that repetitive movement can increase and deteriorate the body. Dr. McIvor whom she saw in 2014 concluded her status was due to progression from the 1994 injury. This conforms with applicant's belief. In *City of Fresno*

v. WCAB(Johnson)(1985) 163 Cal. App. 3d 967, 50 Calif. Comp. Cases 53, the Court held that applicant is not charged with knowledge the disability is due to employment without medical opinion so finding. The applicant in that case as in the case at bar was provided a medical opinion that the disability was not job related. The date of injury for Statute of Limitations purpose is the date when she learned from her attorney that her disability may be caused by or contributed to her entire period of employment with MDUSD.

RECOMMENDATION

It is recommended that defendant's Petition for Reconsideration be DENIED.

NOTICE OF TRANSMISSION

On, 2025, this matter is transmitted to the Reconsideration Unit of the Appeals Board.

Date 11/07/2025

Gene Lam

PRESIDING WORKERS' COMPENSATION

ADMINISTRATIVE LAW JUDGE