WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

HERMELINDA MURILLO, *Applicant*

vs.

SCI-FUNERERIA DEL ANGEL;
OLD REPUBLIC INSURANCE COMPANY,
administered by GALLAGHER BASSETT, *Defendants*

Adjudication Number: ADJ12994950
Los Angeles District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted the Petition for Reconsideration[1] filed by applicant in order to study further the legal and factual issues raised therein. This is our Opinion and Decision after Reconsideration.

Applicant sought reconsideration of the Findings and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on March 11, 2021, wherein it was found that applicant sustained an injury arising out of and in the course of her employment to the right knee and left shoulder on November 30, 2011, and that her claim is barred by the statute of limitations pursuant to Labor Code[2] section 5405.

Applicant contends that defendant failed to meet its burden of proof and is estopped to assert the statute of limitations because it never complied with the notice requirements of section 5401 pursuant to *Kaiser Found. Hosps. Permanente Medical Group v. Workers' Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57, 63 [50 Cal.Comp.Cases 411] and *Reynolds v. Workmen's Comp. Appeals Bd. (Reynolds)* (1974) 12 Cal.3d 762 [39 Cal.Comp.Cases 768]; and, further, defendant misled applicant by initially accepting applicant's claim and providing medical treatment but then

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[1] Commissioners Lowe and Sweeney, who both previously served on the panel which granted reconsideration to further study the factual and legal issues in this case, no longer serve on the Appeals Board. Other panelists have been assigned in their place.

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

failing to provide sufficient notice advising applicant of her remedies and rights if she disagreed with the carrier's decision not to pay permanent disability.

Defendant filed and Answer to Applicant's Petition for Reconsideration (Answer), and the WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied.

We have reviewed the record in this matter, the allegations of the Petition for Reconsideration and the Answer, and the contents of the Report. Based on our review of the record and based on the reasons set forth below, it is our decision after reconsideration to rescind the F&O and return this matter to the trial level for further proceedings consistent with this decision.

I. FACTS AND PROCEDURAL HISTORY

In this case, defendant accepted applicant's claim for the November 30, 2011 specific injury on December 6, 2011 by sending a letter in English only:

> **Your recent Workers' Compensation claim has been accepted for benefits.**
> ...
>
> 2. **We will pay for medical care that is reasonably required to cure or relieve effects from your injury.** All medical treatment is subject to Utilization Guidelines or the American College of Occupational and Environmental Medicine guidelines. Your physician must obtain prior authorization for any non-emergency medical treatment or diagnostic services. If you receive any medical bills, please send them to Gallagher Bassett Services, PO Box 22348, Tucson, AZ 85734. Any other correspondence or information other than medical bills should be sent to our office at the address on this letterhead. We will reimburse you for your necessary transportation expenses. Mileage incurred on or after 07/01/2011, will be reimbursed at the rate of $00.555 per mile (regardless of the date of injury).
>
> 3. **You have the right to change treating doctors 30 days after you reported the injury to your employer.** If you are included in your employer's Medical Provider Network (MPN), then you may change physicians within the MPN at any time.
>
> 4. **When an undisputed industrial injury occurs, the Labor Code of the State of California provides for the following benefits when applicable: medical treatment, temporary disability, permanent disability, and supplemental job displacement benefit.** The statute of limitations for receiving medical treatment is one year from the date of injury or one year from the date of last furnishing of benefits, whichever is last. Once a finding of permanent

> disability has been issued, the statute of limitations for re-opening your claim for new and further permanent disability is five years from the date of injury.

(Def. Exh. A, Acceptance Letter, December 6, 2011, p. 1, bold added.)

On the same date as the acceptance letter, defendant sent applicant a letter in English only describing how she could claim reimbursement for mileage to and from medical appointments for treatment related to her industrial injury. (Def. Exh. B, Letter to Applicant, December 6, 2020.)

On the same date as the acceptance letter, defendant sent applicant a DWC-1 claim form with instructions in both English and Spanish. (Def. Exh. C, DWC-1 Claim Form, issued with the Acceptance Letter, December 6, 2011.)

It is undisputed that the employer provided applicant with medical treatment for the November 30, 2011 specific injury. (Minutes of Hearing and Summary of Evidence (MOH), December 23, 2020, December 23, 2020, p. 2 [defendant stipulated that applicant treated for that specific injury to her knee and shoulder at U.S. HealthWorks].)

On January 29, 2014, orthopedic surgeon Brian Solberg, M.D., who started treating applicant on September 11, 2013, declared her permanent and stationary from the November 30, 2011 specific injury with 0% whole person impairment. (Joint Exh. A, report of panel qualified medical evaluator (PQME) Brian D. Rothi, M.D., October 7, 2020, p. 5.) Dr. Solberg described the injury as a contusion to her right knee and a "'very mild'" injury to her left knee. (*Ibid.*) Dr. Solberg did not expect applicant to require any surgery resulting from her industrial injury. (*Ibid.*)

On April 2, 2014, defendant sent applicant a draft Stipulations with Request for Award (draft Stipulations) in English only telling applicant that the stipulations "state that both parties agree to the amount of disability and **will assure [*sic*] that you receive future medical treatment, should you need it...This is merely a formality, as explained above, to assure your right to future medical treatment should you need it.**" (Def. Exh. D, Proposed Stipulation, April 2, 2014, bold added.) The "amount of disability" was 0 percent (0%) and provided for a stipulation to "future medical care to right knee" with no provision for future medical care for applicant's accepted left shoulder injury. (*Id.*, at pp. 5-6.) On June 9, 2014, defendant re-sent the same draft stipulations in English only to applicant with an identical cover letter. (Def. Exh. E, June 9, 2014.) There are no executed stipulations with request for award and/or award in the record of this case.

We find no permanent disability notices as required by Rule 9812, subdivision (g), in the record of this case, and specifically, we do not find a notice of no permanent disability as required by subdivision (g)(3) (Cal. Code Regs., tit. 8, § 9812, subd. (g)).[3]

Also on April 2, 2014, defendant sent applicant a letter in English only that included an alleged "QME Waiver" that asked applicant to waive her right to a panel QME (qualified medical evaluator):

> I, Hermelinda Murillo, have been advised of my right to a panel QME doctor and expressly waive this right. Instead I wish to settle my workers' compensation case base [*sic*] upon the treating physician Dr. Brian Solberg's permanent and stationary report dated 01/29/14 [*sic*]

(Def. Exh. F, Letter to Applicant, April 2, 2014, p. 3.)

We find no evidence in the record that applicant was advised of her right to a panel QME. There was no notice or provision of a QME panel request form as required by Rule 9812, subdivision (h), in the record of this case.[4]

Applicant stopped working in 2018 because of the continuing pain in her knees. (Joint Exh. B, PQME Report, September 17, 2020, p. 3.) Applicant reported that she did not receive any workers compensation benefits from her employer. (Joint Exh. B, PQME Report, September 17, 2020, p. 4.) At trial, it was stated that applicant "waived" temporary disability payments for the accepted, specific injury of November 30, 2011. (MOH, December 23, 2020, p. 2.) We find no evidence in the record of this case to corroborate any such "waiver" and the WCJ did not issue any finding of fact, order, or award affirming any such "waiver." (See F&O.) **We find no notice of denial of temporary disability indemnity payments in the record of this case as required by Rule 9812, subdivision (a)(3)(A) (Cal. Code Regs., tit. 8, § 9812)**.[5]

On December 16, 2019, defendant terminated applicant's employment and applicant thereafter obtained the assistance of an attorney. (Joint Exh. B, PQME Report, September 17, 2020, p. 3.)

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[3] Current Rule 9812 operative January 1, 2016. For notices related to permanent disability for dates between November 30, 2011 and January 29, 2014, please see 2011-2014 Cal. Code Regs., tit. 8, § 9812.

[4] Current Rule 9812 operative January 1, 2016. For notices related to QME panels for dates between November 30, 2011 and January 29, 2014, please see 2011-2014 Cal. Code Regs., tit. 8, § 9812.

[5] Current Rule 9812 operative January 1, 2016. For notices related to any potential periods of temporary disability between November 30, 2011 and January 29, 2014, please see 2011-2014 Cal. Code Regs., tit. 8, § 9812.

On February 19, 2020, applicant filed an Application for Adjudication of Claim for the November 30, 2011 specific injury to various body parts including both knees, arm, digestive, and psyche. (Application for Adjudication of Claim, February 19, 2020, pp. 2-3; see Amended Application for Adjudication of Claim, September 2, 2020, *infra*.)

On September 17, 2020, applicant was evaluated by orthopedic panel qualified medical evaluator (PQME) Brian D. Rothi, M.D. (Joint Exh. B, PQME Report, September 17, 2020.) **Applicant required a Spanish-language interpreter.** (*Id.*, p. 2.) Applicant reported that after a fall descending a flight of stairs on November 30, 2011 resulting in the accepted injury claim, she reported the incident to her employer who was referred to Beverly Hospital where x-rays of her left knee ruled out fracture. (*Id.* at p. 2.) The employer sent her to an industrial clinic where she underwent physical therapy for about two months and was provided with medication. (*Ibid.*). Applicant received physical therapy "almost annually subsequent to that" for six to eight weeks at a time, experience improvement and then discontinue treatment. (*Id.* at p. 3.) The pain in both knees became progressively worse over time. (*Ibid.*) Applicant denied previous pain in either knee. (*Id.* at p. 7.)

Her employer's workers' compensation carrier made it difficult to get regular treatment and therefore she started treating through her private physician, Jonathan Saluta, M.D. (Joint Exh. B, PQME Report, September 17, 2020, p. 3.) Dr. Saluta performed an MRI which had not been taken before, which the doctor stated revealed "destroyed knees" and that she required knee joint replacement surgery. (*Ibid.*) Applicant underwent left knee replacement surgery on January 14, 2019, followed by physical therapy and improvement. (*Ibid.*) Applicant had her right knee replacement surgery on July 10, 2019, with a post-operative infection requiring as second surgery requiring six weeks of antibiotics which ended in November 2019. (*Ibid.*) Applicant underwent another knee surgy on February 10, 2020 due to remaining restricted mobility in the right knee, but she still has restricted range of motion and pain in that knee. (*Id.*, at p. 4.) She still has some pain in her left knee as well and has to walk with a quad cane to maintain her balance. (*Ibid.*) Applicant reported that overhead use of her left arm caused her pain her left shoulder but does not prevent her from activities. (*Id*. at p. 5.) The PQME's conclusions were as follows:

> Ms. Murillo, according to her history given here, had no pain in her knees absent the specific injury of November 30, 2011. Falling on both of her knees, she had pain intermittently and required treatment.

> Over the course of years, she states that her pain progressed to the point at which she had to stop working in 2018.
>
> This would indicate to me that she most likely has cause for apportionment. That is, it is my opinion that 20% of the need for the surgery on both knees was most likely related to a pre-existing condition, 30% was related to the specific injury which initiated the symptomatology on November 30, 2011, and 50% is related to continuous trauma up through 2018.
>
> With respect to her carpal tunnel syndrome on the right wrist, it is my opinion that this is entirely related to continuous trauma.
>
> Her low back and left shoulder complaints, which have remained stable over the years, in my opinion, are entirely related to the specific injury of November 30, 2011.
>
> It is my opinion that from a practical standpoint, she is now at a point of maximal medical improvement.

(Joint Exh. B, PQME Report, September 17, 2020, p. 7.)

The PQME rated applicant's injuries as follows:

> Per Table 17-33 on pages 546 and 547, the claimant has a 30% impairment on the right knee and 20% impairment on the left knee.
>
> For the right wrist, I would rate her per the discussion on carpal tunnel syndrome on page 495 and give a 5% upper extremity impairment, which translates to a 3% whole person impairment.
>
> With respect to the lumbar spine, she has in effect a DRE Lumbar Category I impairment which has a 0% whole person impairment per Table 15-3 on page 384.
>
> She has no ratable factors of disability referable to her left shoulder.

(Joint Exh. B, PQME Report, September 17, 2020, p. 8.)

The PQME recommended the following medical treatment for applicant's accepted injury:

> The claimant, in my opinion, may require additional medical treatment. This could include for the right wrist and carpal tunnel syndrome splinting, cortisone injections and possible surgical release.

> With respect to the left shoulder, it is my opinion that she would not require any specific treatment other than over the counter anti-inflammatory medication or analgesic medication.
>
> Similar treatment is recommended for her lumbar spine.
>
> For the right and left knees, she will require lifetime medical follow-up and there is a significant likelihood of recurrence of infection or complications and she may require additional surgery for both knees. She also might require intermittent physical therapy and bracing.

(Joint Exh. B, PQME Report, September 17, 2020, pp. 8-9.)

On October 7, 2020, Dr. Rothi issued a supplemental report after reviewing applicant's deposition and additional medical records from applicant's treating physicians that dated between December 1, 2011 and August 19, 2020. (Joint Exh. A, October 7, 2020, pp. 3-5.)[6] Dr. Rothi's comments on his review of applicant's deposition included that applicant treated through workers' compensation for approximately two years until February 2014, and "was released from her industrial injury on January 29, 2014." (*Id.* at p. 5.) Dr. Rothi further commented that applicant did not report her continuing symptoms but went "on her own to Healthcare Partners instead of returning to the industrial carrier." (*Ibid.*) Applicant sustained another fall injury on October 3, 2014 while at home, injuring her low back, neck, left shoulder and right knee with an increase in pain. (*Ibid.*) Dr. Rothi commented on applicant's second opinion with LA Orthopedic Center, and that she had a total of four total knee replacement surgeries (three on her right knee and one on her left knee), with post-operative complications after the initial right knee surgery. (*Id.* at p. 6.) Applicant was involved in a motor vehicle accident in 1999 but reported full recovery from that accident. (*Ibid.*) Dr. Rothi's comments on his record review confirmed applicant's complaints of ongoing pain in both knees through 2017, and ongoing post-operative complications in 2019 following her right knee surgery. (*Ibid.*)

Applicant reported weight gain starting in 2016 and depression in July 2018, both "secondary to her physical pain." (Joint Exh. A, October 7, 2020, p. 7.) In 2018, she was a candidate for surgical bypass surgery to reduce her obesity as it was considered "deleterious to the total knee replacements." (*Id.* at p. 9.)

[6] We note that applicant's deposition is not in evidence.

Dr. Rothi noted the rating report from Brian Solberg, M.D., an orthopedic surgeon who started treating applicant on September 11, 2013, and who declared her permanent and stationary from her November 30, 2011 injury on January 29, 2014 with 0% whole person impairment. (Joint Exh. A, October 7, 2020, p. 7.) Dr. Solberg described that applicant's injury was a contusion to her right knee and a "'very mild'" injury to her left knee. (*Ibid.*) Dr. Solberg did not expect applicant to require any surgery resulting from her industrial injury. (*Ibid.*)

Dr. Rothi noted that Edwin Haronian, M.D., an orthopedic surgeon, indicated on August 19, 2020, that there was an industrial component to applicant's complaints regarding her left shoulder and right knee and that further treatment was indicated. (Joint Exh. A, October 7, 2020, p. 8.)

Dr. Rothi reviewed the surgical records including those records from Jonathan Saluta, M.D., orthopedic surgeon. (Joint Exh. A, October 7, 2020, p. 8.) Dr. Rothi noted that Dr. Saluta reported applicant's "sudden onset of pain" beginning two years prior to August 23, 2019, and recommended an MRI. (*Ibid.*) Thereafter, Dr. Saluta recommended bi-lateral total knee replacements. (*Ibid.*) Dr. Rothi noted that another physician, Kathleen Savage, M.D., remained reluctant to recommend surgery based on her obesity and because she believed applicant wold be "set-up for infection because of multiple ulcers presumably on her legs." (*Id.* at pp. 8-9.)

Following her surgeries (January 29, 2019 to the left knee and July 10, 2019 to her right knee), applicant was discharged from physical therapy on November 27, 2019 due to lack of response to treatment. (*Ibid.*)

Dr. Rothi issued his final conclusions following his review of these records, stating:

> Having reviewed these new medical records, it is my opinion that **the claimant's initial injury of November 30, 2011 aggravated a pre-existing condition of developing arthritis in the right knee; and the subsequent development on the left knee symptoms and findings are a compensable consequence to her right knee injury, therefore, apportionment is basically the same for the right and left knees.**
>
> It is my opinion that 20% of her overall impairment is the natural consequence of her underlying arthritis and obesity; **30% is related to the specific inciting event of November 30, 2011; and 50% is related to continuous trauma up through 2018.**
>
> **Her carpal tunnel, in my opinion, is related to continuous trauma as noted in my report of September 17, 2020.**

> Her low back pain is not ratable. It is a low back sprain or in DRE Lumbar Category I with 0% impairment and related, in my opinion, to her original injury.
>
> **The claimant has no ratable factors of disability referable to her left shoulder.** However, the symptoms in her left shoulder are related to the specific event of November 30, 2011.
>
> **The claimant's symptoms and findings, in my opinion, are consistent with her original injury and the continuous trauma and pre-existing combination.**
>
> **Further treatment will be required as noted in my original report.**
>
> It is my opinion that her work restrictions are isolated to her knees which precludes her from prolonged standing or repetitive stair climbing, or any squatting or kneeling.
>
> It [*sic*] do not recommend any formal work restrictions for her other areas of concern or impairment. [...]

(Joint Exh. A, October 7, 2020, pp. 9-10, bold added.)

The June 3, 2020 and August 19, 2020 reports of treating physician Edwin Haronian, M.D., confirm the conclusions of the PQME. In the August 19, 2020 report, Dr. Haronian reviewed medical records dating from December 1, 2011 through February 11, 2020. (App. Exh. 1, Report of Edwin Haronian, M.D., August 19, 2020, pp. 1-49.) Dr. Haronian concluded that a review of applicant's medical records results in "a clear indication that an industrial injury did occur...that the patient may have had some degenerative changes, which are not work related in the State of California..." and that "[t]reatment is necessary on an industrial basis." (App. Exh. 1, Report of Edwin Haronian, M.D., August 19, 2020, pp. 49-50.) Dr. Haronian concludes that the medical treatment applicant received for her November 30, 2011 specific injury and her cumulative trauma injury was treatment for industrial injury:

> Although, there is indication that the patient may have had some degenerative changes, which are not work related in the State of California, **the labor code indicates that treatment cannot be apportioned. As such, it is reasonable to indicate that the treatment that the patient has received in relation to the total knee replacement is work related.** Apportionment must be provided once the patient reaches maximum medical improvement. There is also indication that the patient underwent another knee arthroscopy recently on February 2020. Considering the fact that there is clear indication of industrial connectivity with

> treatment that the patient received on an industrial basis, it is my opinion that the patient's complaints are related to the industrial injury. **Apportionment which may be related to repetitive motion activities and continuous trauma in addition to the specific claim should be accepted. Treatment is necessary on an industrial basis.**
>
> Initially, when I saw the patient, I did not accept industrial connectivity due to the information that was being provided by the patient. However, in light of the medical records, which do indicate the presence of treatment on an industrial basis previously and appropriate reporting on time, industrial causation should be accepted in my opinion.

(App. Exh. 1, Report of Edwin Haronian, M.D., August 19, 2020, p. 50, bold added.)

We find no notice disclaiming liability for compensation benefits as required by Rule 9812, subdivision (i), in the record of this case.[7]

This matter went to trial on December 23, 2020. (MOH, December 23, 2020, p. 1.) No witnesses were called by either party. (*Ibid.*) Defendant stipulated that applicant sustained a specific injury on November 30, 2011 to her right knee and left shoulder. (*Id.* at p. 2.) Defendant did not stipulate to the compensable consequence injury identified by both the PQME and treating physician, nor to the cumulative trauma injury identified by both physicians. (*Ibid.*) The only issue presented for adjudication was "[w]hether or not the claim is barred by the statute of limitations pursuant to Labor Code section 5405." (*Id.* at p. 2.) All exhibits have been discussed in context, above. (*Id.* at pp. 2-3.)

The F&O issued on March 11, 2021 finding applicant's claim barred by section 5405. There were no findings of fact as to whether applicant sustained a cumulative trauma and further, what applicant's cumulative trauma date of injury was pursuant to section 5412. The Opinion on Decision stated as follows:

> The Applicant was advised of her rights regarding her claim in the acceptance letter or December 6, 2011 (Defense Exhibit B). Specifically, the Applicant is advised:
>
> "*The statute of limitations for receiving medical treatment...is one year from the date of injury or one year from the date of lasting [sic] furnishing of benefits, whichever is last.*"

[7] Current Rule 9812 operative January 1, 2016. For denial notices issued for dates between November 30, 2011 and January 29, 2014, please see 2011-2014 Cal. Code Regs., tit. 8, § 9812.

> The Applicant sat on her rights for over eight years to file an Application for this claim. During this duration of time, the applicant sustained multiple non-industrial injuries to overlapping body parts (Joint Exhibit B page 8). Defendants provided adequate notice to the Applicant (Defense Exhibit B) and tried on two occasions to resolve the matter via Stipulated Award (Defense Exhibits D, E) with no response by the Applicant.
>
> The Defendant met their legal obligations under the Labor Code and should not be penalized for the Applicant's failure to act.

(F&O, Opinion on Decision, p. 2, italics in the original.)

On April 16, 2021, applicant amended her claim to add a cumulative injury during an employment period of February 1, 2008 to December 16, 2019, to her bilateral knees, feet, wrists and hands; upper and lower extremities; internal organs; psyche; sleep disorder; stress. (Amended Application for Adjudication, April 16, 2021, pp. 2-3.)

Applicant sought reconsideration of the F&O and the WCJ filed the Report, reiterating that defendant provided applicant with all proper notices of her workers' compensation rights:

> The Applicant has other remedies available to her in order to proceed with her claim in that she can amended the claim within the legally prescribed time frame. The Applicant clearly sat on her rights in pursuing this claim in spite of notice provided to her through the acceptance letters of December 6, 2011 and the subsequent letters of April 2, 2014 and June 9, 2014. **It is unclear when the Applicant last treated for the claimed injuries as she had subsequent non-industrial injuries for overlapping body parts for which she received treatment on a non-industrial basis.**
>
> The Applicant bears responsibility in pursuing her claim. The Applicant was given proper notice by the carrier and failed to pursue this claim for nine years. It is recommended the Petition filed by the Applicant be denied in its entirety.

(Report, p. 3, bold added.)

II. DISCUSSION

It is undisputed that applicant filed her claim for the November 30, 2011 specific injury on February 19, 2020. Defendant accepted applicant's claim and provided her with a DWC-1 claim form with instructions in both English and Spanish on December 6, 2011. The issue at trial was whether applicant's specific injury claim was time barred by section 5405:

> The period within which proceedings may be commenced for the collection of the benefits provided by Article 2 (commencing with Section 4600) or Article 3 (commencing with Section 4650), or both, of Chapter 2 of Part 2 is one year from any of the following:
>
> (a) The date of injury.
>
> (b) The expiration of any period covered by payment under Article 3 (commencing with Section 4650) of Chapter 2 of Part 2.
>
> (c) The last date on which any benefits provided for in Article 2 (commencing with Section 4600) of Chapter 2 of Part 2 were furnished.

(Lab. Code, § 5405.)

The statute of limitations is an affirmative defense, and therefore, the burden of proof rests with defendant. (Lab. Code, §§ 5409, 5705.) The burden is on defendant to show when the statute of limitations began to run, "starting from any and all three points designated [in Labor Code section 5405]." (*Colonial Ins. Co. v. Industrial Acc. Com. (Nickles)* (1945) 27 Cal.2d 437, 441 [10 Cal.Comp.Cases 321].) On the other hand, "as a general rule, where a claimant asserts exemptions, exceptions, or other matters which will avoid the statute of limitations, the burden is on the claimant to produce evidence sufficient to prove such avoidance." (*Permanente Medical Group v. Workers' Comp. Appeals Bd. (Williams)* (1985) 171 Cal.App.3d 1171, 1184 [50 Cal.Comp.Cases 491].)

"If statutes of limitation are subject to conflicting interpretations, one beneficial and the other detrimental to the employee, section 3202 requires that they be construed favorably to the employee. (*Colonial Ins. Co. v. Ind. Acc. Com.* (1945) 27 Cal.2d 437 [164 P.2d 490].)" (*City of Fresno v. Workers' Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53].)

A. Section 5405, subdivisions (b) and (c)

The WCJ is required to "make and file findings upon all facts involved in the controversy..." (Lab. Code, § 5313; see *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-622.) The WCJ's opinion on decision "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." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), citing *Evans*

v. Workmen's Comp. Appeals Bd. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) The decision must be based on admitted evidence (*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 476), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952 (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. (Garza)* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

In this *accepted* case where defendant stipulated to providing medical treatment for applicant's November 30, 2011 specific injury, it was not just section 5405, subdivision (a) at issue, but also the tolling provisions of subdivisions (b) and (c). With respect to section 5405, subdivision (b), there is some indication in the record that no temporary or permanent disability benefits were paid to applicant, but there is *no admitted evidence* or findings of fact. Consequently, we cannot interpose our own findings without violating the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584] citing *Rucker v. Workers' Comp. Appeals Bd*. (2000) 82 Cal.App.4th 151, 157-158).

With respect to section 5405, subdivision (c), it is undisputed that defendant stipulated to the voluntarily furnishing of medical treatment benefits, and therefore the five-year statute of limitation was triggered in this case extending applicant's deadline to institute proceedings to November 30, 2016 *or later* depending on the last date on which defendant furnished those benefits. (See *Sanchez v. Workers' Co. Appeals Bd.* (1990) 217 Cal.App.3d 346 [55 Cal.Comp.Cases 170].)[8] Again, it is *defendant's* burden to establish the date when the statute of limitations began to run. (See *Nickles*, *supra*.) Given defendant's stipulation to the voluntary furnishing of medical treatment, the WCJ should have made and filed findings determining the last date that defendant provided treatment, i.e., the date from which the WCJ could then have calculated the last date for applicant to file an application for adjudication of claim. Instead, the WCJ erroneously issued the F&O barring applicant's specific injury claim based only on subdivision (a) of section 5405 as if this were a denied claim.

[8] "When section 5405, subdivision (a), is tolled by the voluntary furnishing of benefits, the five-year rule of section 5410 is in turn triggered. (citations) . . Subdivisions (b) and (c) of section 5405 operate to extend the time for filing original claims beyond the five-year limitation of section 5410 when benefits continue to be paid voluntarily, without award, beyond that five-year period. (citations)" (*Sanchez*, *supra*, 217 Cal.App.3d at p. 352.)

Defendant stipulated that it provided medical treatment to applicant for her claim through HealthWorks. We found no medical records from HealthWorks in the record of this case; the only evidence in the record regarding applicant's medical treatment with HealthWorks are the medical record summaries of PQME Dr. Rothi and treating physician Dr. Haronian. Therefore, the evidentiary record in this matter is incomplete as to applicant's treatment with HealthWorks. On the other hand, and as set forth in detail above, the medical reporting of Drs. Rothi and Haronian are consistent and indicate that applicant continued treatment for her knee and shoulder injuries through at least February 11, 2020 (App. Exh. 1, Haronian report), if not August 19, 2020 (Joint Exh. A, Rothi report). The only evidence in the record presenting to the contrary is a summary by PQME Dr. Rothi of Dr. Solberg's January 29, 2014 report finding applicant permanent and stationary from the November 30, 2011 specific injury. However, Dr. Solberg's report is not in evidence and defendant *assured* applicant that the Proposed Stipulations were "a mere formality" and were intended to "assure [*sic*] your right to future medical treatment..." (Def. Exh. D, Proposed Stipulation, April 2, 2014, bold added.)

The burden of proof to establish that applicant is barred by section 5405 is on *defendant* and section 5405 includes subdivision (c). The record here is simply insufficient to establish the last date on which defendant furnished medical treatment benefits under section 5405, subdivision (c). Consequently, we cannot interpose our own findings regarding whether applicant's treatment through 2020 tolled section 5405, subdivision (c), to a date after applicant filed her claim in this matter, without violating the parties' rights to due process. (*Gangwish*, *supra*, 89 Cal.App.4th at p. 1295.)

B. Defendant is Estopped from Raising or Relying on the Statute of Limitations

In addition, and perhaps of more significance, the facts presented in the record of this *accepted* case present serious issues not addressed by the WCJ or the parties.[9] The purpose of the

[9] The filing of a petition for reconsideration gives the Appeals Board the authority to address all issues, including those not specifically raised. (*Pasquotto v. Hayward Lumber* (2006) 71 Cal.Comp.Cases 223, 229, fn. 7 (Appeals Bd. en banc) (Lab. Code, §§ 111(a), 5300, 5301; 5309, 5310, 5906, 5908.) As a result, a grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]), and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Ind. Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) In other words, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (*Id.*; e.g., also, *Tate v. Ind. Acc. Com.* (1953) 120 Cal.App.2d 657, 663 [18 Cal.Comp.Cases 246]; *Pacific Employers Ins. Co. v. Ind. Acc. Com. (Sowell)* (1943) 58 Cal.App.2d 262, 266-267 [8 Cal.Comp.Cases 79].)

"tolling" provisions inherent in section 5405, subdivisions (b) and (c), "'is the protection of the injured employee from being lulled into a sense of security by voluntary payments of benefits until the time to commence formal proceedings with the commission has expired.' (citations omitted)" (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Webb)* (1977) 19 Cal.3d 329, 333 [42 Cal.Comp.Cases 302].) In other words, subdivisions (b) and (c) "prevent a potential claimant from being misled by an employer's voluntary acts which reasonably indicate an acceptance of responsibility for the employee's injury." (*Webb*, *supra*, 19 Cal.3d at p. 334.) This is because "payment may 'lull [the claimant]...into false hopes and cause him to delay presenting his claim...'" (*Id*. quoting *Morrison v. Industrial Acc. Com.* (1938) 29 Cal.App.2d 528, 537 [1938 Cal.App. LEXIS 375].)

> As long as the employer's conduct reasonably suggests that the filing of a claim is unnecessary, the tolling of the statutory time period is entirely proper and in accord with the benefit extension principles of section 5410 and section 5405, subdivisions (b) and (c). (citations omitted)
>
> **However**, **once a potential claimant has been fully informed that the employer and its carrier disclaim compensation liability for an industrial injury, the statute of limitation begins to run no later than the date on which such notice was given.** (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Webb)*, *supra*, 19 Cal.3d at p. 335.)

(*McDaniel v. Workers' Comp. Appeals Bd.* (1990) 218 Cal.App.3d 1011, 1017 [55 Cal.Comp.Cases 72] ("*McDaniel*"), bold added.)

The legal basis for decisions like *Webb* and *McDaniel* is equitable estoppel, "an accepted jurisprudential technique of long standing for avoiding the effect of the running of the statute of limitations *when the delay in instituting proceedings has resulted from some breach of duty or other conduct on the part of the party asserting the statute.* And it has frequently been applied in workers compensation proceedings." (*Hurwitz v. Workers' Comp. Appeals Bd.* (1979) 97 Cal.App.3d 854, 872 [44 Cal.Comp.Cases 983].) "[T]he party asserting the estoppel must have been ignorant of the true facts and must have relied upon the words or conduct of the adverse party to his or her detriment." (*Id.* at p. 874.)

In order to ensure an injured worker is "fully informed" under *Webb* and *McDaniel* to prevent misleading an injured worker, employers must provide the required benefit notices and/or to disclaim liability in accepted liability cases. (See *Webb*, *supra*, 19 Cal. 3d. at 332; see *Galloway*

v. Workers' Comp. Appeals Bd. (1998) 63 Cal.App.4th 880 [63 Cal.Comp.Cases 532] [statute of limitations tolled when a defendant fails to comply with the initial obligation to provide a DWC-1 notice of potential eligibility and claim form *and* also when subsequent notices are not provided].)

An employer's duty to notify an injured worker is specific and extensive and can be found in Rules 9810 et seq. (Cal. Code Regs., tit. 8, § 9810, et seq.).

> **The clear purpose of these rules is to protect and preserve the rights of an injured employee who may be ignorant of the procedures** or, indeed, the very existence of the workmen's compensation law. Since the employer is generally in a better position to be aware of the employee's rights, it is proper that he should be charged with the responsibility of notifying the employee...
> . . .
>
> Since PG&E was obligated to give the notices prescribed by the administrative rules and failed to do so, it may not raise the technical defense of the statute of limitations to defeat petitioner's claim.

(*Reynolds v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 726, 729-730 [39 Cal.Comp.Cases 768], bold added.)

Here, it appears from the limited record including the April and June 2014 Proposed Stipulations and the summary of Dr. Solberg's January 29, 2014 report by PQME Dr. Rothi, that defendant concluded applicant was permanent and stationary and *not* entitled to permanent disability. The record is not clear if defendant was disclaiming all further liability *unless* applicant filed for new and further disability, or whether defendant was disclaiming liability for all disability benefits. ***Either way***, **defendant had the duty to notify applicant of her remedies and/or to disclaim further liability for the claim they had previously accepted and for which they had provided medical treatment.**

In 2014, section 9812, subdivision (i), required a defendant disclaiming all further liability to provide the following notice to the injured worker:

> (i) **Notice Denying Liability for All Compensation Benefits.** If the claims administrator denies liability for the payment of all workers' compensation benefits for any claim except a claim for death benefits, including medical-only claims, the claims administrator shall advise the employee of the denial and the reasons for it. The notice shall be sent no later than 14 days after the determination to deny was made. A copy of the most recent version of the DWC informative pamphlet "QME/AME Fact Sheet" shall be provided with the notice.

> For claims reported on or after April 19, 2004, if an injured worker has filed a completed claim form with the employer, the claims administrator shall advise the injured worker to send for consideration of payment, all bills for medical services provided between the date the completed claim form was given to the employer and the date that liability for the claim is rejected, unless he or she has done so already. The claims administrator shall also advise the employee that the maximum payment for medical services that were provided consistent with the applicable treatment guidelines is $10,000.
>
> A copy of the Notice Denying Liability for All Compensation Benefits shall be served on all lien claimants or all persons or entities who can reasonably be identified by the claims administrator from information in the claims file to be potential lien claimants on account of their having furnished benefits, goods or services for which a lien may be filed under Labor Code sections 4903 through 4906, inclusive.

(2014 Cal. Code Regs., tit. 8, § 9812, subd. (i), emphasis added.)

In 2014, Rule 9812, subdivision (g)(3), required a defendant disclaiming liability for permanent disability to provide applicant with the following notice:

> (3) **Notice That No Permanent Disability Exists.** If the claims administrator alleges that the injury has caused no permanent disability, the claims administrator shall advise the employee that no permanent disability indemnity is payable. This notice shall be sent together with the last payment of temporary disability indemnity or within 14 days after the claims administrator determines that the injury has caused no permanent disability. A copy of the medical report on which the determination of no permanent disability was based, and a copy of the most recent version of the DWC informative pamphlets, QME/AME Fact Sheet and Permanent Disability Fact Sheet shall be provided with the notice. A copy of the DWC form prescribed by the Administrative Director for requesting assignment of a panel of Qualified Medical Evaluators shall be provided with the notice unless the employee is represented by an attorney.
>
> > (A) **The notice shall advise an unrepresented employee of one of the following options:**
> >
> > 1. If the determination is based on a comprehensive medical evaluation, the injured worker may file an Application for Adjudication of Claim with the WCAB.
> >
> > 2. If the injured worker has already received a comprehensive medical evaluation, and either party disputes the results of that evaluation, the injured worker may be asked to return to that physician for a new evaluation.

> 3. If no comprehensive medical evaluation has taken place, the injured worker may obtain an evaluation by a Qualified Medical Evaluator obtained from a panel issued by the DWC Medical Unit pursuant to Labor Code section 4062.1. The notice shall also advise of the procedure for requesting the panel and shall be accompanied by the form prescribed by the DWC Medical Unit with which to request assignment of a panel of Qualified Medical Evaluators. The notice shall advise the injured worker of the 10 day time limit in which a panel may be requested and in which an appointment must be made following receipt of the panel.
>
> The notice shall contain the following warning in not less than 12 point font: You may lose important rights if you do not take certain actions within 10 days. Read this letter and any enclosed fact sheets very carefully.
>
> (B) If the denial is based upon the treating physician's report, the notice shall also advise the worker that he or she may contact an Information and Assistance office to have the treating physician's evaluation review and rated by the Disability Evaluation Unit.
>
> (C) If the claims administrator requests a rating from the Disability Evaluation Unit on the treating physician's report, the notice shall advise the employee that he or she will be receiving a rating based on the treating physician's evaluation from the Disability Evaluation Unit. . . .

(2014 Cal. Code Regs., tit. 8, § 9812, subd. (g), emphasis added.)

In addition, in 2014, Rule 9810 stated:

> (h) **Copies of all benefit notices sent to injured workers shall be maintained by the claims administrator in the claims file**. In lieu of retaining a copy of any attachments to the notice, the claims administrator may identify the attachments by name and revision date on the notice. These copies may be maintained in paper or electronic form.
>
> (i) All benefit notices **shall be made available in English and Spanish**, as appropriate.

(2014 Cal. Code Regs., tit. 8, § 9810, subds. (h)-(i), emphasis added.)

Neither the April or June 2014 Proposed Stipulations or the attached cover letters and documents come close to complying with Rule 9812, subdivisions (i) or (g)(3). In addition, given that applicant required a Spanish-language interpreter during her PQME evaluation, defendant also failed to provide Spanish language versions as required by Rule 9810, subdivision (i). In addition, although defendant attempted to obtain applicant's "waiver" of her right to a panel QME

evaluation (Def. Exh. F, p. 3), there is no evidence in the record that applicant was *ever* advised of her right to a panel QME or provided with notice or provision of a QME panel request form as was required in 2014 by Rule 9812, subdivision (g)(A). On the other hand, there *is* evidence in the record that applicant continued treating for her knee injuries until 2020 but that she sought treatment for her continuing symptoms "on her own to Healthcare Partners" after she "was released from her industrial injury on January 29, 2014." (Joint Exh. A, p. 5.) This raises an inference of fact that applicant sought treatment outside of the workers' compensation system *because* defendant never notified applicant of her remedies following Dr. Solberg's January 29, 2014 "permanent and stationary" report.[10]

We find no evidence in the record of this case that defendant provided applicant with any other notices compliant with Rules 9810 and 9812. Given that defendant is *required* to maintain copies of all such notices in the claims file (see 2014 and 2018 Cal. Code Regs., tit. 8, § 9810, subd. (h)), and there is no explanation for their absence from the record, we rely on the adverse inference raised by their absence from the record that they were *not*, in fact, ever provided to applicant. (See Evid. Code, § 413; see *Skaff v. City of Stockton* (2017) 82 Cal.Comp.Cases 794 [2017 Cal.Wrk.Comp. P.D. LEXIS 148]; *Hamilton v. Workers' Comp. Appeals Bd.* (2011) 76 Cal.Comp.Cases 265 [2011 Cal.Wrk.Comp. LEXIS 32] (writ. den.).)

It is also relevant to our determination that applicant was lulled and/or misled into believing that defendant would continue to accommodate the accepted November 30, 2011 specific injury that defendant continued to employ applicant *even though* she had been off work since 2018 due to pain from her injuries and to undergo multiple knee surgeries. It was only *after* defendant terminated applicant's employment in December 2019 that applicant sought legal advice and thereafter filed a claim. (See *Mihesua*, *supra*, 29 Cal.App.3d at p. 339 [employee sought legal advice after termination and provision of benefits and employer estopped from statute of limitations].)

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[10] We also note that in *Mihesuah v. Workmen's Comp. Appeals Bd.* (1972) 29 Cal.App.3d 337 [37 Cal.Comp.Cases 790], an employer's contributions to an employee's group medical care plan, ". . . necessarily constituted section 4600 'benefits,' thus tolling the statute of limitations for so long as treatment for a compensable injury was afforded under the plan." (*Webb*, *supra*, 19 Cal.3d at pp. 334-335.) Unfortunately, and although quite pertinent in this case, we find no evidence in the record to determine one way or the other whether applicant used employer provided health insurance or medical care plan for her treatment at Healthcare Partners. Given that applicant may have continued to treat for the accepted knee injuries until 2020, it could be that applicant's claim was tolled pursuant to section 5405, subdivision (c), until *after* her claim was filed on February 19, 2020. However, as stated above, the record in this case is incomplete and therefore, we cannot interpose our own findings without violating the parties' rights to due process. (*Gangwish*, *supra*, 89 Cal.App.4th at p. 1295.)

We therefore disagree with the WCJ that applicant "clearly sat on her rights in pursuing this claim in spite of [*sic*] notice provided to her through the acceptance letters of December 6, 2011 and the subsequent letters of April 2, 2014 and June 9, 2014." (Report, p. 3.) As set forth above, the April and June 2014 Proposed Stipulations do not meet the notice requirements of Rule 9812 or otherwise fulfill the "clear purpose of these rules...to protect and preserve the rights of an injured employee..." (*Reynolds*, *supra*, 12 Cal.3d at 729.) Indeed, and contrary to the WCJ's conclusions, defendant's December 6, 2011 acceptance letter was actually *misleading* in its creation of a statute of limitations "*for receiving medical treatment*" and by jumping over applicant's right to institute proceedings regarding her existing injury, stating "[o]nce a finding of permanent disability has been issued, the statute of limitations for re-opening your claim for new and further permanent disability is five years from the date of injury." (Def. Exh. A, p. 1.)

Certainly, neither the December 6, 2011 acceptance letter nor the April and June 2014 Proposed Stipulations describe the time limits for filing an application for adjudication of claim after a defendant disclaims further liability for temporary or permanent disability. (See *California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd. (Carls)* (2008) 163 Cal.App.4th 853, 861, fn. 7 [73 Cal.Comp.Cases 771] citing *Galloway*, *supra*, 63 Cal.App.4th at p. 887.)

Therefore, and under the particular circumstances presented by the facts of this case, defendant is estopped from raising the statute of limitations to bar applicant's claim for the November 30, 2011 specific injury. No defendant may *cause* the situation that leads to a delay in the filing of a claim and then expect the protection of the statute of limitations. (See *Clark v. Millsap* (1926) 197 Cal. 765, 783-784 [laches unavailable as relief as any party seeking equity "must come with clean hands..."]; see also, Civ. Code, § 3517 ["No one can take advantage of his own wrong."].) We remind defendant that the statute of limitations is "an affirmative defense and operates to bar the remedy and not to extinguish the right of the employee." (Lab. Code, § 5409.) A defendant may through its conduct waive "[s]uch defense..." (*Ibid.*)

Accordingly, it is our decision after reconsideration to rescind the F&O and issue new findings of fact that defendant is estopped from asserting the statute of limitations to bar applicant's claim for the November 30, 2011 specific injury.

C. The Alleged Cumulative Trauma Injury

Finally, we note that the WCJ appears to have ignored the consistent reporting of Drs. Rothi and Haronian that in addition to the November 30, 2011 specific injury, applicant may have sustained a cumulative trauma injury which although allegedly apportionable to non-industrial causes, is still alleged by both physicians to be industrial. In the Report, the WCJ states that, "[i]t is unclear when the Applicant last treated for the claimed injuries as she had subsequent non-industrial injuries for overlapping body parts for which she received treatment on a non-industrial basis." (Report, p. 3.) Then, in a somewhat contradictory position, the WCJ also states that "Applicant has other remedies available to her in order to proceed with her claim in that she can amended [*sic*] the claim within the legally prescribed time frame." (Report, p. 3.) This is incorrect.

As the WCJ is surely aware, multiple injuries cannot be merged into one injury: there can be more than one injury arising from the same event or from separate events, and the "number and nature of the injuries suffered are questions of fact for the WCJ or the WCAB. [citations]" (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234-235 [58 Cal.Comp.Cases 323].)[11] Since the Report issued, applicant filed an amended application for a cumulative trauma injury. Upon return to the trial level, an additional adjudication number should be requested for that claim. We note that pleading defects are not jurisdictional and that the amendment to assign an additional adjudication number will "relate back" to the originally filed pleading for statute of limitations purposes. (See *Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal.App.3d 1102, 1116 [53 Cal.Comp.Cases 502]) and *Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200 [50 Cal.Comp.Cases 160].)

Accordingly, it is our decision after reconsideration to rescind the WCJ's decision in its entirety and replace it with our own findings of fact and order. When this matter returns to the trial level for further proceedings consistent with this decision, the WCJ should set a status conference to request an additional adjudication number for the cumulative trauma injury claim currently filed

[11] Given section 5405, subdivision (c), and the reporting of Drs. Rothi and Haronian, the WCJ should not have ignored the duty to determine the number and nature of injuries in this matter. We note that in *Plotnick v. Workers' Comp. Appeals Bd. (Plotnick)* (1970) 1 Cal.3d 622, 623-626 [35 Cal.Comp.Cases 13], the Supreme Court found that "[i]t follows inevitably" that any medical treatment received from the employer during the CT injury period "must to some extent have been designed to relieve [the injured worker] from the effects" of the CT injury, even when the treatment "may also had as their purpose to relieve petitioner from the effects of the original injury." (*Id*. at pp. 625-626.) The Court therefore held that the claim was timely filed within one year of the provision of medical treatment for the CT pursuant to section 5405(c). (*Id*.)

as an amendment to applicant's specific injury claim and for the parties to consider the nature and extent of applicant's injury or injuries, and how best to proceed with discovery.

For the foregoing reasons,

IT IS ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that Findings and Order issued by a workers' compensation administrative law judge on March 11, 2021 is **RESCINDED** and **REPLACED** with the following:

FINDINGS OF FACT

1. HERMELINDA MURILLO sustained a specific injury arising out of and in the course of her employment as an outside salesperson by SCI-FUNERARIA DEL ANGEL on November 30, 2011 to her right knee and left shoulder.

2. SCI-FUNERARIA DEL ANGEL was insured for workers' compensation on November 30, 2011 by OLD REPUBLIC.

3. Defendants SCI-FUNERERIA DEL ANGEL and OLD REPUBLIC INSURANCE COMPANY administered by GALLAGHER BASSET are estopped from raising or relying on the statute of limitations in Labor Code section 5405 to bar applicant's claim for the November 30, 2011 specific injury to her right knee and left shoulder.

ORDER

IT IS ORDERED THAT all other issues related to applicant's accepted specific injury claim of November 30, 2011 are **DEFERRED**.

IT IS FURTHER ORDERED as the Decision after Reconsideration of the Workers' Compensation Appeals Board that this case is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 12, 2026

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

HERMELINDA MURILLO
LAW OFFICE OF MOISES VAZQUEZ
FERNSTROM PLAYA

AJF/oo

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