

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

JOSEPH BILLINGSLEY II, *Applicant*

vs.

CALIFORNIA STEEL INDUSTRIES, INC.; TOKIO MARINE AMERICA, *Defendants*

**Adjudication Number: ADJ20958335
San Bernardino District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact and Order of May 1, 2026, wherein it was found that applicant did not prove industrial injury to his back, knees, arms, shoulders, feet, stress, psyche and in the form of sleep difficulty while employed as an Operations Tech III during a cumulative period ending January 15, 2020. It was also found that applicant's claim was barred by the statute of limitations. The WCJ thus issued an order that applicant take nothing by way of his workers' compensation claim.

Applicant contends that the WCJ erred in finding that the claim was barred by the statute of limitations and in finding that applicant did not sustain industrial injury. On the latter contention, applicant argues that further development of the record is necessary. Applicant also requests an additional qualified medical evaluator panel in the specialty of psychiatry. We have not received an answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant reconsideration and return this matter to the trial level for further development of the record so that the WCJ may reconsider all issues on an augmented record.

I.

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

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on June 2, 2026 and 60 days from the date of transmission is Saturday, August 1, 2023. The next business day that is 60 days from the date of transmission is Monday, August 3, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on August 3, 2026, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals

¹ 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.

Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on June 2, 2026, and the case was transmitted to the Appeals Board on June 2, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 2, 2026.

II.

Applicant testified that he began working for defendant employer in the summer of 2017 as a temporary worker and began working permanently with them as of November of 2017. According to applicant's testimony, he began to work in mobile equipment but about one year after working full time he was assigned to the pipe mill. He says that he did not have symptoms when he began working in the pipe mill but after one year of working in the pipe mill, he began to feel pain. He testified that the work in the pipe mill involved lifting about 50 pounds and constantly picking up a grinder that weighed over 20 pounds. He testified that after a year of working in the pipe mill, he felt tightness in his shoulders but did not report the injury. Afterwards, applicant was assigned to the galvanization mill where he also reported working with 20-pound tools and having to lift 50 pounds. (Minutes of Hearing and Summary of Evidence of February 17, 2026 trial at pp. 4-5.)

According to medical records, applicant was involved in a non-industrial motor vehicle accident in November of 2019. He complained of back pain after this accident and was treated with Flexeril. Applicant again sought treatment for back pain on February 1, 2020, this time attributing back pain to his work. (Ex. E.) Applicant was treated again on February 26, 2020 complaining of shoulder pain. At a February 26, 2020 medical appointment, applicant complained stated that he was quitting his job due to the physical stress and reported to his doctors that he would no longer have medical insurance as of the following month. (Ex. D.)

Applicant left his employment with defendant employer around February of 2020. He testified that he told his employer that he was leaving because he was "physically unable to

continue.” (Minutes of Hearing and Summary of Evidence of February 17, 2026 trial at p. 4.) He testified that he stated in his exit interview that “he didn’t feel like he could continue to do the work. It was wearing him down, and it made him feel unsafe going in there. He felt that quitting was the best choice for him.” (Minutes of Hearing and Summary of Evidence of February 17, 2026 trial at p. 7.)

III.

With regard to the statute of limitations issue, the running of the statute of limitations is an affirmative defense, and the burden of proving it is on the party opposing the claim. (Lab. Code, § 5409; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Martin)* (1985) 39 Cal.3d 57, 67, fn. 8 [50 Cal.Comp.Cases 411].) 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].) The three points designated in section 5405 are date of injury (Lab. Code, § 5405, subd. (a)); the last payment of disability indemnity (Lab. Code, § 5405, subd. (b)); and the last date on which medical treatment benefits were furnished (Lab. Code, § 5405, subd. (c).) A claim is timely if it is filed within a year of the latest of these three points. In this case, applicant was not provided with workers’ compensation benefits so the relevant point for statute of limitations purposes is the date of injury.

The date of injury in cumulative injury cases is “that 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.) “A ‘disability’ under the Workmen’s Compensation Law connotes an inability to work.” (*Herrera v. Workmen’s Comp. Appeals Bd.* (1969) 71 Cal.2d 254, 257 [34 Cal.Comp.Cases 382].) In *State Compensation Ins. Fund v. Workers’ Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998 [69 Cal.Comp.Cases 579], the Court of Appeal made clear that neither medical treatment nor modified work restrictions without wage loss, in and of themselves, are sufficient to constitute “disability” for purposes of Labor Code section 5412. As explained in *Rodarte*, Labor Code section 5412 requires compensable disability, either temporary or permanent. Permanent disability is not compensable until it is ratable. Except in the case of insidious, progressive

diseases, a disability is not ratable until it is permanent and stationary. (*Chavira v. Workers' Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 473 [56 Cal.Comp.Cases 631].)

In this case, the WCJ found that applicant was temporarily disabled when he quit his employment because he quit because of his pain. The WCJ states that applicant knew that this pain was work related, so the statute of limitations began to run as soon as his employment ceased. We believe that further development of the record and analysis is needed on this issue.

It is unclear whether applicant was temporarily disabled when he left his job. We note that the medical records from February 2020 do not state that applicant is being taken off work, nor do they contain any work restrictions. Although it is not in dispute that applicant left work because of the physical effects of the job, it is unclear whether his leaving the job was preference for not doing hard work, concern about the long-term effects of continued employment, or whether he was actually unable to perform his job duties. We believe that further clarification is necessary, including a medical opinion regarding whether applicant was ever temporarily disabled.

IV.

It appears that, beyond the statute of limitations issue, the WCJ found that applicant did not sustain industrial injury because there were not contemporaneous records documenting injury. Qualified medical evaluator orthopedist Christopher LeBrun wrote in his October 17, 2025 report, "While it is medically reasonable that the applicant's current symptomatology in the neck, thoracic spine, bilateral shoulders and bilateral feet is at least partially attributed to the repetitive nature of his regular and customary occupational demands as a full-time laborer worker for California Steel Industries, Inc., there were no corroborating medical records submitted regarding the applicant's complaints during the duration of his employment and no witness statements." (October 17, 2025 report at p. 18.)

However, the fact that applicant did not seek medical treatment or report pain is not in and of itself a bar to workers' compensation recovery. We note that applicant did seek treatment either at the tail end of his employment or very soon afterwards in February of 2020. Also, applicant testified that he told his employer that he was leaving the employment because of the physical demands of the job and there is an unexplained exhibit in the record dated February 6, 2020 in which applicant states, "I Joseph Billingsley II am not planning any claims for work related injuries at this time." (Ex. B.)

We also note that applicant also apparently was involved in a non-industrial motor vehicle accident around this time as well.

We believe it would be helpful to the WCJ in determining causation if a reporting physician could give an opinion on industrial causation based on the history given and the medical records, including the history of the pre-existing workers' compensation claim and the contemporaneous non-industrial motor vehicle accident.

We note that while the WCJ states that he did not find the applicant credible, he does not specify what exactly was not considered credible, and how any testimony or history given negates the compensability of his claim.

V.

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) medical evidence on an issue. The WCAB has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that mandate, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further development of the record, proceedings and decision on the issues of statute of limitations and industrial causation. In granting reconsideration and returning this matter to the trial level for further proceedings and decision, we are mindful of the fact that "[t]he applicant for workers' compensation benefits has the burden of establishing the 'reasonable probability of industrial causation.'" (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] citing *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) Applicant is reminded that he will have the burden of establishing industrial injury in the further proceedings. The WCJ should reanalyze the issues on an augmented record. To the extent that a credibility determination is necessary, the WCJ should specify exactly the history or testimony that was not credited and why. Since we are sending the case back for further development of the record, applicant should also be afforded a panel in psychiatry in order to develop the issue of psychiatric injury. We express no opinion on the ultimate resolution of any issue in this case.

We therefore deny the defendant's Petition.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings of Fact and Order of May 1, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Order of May 1, 2026 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELINGS, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 3, 2026

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

**JOSEPH BILLINGSLEY II
ROBERT OZERAN
LUNA SILVER LAW**

DW/oo

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