

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

KENNY DANIEL WILLIAMS, *Applicant*

vs.

COUNTY OF KERN, permissibly self-insured, *Defendant*

**Adjudication Numbers: ADJ3719477, ADJ10346752
Bakersfield District Office**

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

Defendant seeks reconsideration of the “Joint Ruling Admitting Evidence, Findings of Fact, Order, and Opinions on Decision” (F&O) issued by the workers’ compensation administrative law judge (WCJ) on December 26, 2025.

The WCJ found, in relevant part, that in case ADJ3719477, from March 28, 1986 to May 5, 2005, while employed by defendant as a sheriff’s deputy, applicant sustained injury arising out of and in the course of employment (AOE/COE) to his low back and claims to have sustained injury to his neck, bilateral knees, and circulatory system-heart. The WCJ further found Dr. Donald Webb to be the Agreed Medical Evaluator (AME) who provided services in this case and the Petition to Reopen dated January 20, 2010 was timely filed on January 25, 2010. The WCJ also found good cause to reopen the April 18, 2007 Award and further development of the medical-record to be necessary to determine the nature and extent of the new and further disability. The WCJ ordered parties to coordinate discovery efforts to have applicant reevaluated by the AME, Dr. Donald Webb, to determine the nature and extent of the new and further disability. All other issues were deferred and reserved.

The WCJ also found, in relevant part, that in case ADJ10346752, from March 28, 1986 to January 15, 2012, while employed by defendant as a sheriff’s deputy, applicant sustained injury AOE/COE to the circulatory system (hypertensive cardiovascular disease), carotid artery atherosclerosis, and lower extremities but that there is presently insufficient information to

determine whether applicant sustained injury AOE/COE to the bilateral knees. The WCJ further found the undated Petition to Reopen was filed on January 9, 2020 and that presently, there was insufficient information to determine whether there is good cause to reopen. The WCJ found further development of the medical-legal record to be necessary to determine whether there is new and further disability and, if so, the nature and extent of that new and further disability. The WCJ ordered further action on this case to be deferred and reserved pending the further development of the record.

Defendant contends that since the WCJ's decision includes resolution of threshold issues, it is a final decision subject to reconsideration. Defendant further contends that the WCJ erred by (1) finding good cause to reopen the April 18, 2007 Award; (2) disregarding the determinations of AME Dr. Webb on the issue of new and further disability in ADJ3719477; (3) finding that further development of the medical-legal record is necessary in ADJ10346752; and (4) by not deciding whether finding the January 9, 2020 Petition to Reopen was timely filed.

We have received an Answer from applicant.

As the WCJ who issued the F&O has retired, the Presiding WCJ (PWCJ) has filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition and the Answer, and the contents of the PWCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will grant reconsideration and amend the decision in ADJ3719477 to find that applicant shall be reevaluated by AME Dr. Mitchell U. Silverman (Order, 1); and in ADJ10346752 to find that the Labor Code section 5412¹ date of injury is October 17, 2016 and that the Petition to Reopen was timely filed on January 9, 2020 (Finding of Fact 1). We otherwise affirm the decision.

FACTS

As set forth by the PWCJ in his Report:

Primary proceedings in Case ADJ 3719477 were resolved via a Stipulated Award approved on April 18, 2007. Applicant was found to sustained the claimed cumulative injury to his back during the period from March 28, 1986 to May 9, 2005. The settlement in case ADJ 3719477 did not address Applicant's claim that he also sustained cumulative injury to his neck, bilateral knees and circulatory

¹ All section references are to the Labor Code, unless otherwise indicated.

system during the period of employment. *Stipulations with Request for Award 3/22/2007 p. 1 ¶1.*

The parties jointly relied on the expert Agreed Medical opinion of Donald Webb, M.D. but indicated uncertainty regarding which Permanent Disability Rating Schedule would apply. The parties indicated there would be 40% permanent partial disability if the 1997 PDRS was applied and 24% permanent partial disability if the 2005 PDRS applied. The parties agreed to a compromise figure of 32% permanent partial disability, which was approved. *Stipulations with Request for Award 3/22/2007 p. 1 ¶3, p. 2 ¶9; Award 4/18/2007.*

Applicant filed a Petition to Reopen case ADJ 3719477 on January 20, 2010. *Applicant's Exhibit 03: Petition to Reopen 1/20/2020.* This filing was before the fifth anniversary of the end of the 1986-2005 cumulative injury. (Footnote omitted.)

The primary parties returned to AME Dr. Webb. He re-evaluated Applicant and reported on April 12, 2010. Dr. Webb reported an interim history including:

The patient is currently working full time as a Deputy Sheriff but since I saw him in 2005, he's had several periods when he was off work, perhaps four times over that five year period, which inability to work for a few days up to a week, up until November of last year when he was over work for 2 ½ weeks. He says he picked up a chair in his backyard and then twisted as he did so and had quite severe low back pain and had to see his doctor for evaluation and treatment. He saw Dr. Irene Sanchez that same day and treatment consisted of an injection, rest and medications. When he returned to work after 2 ½ weeks, he returned to full duty without restrictions and has continued to work full duty since then. *Defendant's Exhibit A: Report of Donald E. Webb, M.D. 4/12/2010 p. 2 (bold print in original).*

AME Dr. Webb indicated that "the patient has worsened since I saw him in 2005, so he is temporarily totally disabled again this date, 4/12/2010." But Dr. Webb immediately thereafter opined that:

He continues to work full-time as a Sheriff's Deputy and I recommend that that continue. He wants to keep working and I think it is best that he be allowed to continue working at his usual and customary job." *Defendant's Exhibit A: Report of Donald E. Webb, M.D. 4/12/2010 p. 5.*

AME Dr. Webb also opined that Applicant had permanent impairment as previously reported. *Defendant's Exhibit A: Report of Donald E. Webb, M.D. 4/12/2010 p. 5.*

AME Dr. Webb provided a supplemental report on April 23, 2010. He noted his review of additional medical records. He also corrected the inconsistency in his report wherein he found Applicant to be temporarily totally disabled as of the 4/12/2010 examination. Dr. Webb indicated that:

Of course, that is incorrect, He is not temporarily totally disabled, he is permanent and stationary on the date of my evaluation, 4/12/10, but as the rest of my report notes, he is able to continue working as a Deputy Sheriff. *Defendant's Exhibit B: Report of Donald E. Webb. M.D. 4/23/2020 p. 1.*

The primary parties relied on Dr. Webb's opinion. By Stipulation and Order dated July 29, 2010, Applicant's time off work during the period from June 15, 2010 to June 17, 2010 was recharacterized as compensable Lab.C. §4850 time rather than sick leave. *Defendant's Exhibit E: Stipulation and Order 7/29/2020.*

AME Dr. Webb reevaluated Applicant and provided a report on June 27, 2011. After reviewing interim medical reports, reviewing diagnostic testing, and re-evaluating Applicant, Dr. Webb opined that Applicant had experienced short periods of temporary total disability since 2005 but was currently working full time without restriction. *Defendant's Exhibit C: Report of Donald E. Webb. M.D. 6/27/2011 p. 6.* Applicant was considered permanent and stationary from 4/12/2010 although AME Dr. Webb opined that there were would a new period of temporary disability if Applicant underwent spinal surgery. Permanent impairment was considered unchanged. *Defendant's Exhibit C: Report of Donald E. Webb. M.D. 6/27/2011 p. 7.*

AME Dr. Webb reviewed additional medical records and provided a supplemental report. He indicated that the additional records did not change his opinion but strongly recommended a second opinion prior to any spinal surgery. *Defendant's Exhibit D: Report of Donald E. Webb, M.D. 7/20/2011 p. 2.*

Primary proceedings in case ADJ 10346752 were resolved via Stipulations with Request for Award filed May 3, 2017, and approved by the undersigned PWCJ. Applicant was agreed to have sustained the claimed cumulative industrial injury to his circulatory system in the form of hypertensive cardiovascular disease, carotid artery atherosclerosis and lower extremity atherosclerosis during the period from March 28, 1986 to January 16, 2012 from which Applicant had no lost time from work but sustained 55% permanent partial disability and a need for further medical treatment. The primary parties noted their reliance on the expert opinion of Stanley Majcher, M.D. *Stipulations with Request for Award and Award 5/03/2017; Report of Stanley Macher, M.D. 8/16/2016.*

Applicant filed a Petition to Reopen on January 9, 2020. This was more than five years after the fifth anniversary of the ending of the agreed period of cumulative injury. The petition alleges new and further disability to "the industrial injury

suffered to his right knee on CT 3/28/1986 -01/16/2012.” *Petition to Reopen 1/09/2020.*

The parties were unable to settle the petitions to reopen the pending cases. An initial Trial was held on October 27, 2023 resulting in an Order Rescinding Submission dated January 18, 2024. A second Trial on November 5, 2024 resulted in Findings of Fact and Orders on January 9, 2025 but, following Petitioner’s Petition for Reconsideration of February 3, 2025, that decision was rescinded on February 11, 2025. A third Trial was held on September 19, 2025, resulting in Joint Rulings, Orders Admitting Evidence, Findings of Fact and Orders dated December 26, 2025.

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 cases were transmitted to the Appeals Board on April 14, 2026 and 60 days from the date of transmission is Saturday, June 13, 2026. The next business day that is 60 days from the date of transmission is Monday, June 15, 2026. (See Cal. Code Regs., tit.

8, § 10600(b).)² This decision is issued by or on Monday, June 15, 2026, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on April 14, 2026, and the cases were transmitted to the Appeals Board on April 14, 2026. Service of the Report and transmission of the cases to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 14, 2026.

II.

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian, supra*, at p. 1075 [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’...”]; *Rymer, supra*, at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, at p. 45 [“[t]he term

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

[‘final’] does not include intermediate procedural orders”].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

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

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

Here, the WCJ’s decision includes findings regarding threshold issues as to the existence of an employment relationship between applicant and defendant and that applicant sustained injury AOE/COE to his low back from March 28, 1986 to May 5, 2005 and to his circulatory system (hypertensive cardiovascular disease), carotid artery atherosclerosis, and lower extremities from March 28, 1986 to January 16, 2012. Moreover, the WCJ’s findings that the Petition to Reopen dated January 20, 2010 was timely filed and that there is good cause to reopen the April 18, 2007 Award are findings regarding threshold issues. Accordingly, the WCJ’s decision is a final order subject to reconsideration rather than removal.

III.

We will first address defendant’s contention that the WCJ erred in finding that there is good cause to reopen the April 18, 2007 Award and disregarded the determinations by AME Dr.

Webb on the issue of new and further disability in ADJ3719477. As discussed above, this is a final finding subject to reconsideration.

Section 5410 confers on the WCAB continuing jurisdiction over a prior award when a timely petition is filed within five years of the date of injury. The section provides:

Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period. This section does not extend the limitation provided in Section 5407.

(Lab. Code, § 5410.)

For an applicant to recover additional temporary or permanent disability benefits, they must not only have filed a petition to reopen within five years from the date of injury but must also have suffered a “new and further disability” within that five-year period, unless there is otherwise “good cause” to reopen the prior award. An injured worker therefore cannot confer jurisdiction on the Board by filing a petition to reopen an award before the five-year period has expired for anticipated new and further disability to occur thereafter. (*Sarabi v. Workers’ Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, 926, [72 Cal.Comp.Cases 778]; *Nicky Blair’s Rest. v. Workers’ Comp. Appeals Bd.* (*Macias*) (1980) 109 Cal.App.3d 941 [45 Cal.Comp.Cases 876].)

The *Sarabi* court discussed what constitutes “new and further” disability as follows:

““[N]ew and further disability” has been defined to mean disability... result[ing] from some demonstrable change in an employee’s condition...’ [citation],” including a “gradual increase in disability.” (*Nicky Blair’s Restaurant v. Workers’ Comp. Appeals Bd.* (1980) 109 Cal.App.3d 941, 955 [167 Cal. Rptr. 516].) ““Historically, a change in physical condition necessitating further medical treatment ha[s] been considered new and further disability...[Citation.]” **Thus, “[c]ommonly, new and further disability refers to a recurrence of temporary disability, a new need for medical treatment, or the change of a temporary disability into a permanent disability.”** [Citation.]”

(*Sarabi, supra*, at p. 926.)

More recently, the Court of Appeal in *Applied Materials v. Workers’ Comp. Appeals Bd.* (2021) 64 Cal.App.5th 1042 [86 Cal.Comp.Cases 331], defined new and further disability as “disability resulting from some demonstrable change in the employee’s condition, including a

gradual increase in disability, a recurrence of TD, a new need for medical treatment, or the change of a temporary disability into a permanent disability.” (*Id.* at p. 1080.)

Applying these principles to the matter at bar, we first observe that applicant has timely invoked the continuing jurisdiction of the WCAB. Because defendant did not seek reconsideration of the WCJ’s Findings on the grounds that the Petition to Reopen dated January 20, 2010 was untimely, that aspect of the WCJ’s decision is deemed waived under section 5904. Section 5904 dictates that a petitioner seeking reconsideration “shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration.”

As stated in the PWCJ’s Report:

Petitioner’s second argument is “The WCJ Erred by Disregarding the Determinations of AME Dr. Webb on the issue of New and Further Disability in ADJ 3719477. “*Petition for Reconsideration 1/20/2026 p. 3 lines 24-25.* Petitioner contends that AME Dr. Webb opined that Applicant’s level of permanent impairment of his lower back had not changed, regardless of which PDRS was applicable. *Petition for Reconsideration 1/20/2026 p. 3 line 26 to p. 5 line 21.* Petitioner argues that reliance on Dr. Webb’s opinion that Applicant sustained new periods of temporary disability did not justify re-opening or further development of the medical-legal record and reliance on the new periods of temporary disability for that purpose was a “ruse.” *Petition for Reconsideration 1/20/2026 p. 5. Line 22 to p. 6 line 6.*

Applicant responds that new and further temporary disability is new and further disability sufficient to justify re-opening, citing authority including *Sarabia v. WCAB* [2007] 151 Cal.App. 4th 920, 925, 72 CCC 778]. *Answer to Petition for Reconsideration 2/02/2026 p. 7 line 3 to p. 8 line 17.* There is no ruse here.

Applicant also argues that Dr. Webb’s re-quantification of his level of permanent impairment under the 2005 PDRS would rate 35%, an increase from the former 24%. *Answer to Petition for Reconsideration 2/02/2026 p. 8 line 18 to p. 9 line 6.* It is noted that Applicant’s two arguments are independently sufficient for the Trial-level finding that new and further disability to Applicant’s lower back from the March 28, 1986 to May 9, 2005, cumulative injury most probably occurred.

(Report, at p. 9.)

Upon our independent review of the record, we agree with the PWCJ’s analysis finding adequate evidence of new and further disability to applicant’s lower back. The WCJ has appropriately exercised the continuing jurisdiction of the Appeals Board in ordering development of the medical-legal record to determine the nature and extent of the new and further disability. As

applicant has timely filed the Petition to Reopen and we find evidence of new and further disability, the issue of whether there is good cause to reopen the April 18, 2007 Award is moot.

IV.

We next address defendant's contention that in ADJ10346752, the WCJ did not decide whether the Petition to Reopen filed on January 9, 2020 was timely. (Petition, at p. 6.) The WCJ found that "[t]he undated Petition to Reopen was filed on January 9, 2020." (Findings of Fact No. 1.) Defendant argues that the parties stipulated and the WCAB approved the Stipulations with Request for Award for a date of injury of March 28, 1986 to January 16, 2012. (Petition, at p. 6.) As the Petition was filed more than five years from the end date of the cumulative trauma injury, January 16, 2012, defendant argues it is untimely. (*Id.*)

Workers' compensation pleadings may be amended by the Appeals Board to conform to proof, based on evidence submitted at trial. (Cal. Code Regs., tit. 8, § 10517; *Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 199-200 [50 Cal.Comp.Cases 160].) The parties' stipulations are not binding on the Appeals Board or the WCJ and the Appeals Board or the WCJ may reject or amend a stipulation and base the decision on the evidence presented at the hearing. (Lab. Code, § 5702; Cal. Code Regs., tit. 8, § 10517; *Rubio, supra*; *Draper v. Workers' Comp. Appeals Bd.* (1983) 147 Cal.App.3d 502 [48 Cal.Comp.Cases 748]; *Turner Gas Co. v. Workmen's Comp. Appeals Bd.* (1975) 47 Cal.App.3d 286 [40 Cal.Comp.Cases 253].)

Here, defendant incorrectly claims that the applicant stipulated to a January 16, 2012 end date of injury and that consequently, the Petition is untimely. Stipulations to period of exposure are not tantamount to stipulations to legal dates of injury for purposes of section 5412. (*Palmer v. Workers' Comp. Appeals Bd.* (1987) 192 Cal.App.3d 1241, 1250 [52 Cal.Comp.Cases 298].)

In cases involving an alleged cumulative trauma injury, the date of injury is governed by section 5412, which provides:

The date of injury in cases of occupational diseases or cumulative injuries 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.

Section 5412 requires a convergence of two elements: (1) the date when the employee first suffers disability; and (2) the employee's acquisition of knowledge that such disability was caused by the employee's present or prior employment.

As for the first element, there is no “disability” within the meaning of section 5412 until there has been either compensable temporary disability or permanent disability. (*State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998, 1003 [69 Cal.Comp.Cases 579]; *Chavira v. Workers’ Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463, 474 [56 Cal.Comp.Cases 631].)

At the time the parties settled ADJ10346752 by way of Stipulations with Request for Award, the parties stipulated that the settlement was based on the reports of Independent Medical Evaluator (IME), Dr. Stanley Majcher. (Stipulations with Request for Award, May 3, 2017, at p. 7.) The first evidence in the record of applicant’s disability occurs in the report by Dr. Majcher dated October 17, 2016, when he finds applicant sustained permanent disability for his hypertensive cardiovascular disease, carotid artery atherosclerosis, and atherosclerosis involving arterial circulation to the lower extremities. (Report by Dr. Stanley J. Majcher, dated October 17, 2016, at pp. 3-5.)

In connection with the second element regarding the “knowledge” component of section 5412, whether an employee knew or should have known their disability was industrially caused is a question of fact. (*City of Fresno v. Workers’ Comp. Appeals Bd. (Johnson)* (1985) 163 Cal.App.3d 467, 471 [50 Cal.Comp.Cases 53].) An employee is not charged with knowledge that their disability is job-related without medical advice to that effect, unless the nature of the disability and the applicant’s training, intelligence and qualifications are such that they should have recognized the relationship between the known adverse factors involved in their employment and their disability. (*Id.* at p. 473; *Newton v. Workers’ Co. Appeals Bd.* (1993) 17 Cal.App.4th 147 [58 Cal.Comp.Cases 395].) When an employee expresses unequivocal knowledge of a link between his injury and his employment, the opinion of an examining doctor may not be required. (*Nielsen v. Workers’ Comp. Appeals Bd.* (1985) 164 Cal.App.3d 918, 931.)

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. Workers’ Comp. Appeals Bd., supra*, 69 Cal.2d at p. 559.) That burden is not sustained merely by a showing that the employee knew they had some symptoms. (*Johnson, supra*, at p. 471, citing *Chambers, supra*, at p. 559.) In general, an employee is not charged with knowledge that their disability is job-related without medical advice to that effect. (*Johnson, supra*, at p. 473; *Newton, supra*, 17 Cal.App.4th at p. 156, fn. 16.)

Here, defendant has not met its burden to show that applicant knew that his injury was job-related until, at earliest, when applicant filed an Application for Adjudication of Claim on March 23, 2016. Because the first evidence of disability for purposes of establishing a section 5412 date of injury occurred no earlier than October 17, 2016, and the first evidence of knowledge for purposes of establishing a section 5412 date of injury occurred no earlier than March 23, 2016, we conclude that the date of injury pursuant to section 5412 is October 17, 2016.

It is axiomatic that any decision of the WCAB must be supported by substantial evidence. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 (Appeals Bd. en banc), citing Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) Where the issue in dispute is a medical one, expert medical evidence is ordinarily needed to resolve the issue. (*Insurance Co. of North America v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 905, 912 [46 Cal.Comp.Cases 913]; *Peter Kiewit Sons v. I.A.C.* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].) In order to constitute substantial medical evidence, a medical opinion “must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.” (*Escobedo, supra*, 70 Cal.Comp.Cases at p. 621.)

Here, we conclude that substantial medical evidence supports a finding that the “date of injury” is October 17, 2016, based on the IME report of Dr. Majcher dated October 17, 2016, where he opined that applicant’s job duties as a law enforcement officer caused him to suffer a cumulative injury. Given that the “date of injury” pursuant to section 5412 is October 17, 2016, we find that applicant’s Petition to Reopen was timely filed on January 9, 2020.

V.

Although defendant challenges findings that are final, the defendant is also challenging the WCJ’s findings to further develop the medical-legal record to determine the nature and extent of the new and further disability in ADJ3719477 and to determine whether there is new and further disability and, if so, the nature and extent of that new and further disability in ADJ10346752. Contrary to defendant’s contention, these are interlocutory finding/orders subject to the removal standard rather than reconsideration pursuant to the discussion above. (See *Gaona, supra*.)

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

Here, based upon our review, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy. However, defendant contends that orthopedic AME Dr. Donald Webb has passed away. (Petition at p. 4.) Per applicant, parties have since utilized Dr. Mitchell U. Silverman as the replacement orthopedic AME. (Answer, at p. 5.) As such, the parties should return to AME Dr. Silverman for further development of the record.

Accordingly, we grant defendant's Petition for the limited purpose of amending the Order in ADJ3719477 to have applicant reevaluated by AME Dr. Mitchell U. Silverman; and the Findings of Fact in ADJ10346752 to find that under section 5412, the date of applicant's cumulative injury is October 17, 2016 and consequently, the Petition to Reopen was timely filed on January 9, 2020 (Finding of Fact 1). We otherwise affirm the WCJ's F&O.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the F&O of the WCJ dated December 26, 2025 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the F&O of the decision of December 26, 2025 by the WCJ is **AFFIRMED**, except that it is **AMENDED**, as follows:

ADJ3719477

ORDERS

1. Within thirty day after issuance of this Order, the parties shall coordinate discovery efforts to have applicant reevaluated by AME Dr. Mitchell U. Silverman to determine the nature and extent of the new and further disability.

FINDINGS OF FACT

ADJ10346752

Findings of Fact Based on the Judge's Determination

1. The Labor Code section 5412 date of injury is October 17, 2016. The Petition to Reopen was timely filed on January 9, 2020.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 15, 2026

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

**KENNY DANIEL WILLIAMS
LAW OFFICES OF ANDREW B. SCOTT
COUNTY COUNSEL – COUNTY OF KERN**

JL/abs

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