

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3  
4 **ROBERT GRAVLIN,**

5 *Applicant,*

6 **vs.**

7 **CITY OF VISTA; Permissibly Self-Insured,**

8 *Defendant.*

Case No. ADJ513626 (SDO 0296833)

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10  
11 **OPINION AND ORDER**  
12 **GRANTING DEFENDANT'S PETITION**  
13 **FOR RECONSIDERATION AND**  
14 **DECISION AFTER**  
15 **RECONSIDERATION**

16 Defendant City of Vista, permissibly self-insured, seeks reconsideration of the January 13, 2017  
17 Joint Findings And Award of the workers' compensation administrative law judge (WCJ), who found  
18 that applicant sustained industrial cumulative trauma injury to his heart, neck and right knee, and in the  
19 form of hypertension and skin cancer while employed as a firefighter during the period January 6, 1975  
20 to April 25, 2002, causing 74% permanent disability and need for future medical treatment. The WCJ  
21 also awarded a 10% penalty pursuant to Labor Code section 4650 for non-payment of amounts due but  
22 not previously paid.<sup>1</sup>

23 Defendant contends the WCJ should have found separate dates of injury under section 5412 for  
24 the injury to the heart/hypertension and the skin cancer, and that separate awards should have issued for  
25 the permanent disability caused by each of those conditions instead of combining the disabilities they  
26 caused under the Multiple Disability Table (MDT) into a single award contrary to section 3208.2.<sup>2</sup>  
27 Defendant further contends that section 4650 was improperly applied to award the 10% penalty.

<sup>1</sup> Further statutory references are to the Labor Code. Section 4650(d) provides in pertinent part that if "any indemnity payment is not made timely as required by this section, the amount of the late payment shall be increased 10 percent and shall be paid, without application, to the employee..."

<sup>2</sup> Section 3208.2 provides as follows: "When disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, all questions of fact and law shall be separately determined with respect to each such injury, including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit."

1 An answer was received from applicant. The WCJ provided a Report And Recommendation On  
2 Petition For Reconsideration recommending that reconsideration be denied.

3 Reconsideration is granted and the WCJ's decision is rescinded as the Decision After  
4 Reconsideration.<sup>3</sup> New findings are entered that applicant sustained two separate cumulative injuries,  
5 one to the heart/ hypertension and the other to his skin in the form of skin cancer. The different dates of  
6 injury support separate awards of permanent disability for those separate conditions. In that defendant's  
7 liability for permanent disability was uncertain it did not fail to make timely payments and no penalty is  
8 awarded under section 4650.

### 9 10 BACKGROUND

11 Applicant was employed by defendant as a firefighter from January 6, 1975 until January, 2005.  
12 Applicant filed claims for several industrial injuries sustained during the course of that employment.  
13 Five of those claims were addressed by entry of stipulated awards on July 14, 2015 (ADJ1145586,  
14 ADJ2242135, ADJ4524360, ADJ1193152, and ADJ64415703). Three other cases (ADJ513626,  
15 ADJ3212601 and ADJ4651442) were subsequently dismissed. (See footnote 3.)

16 In June 2002, applicant filed an application alleging cumulative trauma injury to the  
17 heart/hypertension and to the skin (skin cancer) sustained during the period from the date when he started  
18 working for defendant, January 6, 1975, to April 25, 2002, the date applicant received medical  
19 information diagnosing hypertension, with an indication of permanent disability and request for  
20 treatment. (See, November 25, 2002 report of Qualified Medical Evaluator (QME) Prakash Jay, M.D.,  
21 Joint Exhibit AA, p. 4.) Applicant subsequently obtained medical evidence of permanent disability in  
22 relation to his skin cancer injury when he received the October 23, 2002 report of QME John F. Shega,  
23 M.D. (Exhibit 1.)

24  
25 <sup>3</sup> Only the Findings and Award of the WCJ are rescinded and not her Orders dismissing ADJ3212601 and ADJ4651442 with  
26 prejudice, and dismissing the neck and right knee from claimed body parts in ADJ513626 with prejudice. Although  
27 ADJ4651442 and ADJ3212601 are included on the captions of defendant's petition and applicant's answer, the WCJ's  
Stipulated Facts 3 and the December 21, 2016 Minutes Of Hearing show on page 2, lines 13-14, that the two cases were  
dismissed with prejudice at that time.

1 After the examinations by the QMEs, the parties selected Daniel J. Bressler, M.D., to serve as  
2 their Agreed Medical Evaluator (AME). Following an examination on November 23, 2015, Dr. Bressler  
3 reported that both applicant's skin cancer and his heart trouble were presumed by law to have arisen out  
4 of and in the course of his firefighter employment. (Lab. Code, §§ 3212 and 3212.1.)

5 The parties were unable to agree on a disposition of the case and a mandatory settlement  
6 conference was conducted on November 1, 2016. The parties stipulated at that time that applicant  
7 sustained industrial injury in the form of skin cancer, hypertension, heart, neck and right knee during the  
8 period "1-6-75 TO 4-25-02." The pretrial conference statement lists as an issue applicant's contention  
9 that one cumulative trauma injury is properly applied to both the admitted injury to the skin and to the  
10 injury to the heart, citing *Ott v. City of Anaheim* (2010) 75 Cal.Comp.Cases 371 [2010 Cal. Wrk. Comp.  
11 LEXIS 33] (writ den.) (*Ott*). The listing of issues on the pretrial conference statement also includes  
12 defendant's contention that there are separate dates of injury for the injury to the heart and for the injury  
13 to the skin, and "Anti-Merger," presumably in reference to the provisions of section 3208.2 as noted  
14 above.

15 The case was tried on December 21, 2016. According to the Minutes Of Hearing (Minutes) from  
16 that date, the recommended permanent disability rating for the heart injury is 55% and the recommended  
17 permanent disability rating for the skin injury is 35%. Under the MDT, the two ratings combine for a  
18 single rating of 74% permanent disability. The Minutes also describe applicant's contention that one  
19 cumulative injury should be found to have occurred over the same cumulative trauma period, causing  
20 injury to the heart and skin, with a combined rating and award of 74% permanent disability. The  
21 Minutes further note defendant's contention that the decision in *Ott* does not control this case and that  
22 separate dates of injury should be found for applicant's heart trouble and his skin cancer.

23 The WCJ accepted applicant's contention and found one cumulative trauma injury causing injury  
24 to the heart and skin. The MDT was used by the WCJ to combine the ratings for the heart and skin into a  
25 single award of 74% permanent disability in her January 13, 2017 decision as described above.

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1 The WCJ explains the reasons for her decision in her Report as follows:

2 The defendant asserts that the 'anti-merger' doctrine prohibits the two body  
3 parts of heart and skin (skin cancer) listed on the same application from  
4 being considered as if they were multiple body parts rated together for a  
5 single combined rating. The 'anti-merger' doctrine was to prevent the  
6 'merger' of specific injuries within the CT period from being 'merged' into  
7 the CT claim. It was never intended to separate out the body parts for  
8 which injury is alleged in the same CT period. If the defendant's logic  
9 were followed, then all cumulative trauma claims with multiple body parts  
10 would be subject to separation and separate ratings because there arguably  
11 is a different causative element separate and apart from the injurious  
exposure of the employment. This position is untenable. Further, there is  
no medical evidence to suggest that there were two different periods of  
injurious exposure for these two body parts or any mechanism other than  
by way of his employment as a fire fighter that exposed him to the sun and  
to the stress which caused the heart trouble. Without further belaboring the  
point, the undersigned WCJ considered all the arguments by defendant and  
felt that factually and legally the case was the same as the facts in the writ  
denied case of [Ott], and that the reasoning and holding as enunciated in  
that case should apply to the instant case. To wit:

12 In this case, the applicant was a fire fighter with the City of Vista from  
13 January 6, 1975 to the time he retired in October of 2005 (Minutes of  
14 Hearing 12/21/2016, 5:1-6). He last worked in January 2005 and  
15 performed no work between January and his retirement in October 2005.  
16 In his capacity as a firefighter he worked as a fire paramedic and fire  
17 engineer. All of which had the same exposure to the sun and to stresses of  
18 the environment. (Minutes of Hearing 6:2-7:2; Dr. Prakash Jay report  
11/25/2002, page 7; Jt. Ex. BB page 3, 4).

19 The applicant testified that his heart 'trouble', arrhythmia, was in the  
20 1990's but lost no time from this. Similarly, the applicant developed skin  
21 cancer but did not lose any time from work (Minutes of Hearing  
22 12/21/2016, 5:16-23).

23 The applicant testified that he first knew that the skin cancer and heart  
24 trouble could be work-related when he spoke to his workers' compensation  
25 attorney who was handling various other specific injury orthopedic claims  
26 for him (see ADJ4524360; ADJ1993152; ADJ2242135; and ADJ1145586).  
27 The application for Adjudication of Claim for the instant case was filed on  
or about 8/5/2002. The applicant was seen on October 23, 2002 by Dr.  
John Shega as a QME. Dr. Shega pronounced the applicant permanent and  
stationary for the skin cancer. He issued prophylactic work restrictions of  
wearing sun screen and a wide brimmed hat (Applicant Exhibit 1,  
10/23/2002 report Dr. Shega). On November 25, 2002, the applicant was  
seen by Dr. Prakash Jay as a QME for his heart condition (Jt. Ex. AA). Dr.  
Jay found the heart to be a compensable consequence of the stress of the  
job, found that he was permanent and stationary as of that date and issued  
prophylactic work restrictions from 'undue emotional stress' and 'very  
heavy lifting (Jt. Ex. AA page 11).

1 On January 4, 2016, the applicant was seen by Dr. Daniel Bressler as an  
2 AME of the heart problems and skin and pulmonary problems (Jt. Ex. BB,  
3 page 1). Dr. Bressler found that the applicant was permanent and  
4 stationary from his skin and heart trouble (Jt. Ex. BB, page 19). He further  
5 issued AMA Guide impairments (Jt. Ex. BB, page 20). Dr. Bressler  
6 authored a supplemental report on July 14, 2016 rating the permanent  
7 disability under the 1997 PDRS [Permanent Disability Rating Schedule]  
8 (Jt. Ex. CC, pages 1 and 2).

9 On October 18, 2016, the deposition of Dr. Bressler was taken (Jt. Ex.  
10 DD). Dr. Bressler's opinions remained unchanged. He also testified that  
11 there were no 'specific' injuries to the heart or skin of which he knew (JT. Ex.  
12 DD 6:5-9; 8:12-15).

13 Based on the medical reports and testimony as listed above, there is no  
14 basis for the 'anti-merger' doctrine to apply and no basis for separating out  
15 the body parts for rating. Therefore, the applicant is entitled to a non-  
16 apportioned award at 74%. It is further found that the applicant was  
17 permanent and stationary for the skin and heart on November 25, 2002  
18 based on the report of Prakash Jay (Jt. Ex. AA 11/25/2002).

### 19 DISCUSSION

20 The WCJ's reliance upon the decision in *Ott* to find one cumulative trauma injury in this case is  
21 misplaced. In *Ott*, the applicant filed two claims of cumulative injury arising from the same  
22 employment. The first alleged injury to the heart and orthopedic injuries during the period July 1997  
23 through January 18, 2003. The second claim alleged injury in the form of cancer during the period July  
24 1977 through February 24, 2004. The WCJ in *Ott* found two cumulative injuries as alleged, finding that  
25 the heart and orthopedic injuries in the first claim caused 96% permanent disability, and separately  
26 finding that the cancer in the second case caused 50% permanent disability.

27 The defendant in *Ott* sought reconsideration of the WCJ's finding of two injuries, contending that  
it was error to award a total of more than 100% permanent disability when there was only one cumulative  
trauma period, and notwithstanding that two separate cumulative injuries were claimed. The Appeals  
Board granted reconsideration and noticed an intention to find one cumulative trauma injury causing  
100% permanent disability. Defendant objected that such a finding would be contrary to the parties'  
stipulation that there were two separate cumulative trauma injuries.

In support of its finding that applicant sustained a single cumulative trauma injury causing 100%  
permanent disability, the Appeals Board in *Ott* noted that section 5500.5 limits liability for a cumulative

1 trauma injury to employers during the last year “immediately preceding either the date of injury” as  
2 determined under section 5412, or “the last date on which the employee [was exposed] to the hazards of  
3 the occupational disease or cumulative injury, whichever occurs first.”<sup>4</sup> In *Ott*, the applicant’s injurious  
4 exposure for all of his industrial conditions ended when he stopped working, but the cancer did not  
5 manifest itself until after the date. In finding one cumulative trauma injury, the Appeals Board reasoned  
6 that because the applicant worked without disability until his job ended the period of injurious exposure  
7 was not separated by a period of temporary disability or other circumstance that supported a finding of  
8 two cumulative trauma injuries.

9 In this case, unlike in *Ott*, applicant was diagnosed with hypertension with an indication of  
10 permanent disability in October 2002, before he stopped employment and the injurious exposure ended.  
11 In addition, he received a second medical report in November 2002 diagnosing skin cancer as a separate  
12 injury with an indication of permanent disability before he stopped employment and the injurious  
13 exposure ended. In short, the applicant in *Ott* worked without disability until his job ended, unlike the  
14 applicant in this case who obtained knowledge of two injuries causing disability before he ended his  
15 employment and injurious exposure.

16 Section 5500.5 establishes liability for cumulative trauma based upon the date of injury “as  
17 determined” under section 5412, or based upon the last date on which the employee was exposed to the  
18 hazards of the occupational disease or cumulative injury, “whichever occurs first.” Here, the dates when  
19 applicant obtained knowledge of the disabilities caused by his skin cancer and by his heart condition  
20 occurred *before* the last date of injurious exposure, unlike the facts in *Ott*.

21 The facts in this case are more like those in *Aetna Casualty and Surety Co. v. Workers’ Comp.*  
22 *Appeals Bd. (Coltharp)* (1973) 35 Cal.App.3d 329 [38 Cal.Comp.Cases 720] (*Coltharp*), where the  
23 Appeals Board determined that the applicant sustained two cumulative injuries. In *Coltharp*, the WCJ  
24 found two separate and distinct periods of disability that were not caused by specific injury but were  
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26 <sup>4</sup> Section 5412 provides in full as follows: “The date of injury in cases of occupational diseases or cumulative injuries is that  
27 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.”

1 cumulative in nature. However, the WCJ further found that applicant had only sustained one single  
2 cumulative injury. The Appeals Board in *Coltharp* set aside the WCJ's decision that applicant had only  
3 sustained one single cumulative injury and the Court affirmed that decision. As concluded in *Coltharp*,  
4 section 3208.2 did not allow merger of the separate injuries into a finding of one single cumulative  
5 injury, and instead it required a finding of more than one cumulative injury. (*Coltharp, supra*, 35  
6 Cal.App.3d at pp. 342-343.)

7 Similarly, the existence of separate dates of injury for the cumulative skin cancer injury and the  
8 cumulative heart injury distinguish this case from the case relied upon by applicant, *Western Growers*  
9 *Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases  
10 323] (*Austin*). In *Austin*, the WCJ found that there were two periods of temporary disability but only one  
11 cumulative injury. That finding was determined to be correct in *Austin* because the applicant's two  
12 separate periods of disability were connected by a continuous need for medical treatment of the same  
13 cumulative injury. (*Id.*) That is not the situation in this case, where the applicant has sustained separate  
14 injuries to different body parts with different dates of injury and different disabilities.

15 We are also not persuaded that defendant's acknowledgement that applicant sustained cumulative  
16 industrial injury to his heart and in the form of skin cancer at the November 1, 2016 pretrial conference  
17 somehow precludes a finding of two cumulative injuries. Stipulations are binding on a party in the  
18 absence of a showing of good cause. (*County of Sacramento v. Workers' Comp. Appeals Bd.*  
19 *(Weatherall)* (2000) 77 Cal.App.4th 1114, 1120 [65 Cal.Comp.Cases 1] (*Weatherall*.) However, it is  
20 important to consider the entire circumstances in order to correctly understand the scope of the  
21 stipulation made in this case.

22 Here, defendant stipulated at the pretrial conference that applicant sustained cumulative injury to  
23 his heart and skin cancer on an industrial basis during the period from January 6, 1975 to April 25, 2002.  
24 However, at that same time defendant stated its contention on the pretrial conference statement that there  
25 were separate dates of injury for the two conditions and that the "anti-merger" statute applied.  
26 Defendant's contention on the pretrial conference statement that applicant sustained two separate injuries

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1 preserved that contention as an issue to be determined by the WCJ, notwithstanding defendant's further  
2 acknowledgement that applicant had, in fact, sustained industrial injury to his heart and to his skin.

3 The January 13, 2017 decision of the WCJ is rescinded and a new decision is entered as discussed  
4 above.

5 For the foregoing reasons,

6 **IT IS ORDERED** that defendant's petition for reconsideration of the January 13, 2017 Joint  
7 Findings And Award of the workers' compensation administrative law is **GRANTED**.

8 **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers'  
9 Compensation Appeals Board that the January 13, 2017 Joint Findings And Award of the workers'  
10 compensation administrative law is rescinded and the following is substituted in its place:

11 **STIPULATED FACTS**

12 1. Applicant **ROBERT L. GRAVLIN**, born ( ), while employed during the period  
13 January 6, 1975 to April 25, 2002, as a Fire Fighter, Occupational Group No. 490, at Vista, California, by  
14 the **CITY OF VISTA FIRE DEPARMENT**, sustained injury arising out of and in the course of  
15 employment to his skin in the form of cancer, hypertension, heart, neck and right knee.

16 2. The **CITY OF VISTA FIRE DEPARTMENT** was permissibly self-insured on the date of  
17 injury.

18 3. ADJ3212601 and ADJ4651442 are dismissed with prejudice.

19 4. The neck and right knee are withdrawn as part of ADJ513626.

20 5. For the purposes of rating each body part the following ratings apply: For the heart, based on  
21 Dr. Bressler's report of July 14, 2016, the rating string is 11.32-40-4901-49-55; for the Skin, pursuant to  
22 the report of Dr. Bressler on July 14, 2016, the rating string is 6.1-25-490H-30-35.

23  
24 **FINDINGS OF FACT**

25 1. The date of applicant's injury to the heart is April 25, 2002, when he received medical  
26 information indicating a diagnosis of hypertension and he requested treatment. (See, November 25,  
27 2002 report of Qualified Medical Evaluator (QME) Prakash Jay, M.D., Joint Exhibit AA, p. 4.)

1 2. The date of applicant's injury to the skin is October 23, 2002, when Qualified Medical Evaluator  
2 (QME) John Shega reported on that condition and provided medical evidence of industrial injury.

3 3. Applicant is entitled to an unapportioned award of 55% permanent disability for the injury to the  
4 heart, which is equivalent to 306.25 weeks at \$170.00 per week of permanent disability indemnity,  
5 equating to \$52,062.50, payable beginning November 25, 2002, less amounts previously paid on  
6 account thereof and an attorney fee of 15%.

7 4. Applicant is entitled to an unapportioned award of 35% permanent disability for the injury to the  
8 skin, which is equivalent to 161 weeks at \$170.00 per week of permanent disability indemnity, equating  
9 to \$27,370.50, payable beginning November 25, 2002, less amounts previously paid on account thereof  
10 and an attorney fee of 15%.

11 5. The reasonable value of the services rendered by applicant's attorney(s) is 15% of the permanent  
12 disability awarded, payable to O'MARA & HAMPTON.

13 6. There is need for further medical treatment for the skin and for the heart.

14  
15 **JOINT AWARD**

16 **AWARD IS HEREBY MADE** in favor of **ROBERT GRAVLIN** against **CITY OF VISTA**  
17 **FIRE DEPARTMENT** as follows:

18 A. For the injury to the heart, permanent disability indemnity at 55% equating to 306.25 weeks at  
19 \$170.00 per week beginning November 25, 2002, less credit for any sums previously paid on  
20 account thereof, and less attorney's fees of 15% of the amount awarded.

21 B. For the injury to the skin, permanent disability indemnity at 35% equating to 161 weeks at  
22 \$170.00 per week beginning November 25, 2002, less credit for any sums previously paid on  
23 account thereof, and less attorney's fees of 15% of the amount awarded.

24 C. Further medical treatment.

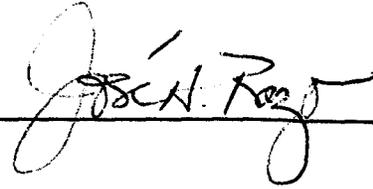
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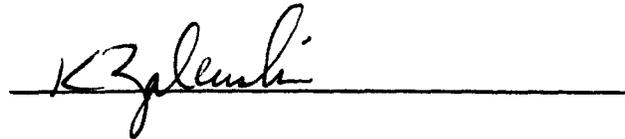
1 D. A reasonable attorney's fee of \$11,914.95, which is 15% of the total permanent disability  
2 indemnity awarded (\$79,433.00), to be paid from accrued benefits.

3 **WORKERS' COMPENSATION APPEALS BOARD**

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7 **JOSÉ H. RAZO**

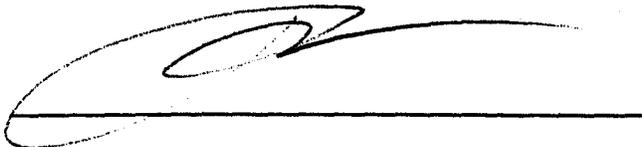
8 **I CONCUR,**

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12 **KATHERINE ZALEWSKI**



13  
14 **I DISSENT (See Separate Dissenting Opinion),**

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16 

**DEPUTY**

17  
18 **RICHARD L. NEWMAN**

19 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

20 **MAR 27 2017**

21  
22 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**  
23 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

24 **ROBERT GRAVLIN**  
25 **O'MARA & HAMPTON**  
26 **LAW OFFICE OF RUDY H. LOPEZ**



27 **JFS/abs**

1           **SEPARATE DISSENTING OPINION OF DEPUTY COMMISSIONER NEWMAN**

2           I dissent. I would uphold the decision of the WCJ for the reasons expressed in her Report and in  
3 her January 13, 2017 Opinion On Decision, and for the reasons below.

4           Applicant was exposed to conditions that caused injury to his skin and heart while employed by  
5 defendant from the time of his hire in 1975 until he left that employment in 2005. Although applicant  
6 may have learned of the employment origin of those conditions at different times before he stopped  
7 working, the time period of injurious exposure and employment was the same for both conditions. In this  
8 circumstance, the WCJ correctly found that both conditions were sustained as part of a single cumulative  
9 trauma injury. (*Ott, supra.*)

10           As noted in *Ott*, "...although applicant's cancer did not manifest itself until after Applicant  
11 ceased working this did not change the fact that the injurious exposure causing the cancer occurred  
12 during the earlier cumulative trauma period. ..." (*Ott, supra* 75 Cal.Comp.Cases at p. 374.) Similarly, in  
13 this case applicant obtained knowledge of the injuries to his skin and heart at different times, but that  
14 does not change the fact that the injurious exposure causing both injuries occurred during the same  
15 cumulative trauma period.

16           As set forth in section 3208.1, an injury may be either "specific," which means "occurring as the  
17 result of one incident or exposure which causes disability or need for medical treatment," or it may be  
18 "cumulative," which means "occurring as repetitive mentally or physically traumatic activities extending  
19 over a period of time, the combined effect of which causes any disability or need for medical treatment."  
20 (Lab. Code, § 3208.1.) As shown by section 3208.1, there is no single *date* of a cumulative injury per se,  
21 because the cause of injury occurs over a period of time. (*Beveridge v. Industrial Acc. Com.* (1959) 175  
22 Cal.App.2d 592, 595 [24 Cal.Comp.Cases 274].)

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1 The "date of injury" described in section 5412 is not the "date" when a cumulative injury is  
2 caused, but it is the date used for statute of limitation and liability purposes in adjudicating claims. (Lab.  
3 Code §§ 5405, 5407, 5410 and 5500.5.) As explained by the Court in *J. T. Thorp v. Workers' Comp.*  
4 *Appeals Bd. (Butler)* (1984) 153 Cal.App.3d 327, 341 [49 Cal.Comp.Cases 224]:

5 "The 'date of injury' is a statutory construct which has no bearing on the  
6 fundamental issue of whether a worker has, in fact, suffered an industrial  
7 injury... [T]he 'date of injury' in latent disease cases 'must refer to a period  
8 of time rather than to a point in time.' (citation.) The employee is, in fact,  
9 being injured prior to the manifestation of disability... [T]he purpose of  
10 section 5412 was to prevent a premature commencement of the statute of  
11 limitations, so that it would not expire before the employee was reasonably  
12 aware of his or her injury." (*Butler, supra*, 153 Cal.App.3d at p. 341; cf.  
13 *Palmer v. Workers' Comp. Appeals Bd.* (1987) 192 Cal.App.3d 1241 [52  
14 Cal.Comp.Cases 298].)

15 The date of injury under section 5412 has relevance to the statute of limitations and the allocation  
16 of liability for a cumulative industrial injury under section 5500.5, but it does not determine the question  
17 in this case whether an applicant sustained one or two cumulative injuries. Instead, the WCJ properly  
18 identified applicant's heart and skin as the body parts affected by the same cumulative industrial  
19 injurious exposure and found one injury. The WCJ's decision should be affirmed.

20 In addition, defendant stipulated at the pretrial conference on November 1, 2016 to a single period  
21 of injurious exposure ending April 25, 2002, causing injury to the heart and skin. Stipulations at a  
22 mandatory settlement pretrial conference are binding unless the parties are allowed to withdraw from the  
23 agreement by showing of good cause. (*Weatherall, supra*, 77 Cal.App.4th at pp. 1119-1120.) Here, no  
24 good cause was shown that allows defendant to be relieved of its stipulation and agreement with the  
25 substance and date of injury as claimed by applicant.

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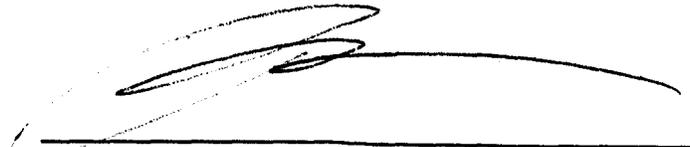
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1 The number and nature of the injuries suffered by an employee are questions of fact for the WCJ,  
2 and a WCJ's finding in that regard should be upheld when it is supported by substantial evidence that  
3 preponderates in light of the entire record. (*Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal.3d 274  
4 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. App. Bd.* (1970) 1 Cal.3d 627, 637 [35  
5 Cal.Comp.Cases 16]; *Coltharp, supra.*) Here, the January 13, 2017 decision of the WCJ is supported by  
6 substantial evidence and it should be affirmed.

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8 **WORKERS' COMPENSATION APPEALS BOARD**



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**RICHARD NEWMAN, DEPUTY COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**MAR 27 2017**

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

**ROBERT GRAVLIN  
O'MARA & HAMPTON  
LAW OFFICE OF RUDY H. LOPEZ**

**JFS/abs**

