

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

3
4 **IMELDA SOSA,**

5 *Applicant,*

6 **vs.**

7 **BRAWLEY UNION HIGH SCHOOL**
8 **DISTRICT; ATHENS ADMINISTRATORS,**
9 **LIBERTY MUTUAL INSURANCE, SELF-**
10 **INSURED SCHOOLS OF CALIFORNIA,**

11 *Defendants.*

Case No. ADJ8855485
(San Diego District Office)

OPINION AND DECISION
AFTER RECONSIDERATION

12 On July 24, 2018, we granted reconsideration of the May 1, 2018 Findings, Award and Order.
13 This is our Opinion and Decision After Reconsideration.

14 Defendant Brawley Union High School District and third party administrator Athens
15 Administrators seek reconsideration of the May 1, 2018 decision. In that decision, the workers'
16 compensation administrative law judge (WCJ) found that applicant sustained a cumulative trauma injury
17 through June 13, 2011 while employed by Brawley Union High School District. The WCJ found that
18 applicant sustained 23% permanent disability as a result of the industrial injury and awarded permanent
19 disability indemnity and future medical treatment.

20 Defendant contends that applicant did not sustain compensable temporary disability in 2011
21 because applicant was paid industrial accident leave under the Education Code for a single day's absence
22 and would not have been entitled to temporary disability under Labor Code section 4652. Defendant also
23 contends that applicant did not have knowledge that her disability was related to a cumulative trauma
24 injury to her neck on June 13, 2011.

25 We have considered the allegations of the Petition for Reconsideration and reviewed the record.
26 The WCJ provided a Report and Recommendation on Petition for Reconsideration (Report) in response
27 to each petition. For the reasons discussed by the WCJ in his Report, which we adopt and incorporate,
and for the reasons discussed below, we will affirm the May 1, 2018 Findings, Award, and Order.

1 We will briefly review the relevant facts. Applicant submitted a claim form to her employer on
2 June 3, 2011 for a specific injury “From shoulder to neck—sometimes whole arm.” (Exh. A, June 3,
3 2011, DWC-1 Form.) On July 7, 2011, applicant’s primary treating physician took applicant off work
4 for a single day on June 13, 2011 and a single day on July 7, 2011. (Exh. KK, Thomas J. Bruff, M.D.,
5 July 7, 2011 Letter; Exh. MM, Summary of Work and Leave.) After a period of medical treatment,
6 applicant filed an Application for Adjudication of Claim on November 7, 2012. At trial, the parties
7 stipulated that applicant sustained an industrial injury during the period April 8, 1997 through
8 December 10, 2012. (December 5, 2017 Minutes of Hearing and Summary of Evidence (MOH/SOE),
9 p. 2.) However, the parties also submitted the issue of “date of injury” at trial.

10 Labor Code section 3208.1 provides that a cumulative industrial injury occurs whenever the
11 repetitive physically traumatic activities of an employee’s occupation cause any disability or a need for
12 medical treatment. Pursuant to section 5500.5, liability for an injured worker’s cumulative injury is
13 limited to those employers who employed the employee during a period of one year immediately
14 preceding the date of injury, as determined pursuant to Labor Code section 5412, or the last date on
15 which the employee was employed in an occupation exposing her to the hazards of the cumulative injury,
16 whichever occurs first. (Lab. Code, § 5500.5(a).) The date of injury for an industrial cumulative trauma
17 injury is defined by Labor Code section 5412, as follows: “The date of injury in cases of occupational
18 diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom
19 and either knew, or in the exercise of reasonable diligence should have known, that such disability was
20 caused by his present or prior employment.” As used in Labor Code section 5412, “disability” means
21 either compensable temporary disability or permanent disability.¹ (*Chavira v. Worker’s Comp. Appeals*
22 *Bd.* (1991) 235 Cal.App.3d 463 [56 Cal.Comp.Cases 631]; *State Compensation Insurance Fund v.*
23 *Workers’ Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998 [69 Cal.Comp.Cases 579].)

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25 ¹ Ordinarily, “no temporary disability indemnity is recoverable for the disability suffered during the first three days after the
26 employee leaves work as a result of the injury unless temporary disability continues for more than 14 days or the employee is
27 hospitalized as an inpatient for treatment required by the injury.” (Lab. Code, § 4652.) However, in this case, applicant
received Industrial Accident Leave (IDL).

1 Here, applicant had knowledge of an industrial injury and suffered disability as a result of the
2 injury on June 13, 2011. Accordingly, the WCJ correctly determined applicant's date of injury.

3 For the foregoing reasons,

4 **IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation
5 Appeals Board, that the May 1, 2018 Findings, Award and Order is **AFFIRMED**.

6 **WORKERS' COMPENSATION APPEALS BOARD**

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11 **MARGUERITE SWEENEY**

12 **I CONCUR,**

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15 **DEIDRA E. LOWE**

16
17 
18 **JOSÉ M. RAZO**



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

20 **NOV 07 2019**

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

23 **ADAMS, FERRONE & FERRONE**
24 **LAW OFFICES OF MARK H. BARBER**
25 **TESTAN LAW**
26 **HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**
27 **IMELDA SOSA**

MWH/ebc