

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

**MARICELA PEREZ, *Applicant***

**vs.**

**COMPREHENSIVE BLOOD AND CANCER CENTER (CBCC); FARMERS  
INSURANCE COMPANY; STOCKDALE PODIATRY GROUP; STATE FARM  
INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ11965696  
Bakersfield District Office**

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

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, and the reasons stated below, we will grant reconsideration, amend the WCJ's decision as recommended in the report, and otherwise affirm the November 1, 2021 Findings of Fact.

The date of injury for cumulative trauma claims "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,<sup>1</sup> § 5412.) In turn, liability for a cumulative injury is determined under section 5500.5, which states in relevant part:

. . . liability for occupational disease or cumulative injury claims filed or asserted on or after January 1, 1978, shall be limited to those employers who employed the employee during a period . . . [one year] immediately preceding either the date of injury, as determined pursuant to Section 5412, *or* the last date on which

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury, ***whichever occurs first***. (Lab. Code, § 5500.5(a), emphasis added.)

Although the period of liability for cumulative trauma claims is limited to the last year of injurious exposure, the actual date of injury under section 5412 may be different than applicant's last date of work. "Pursuant to section 5412, the date of a cumulative injury is the date the employee first suffers a 'disability' and has reason to know the disability is work related." (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 238 [58 Cal.Comp.Cases 323].) Disability has been defined as "an impairment of bodily functions which results in the impairment of earnings capacity." (*J.T. Thorp v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 327, 336 [49 Cal.Comp.Cases 224].) Disability can be either temporary or permanent. (*Chavira v. Workers' Comp. Appeals Bd.* (1991) 253 Cal.App.3d 463, 474 [56 Cal.Comp.Cases 631].) Whether there is temporary or permanent disability indicating the date of cumulative injury is a question of fact, which must be supported by substantial evidence. (*Austin, supra*, 16 Cal.App.4th at 233-235.)

While the WCJ did not make an actual finding of fact as to the section 5412 date of injury, the Opinion on Decision indicates that the WCJ believed it to be January 16, 2020, the date of the first report from David Baum, M.D., the internal medicine panel qualified medical examiner (PQME). However, in case such as this one, where the applicant files an Application for Adjudication of Claim seeking benefits for industrial injury, the applicant's date of knowledge is no later than the date of the application which was filed on February 22, 2019.

Nevertheless, liability for cumulative trauma is limited to the last year "***immediately preceding***" ***either*** the section 5412 date of injury "***or***" the last date of occupational exposure, "***whichever occurs first***." (Lab. Code, § 5500.5.) In this case, we agree with the WCJ that pursuant to Dr. Baum's substantial opinion, the last year of injurious occupational exposure was the year ending on July 3, 2012.

Dr. Baum stated that:

The carcinogenic potential of ionizing radiation is additive. The exposure at the podiatrist's office, I believe, initiated the process which eventuated the meningioma 15 years later – hastened by 6 years of more intense exposure as an assistant radiation therapist at CBCC.

Still, the responsibility for meningioma-related disability in this case lies with CBCC, i.e., the employer responsible for the last year of injurious exposure. (Defendant's Ex. A Page 17)

Dr. Baum testified at his deposition as follows:

Well, the tumorigenic process. The tumor developed, let's say, seven, eight, nine years before she started working at CBBC. But to say that the additional radiation exposure aborted the evolution of that tumor would not be correct. It probably contributed to the evolution of her multifocal disease.

In other words, she had the tumor before she began working at CBCC. There's no question about that. Now, whether she was symptomatic, I really have no idea. She indicated that she was not. But the last year of injurious exposure certainly was at CBCC.

\* \* \*

I have no history that she was symptomatic or impaired before she started working at CBBC – of CBCC.

(Defendant's Ex. C, at p. 13:5 -15; 14:22-25.)

Therefore, the last year of injurious occupational exposure ending on July 3, 2012 predates the section 5412 date of injury.

While defendant attempts to raise several alternative theories that would shift liability to a period either before or after the year ending July 3, 2012, defendant cites to no evidence in the record in support. Moreover, while defendant raised the issue that it "dispute[d] the date of injury pursuant to Labor Code section 5412." Defendant did not raise the affirmative defense of statute of limitation. Therefore, we need not address that issue.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the November 1, 2021 Findings of Fact is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the November 1, 2021 Findings of Fact is **AFFIRMED**, **EXCEPT** that it is **AMENDED** as follows:

**FINDINGS OF FACT**

1. Mericela Perez (Applicant) was thirty-five (35) years old and employed as a Radiology Technician at Bakersfield, California by Comprehensive Blood and Cancer Center (Employer), during the period ending on July 3, 2012, wherein she sustained injury arising out of and in the course of her employment in the form of an intracranial meningioma.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**January 24, 2022**

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

**MARICELA PEREZ  
LAW OFFICE OF LEVITON, DIAZ & GINOCCHIO  
LAW OFFICE OF STRATMAN, SCHWARTZ & WILLIAMS  
LAW OFFICE OF ALBERT & MACKENZIE**

**PAG/pc**

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

**REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION**

**INTRODUCTION**

Trial in the primary proceedings on the issue of injury arising out of and in the course of Applicant's employment in above-captioned case was held on September 1, 2021. The matter was thereafter submitted on September 22, 2021 to Workers' Compensation Judge Christopher M. Brown. A Rulings on Evidence, Findings of Fact; Opinion on Decision was issued on November 1, 2021. Defendant filed a timely, verified and sufficiently served Petition for Reconsideration on November 24, 2021.

The Petition does not state the legal basis for its filing but the arguments are consistent with Labor Code § 5903 (a), (c) and (e). Specifically, Petitioner argues Applicant did not suffer a cumulative trauma injury with an end date of July 3, 2012, that the year of liability for a cumulative trauma should be established is established by Labor Code § 5412 not §5500.5

**STATEMENT OF FACTS**

Maricela Perez (Applicant) was thirty-five (35) years old and employed as a Radiology Technician at Bakersfield, California by Comprehensive Blood and Cancer Center (Employer) on July 3, 2012, the last day of the alleged cumulative trauma, wherein she suffered an injury arising out of and in the course of her employment in the form of an intracranial meningioma. Finding of Fact 1 has a clerical error and states the cumulative trauma ended on July 3, 2013. This error needs to be corrected.

Applicant's employment with Comprehensive Blood and Cancer Center began on May 27, 2007. (MOH Page 2 Lines 35 – 38) She has worked with other employers where she was exposed to ionizing radiation before she began employment with CBCC. The Panel Qualified Medical Examiner gave his expert opinion that Applicant's exposure to ionizing radiation at CBCC contributed to the development of her cranial tumors.

**DISCUSSION**

The issue of injury arising out of and in the course of Applicant's employment with California Blood and Cancer Center was the main issue for the trial held on September 1, 2021. The one year period of liability for cumulative trauma injuries is established by Labor Code § 5500.5. For injuries on or after January 1, 1981 liability for occupational diseases or cumulative injuries is limited to those employers who employed the employee during a one year period immediately preceding either the date of injury as determined by Labor Code § 5412 or the last day on which the employee was employed in an

occupation exposing him or her to the to the hazards to the hazards of the occupational disease or cumulative injury, whichever occurs first<sup>1</sup>

Applicant was exposed to ionizing radiation when she worked as a Radiology Technician for CBCC. Applicant first sought treatment for her brain tumors while she was working for CBCC. (Defendant's Ex. C Page 17 Lines 22 – 25) Applicant worked at CBCC until July 3, 2012 when she received the results of a CT scan that identified brain tumors. Applicant was taken off work as of July 4, 2012 and underwent surgery for the cranial tumors on September 23, 2012. (OOD Pages 3 – 4, Defendant's Ex. A Page 3) July 3, 2012 was the first time Applicant had both disability and treatment for her cranial tumors. An Application for Adjudication of Claim for workers' compensation benefits asserting these tumors arose out of and in the course of Applicant's employment was filed on February 25, 2019.

Applicant was examined by Dr. David Baum, M.D. as the Panel Qualified Medical Examiner specializing in Internal Medicine for this claim of industrial injury. Dr. Baum examined Applicant on January 16, 2020. He issued reports dated January 16, 2020 and July 20, 2020. (Defendant's Exs. A & B) His deposition was taken on December 17, 2020. (Defendant's Ex. C) Dr. Baum gave his expert medical opinion that Applicant's exposure to ionizing radiation while working for CBCC contributed to the development of her cranial tumors. He expressly stated:

The carcinogenic potential of ionizing radiation is additive. The exposure at the podiatrist's office, I believe, initiated the process which eventuated the meningioma 15 years later – hastened by 6 years of more intense exposure as an assistant radiation therapist at CBCC.

Still, the responsibility for meningioma-related disability in this case lies with CBCC, i.e., the employer responsible for the last year of injurious exposure.

(Defendant's Ex. A Page 17, OOD Pages 2 - 3)

Dr. Baum clearly indicated Applicant suffered a cumulative injury through July 3, 2012, and that the exposure to ionizing radiation at CBCC contributed to applicant's disability and need for medical treatment.

Defendant's Petition asserts that liability should be determined by the start of the exposure not the last day of exposure. (Petition Page 7) By analogy, if Applicant suffered an orthopedic cumulative trauma to her hands or back due to repetitive exposure to micro traumas the employer at the beginning of the trauma, not the last year of the trauma would be liable.

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<sup>1</sup> Labor Code § 5500.5

Defendant has also asserted that Applicant's exposure to ionizing radiation occurring after her disability and surgery caused the disability and need for surgery and liability for Applicant's disability and surgery in 2012 should be shifted to the subsequent carrier for CBCC. (Petition Page 6 Lines 13 – 17) Defendant has not explained how injurious exposure occurring after the disability and medical treatment caused the disability and need for medical treatment in 2012. It is possible Applicant suffered a separate industrial cumulative trauma after she returned to work post-surgery and post disability. However, that was not at issue in the present trial.

## **CONCLUSION**

Applicant suffered a cumulative trauma injury as the result of ionizing radiation that caused cranial tumors. She did not have disability in the form of missed time from work due to the cranial tumors until July of 2012. She did not receive medical treatment for the cranial tumors until the CT scan was performed in 2012. She was then temporarily disabled at least until she recovered from her brain surgery that took place on September 23, 2012.

Dr. Baum gave his expert medical opinion as the Panel Qualified Medical Examiner that Applicant's intracranial meningiomas were partially caused by being exposed to ionizing radiation while she worked as a Radiology Technician for CBCC. There is no medical opinion indicating Applicant's disability and treatment in 2012 were caused by her post disability and post treatment employment.

Labor Code § 5500.5 establishes the year of liability for cumulative trauma injuries. The year of liability for Applicant's disability and treatment resulting from ionizing radiation is July 4, 2011 to July 3, 2012. Finding of Fact 1 has a clerical error stating:

1. Maricela Perez (Applicant) was thirty-five (35) years old and employed as a Radiology Technician at Bakersfield, California by Comprehensive Blood and Cancer Center (Employer) on July 3, 2013, the last day of the alleged cumulative trauma, wherein she suffered an injury arising out of and in the course of her employment in the form of an intracranial meningioma.

The Opinion on Decision correctly states the year of liability:

July 3, 2012 was the last day Applicant was exposed to the occupational hazard of ionizing radiation. The Labor Code § 5412 date of injury is after July 3, 2012. The year of liability for Applicant's industrial cumulative trauma will be July 4, 2011 through July 3, 2012. (OOD Page 5)

The Stipulations at Trial also correctly state the alleged cumulative trauma period as October 1, 1995 through July 3, 2012 and Applicant was thirty-five (35) on July 3, 2012. (MOH Page 2 Lines 20 – 25) Defendant’s Petition addresses the correct date of injury. (Petition Page 6) Therefore, the WCJ recommends granting the Petition to issue an Amended Finding of Fact 1 that July 3, 2012 was the last day of the cumulative trauma, or remanding the case so an Amended Finding of Fact 1 can be issued.

Christopher Brown  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE  
Date: December 8, 2021