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1 WORKERS' COMPENSATION APPEALS BOARD  
2 STATE OF CALIFORNIA

3  
4 MATTHEW WALKER,

5 *Applicant,*

6 vs.

7 TAMPA BAY LIGHTNING; CHICAGO  
8 BLACKHAWKS; ST. LOUIS BLUES;  
9 FEDERAL INSURANCE (CHUBB GROUP  
OF INSURANCE COMPANIES),

10 *Defendants.*

Case No. ADJ9097128  
(Santa Ana District Office)

OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION AND  
DECISION AFTER  
RECONSIDERATIO

11  
12 Defendant Federal Insurance (Federal), the insurer of defendants Tampa Bay Lightning, Chicago  
13 Blackhawks and St. Louis Blues, seeks reconsideration of the March 27, 2015 Findings Of Fact of the  
14 workers' compensation administrative law judge, who found in pertinent part that "the case was filed  
15 before Labor Code [section] 3600.5 barred the applicant's case based on both [Code of Civil Procedure  
16 section 12a] and [California Code of Regulations, title 8, section 10508]."<sup>1</sup> Applicant claims he  
17 sustained cumulative industrial injury to multiple body parts while working as a professional ice hockey  
18 player for the defendant employers during the period ending June 5, 2010.

19 Federal contends that applicant's claim is barred by the amendments to Labor Code section  
20 3600.5 because the claim was filed after the September 15, 2013 operative date of those amendments.

21 An answer was received from applicant. The WCJ provided a Report And Recommendation On  
22 Petition For Reconsideration (Report) recommending that reconsideration be denied.

23 Reconsideration is granted and the WCJ's decision is reversed as our Decision After  
24 Reconsideration. By the plain terms of the statute, the amendments to section 3600.5 "apply to all claims  
25 for benefits pursuant to this division filed on or after September 15, 2013." (Lab. Code, § 3600.5(h).)

26  
27 <sup>1</sup> Bracketed citations substituted. Further statutory references are to the Labor Code except where otherwise stated.

1 The record shows that applicant's claim was filed after September 15, 2013, so the amendments to  
2 section 3600.5 apply to it. Based upon the parties' stipulation at trial, it is further ordered as part of the  
3 Decision After Reconsideration that compensation for applicant's claim is barred by the amendments to  
4 section 3600.5.

### 5 BACKGROUND

6 The background facts are straightforward. The WCJ describes them in her Report along with the  
7 reasons for her decision in pertinent part as follows:

8 Matthew Walker, born April 7, 1980, while employed during the alleged  
9 period from September 30, 2000 to June 5, 2010 as a professional athlete,  
10 occupation group 580, by the Philadelphia Flyers, Tampa Bay Lightning,  
Chicago Blackhawks and St. Louis Blues claims to have sustained injury  
arising out of and in the course of employment.

11 At the time of the alleged injuries all the employers were insured by Chubb  
Insurance.

12 The only issue at trial was if the applicant filed his case before or on or  
13 after September 15, 2013. The parties stipulated that if the case was filed  
14 on or after September 15, 2013 then the applicant's case would be barred  
by Labor Code [section] 3600.5, as amended for professional athletes.  
Defendant raises Labor Code [section] 5401(c).

15 The court found that because September 14, 2013, the last day to file was a  
16 Saturday and the applicant filed on September 16, 2013, a Monday, the  
filing was timely...

17 The defendant argues that the California Legislature 'made no provision  
18 for this operative date to be pushed back' (Petition for Reconsideration,  
page 6, lines 1, 2). The court argues, as she did in the Opinion on Decision  
19 that for [Code of Civil Procedure section 12a] and [California Code of  
Regulations, title 8, section 10508] NOT to apply, there had to be a  
20 SPECIFIC exemption because [Code of Civil Procedure section 12(a)]  
states it applies to *any code* whether expressed (or not).

21 The argument that when something applies January 1 of any year even  
22 though the first is a holiday rings hollow because of the above; also,  
usually these refer to traffic laws or regulations that don't require such  
23 things as filings of applications. The court recalls when vocational  
rehabilitation stopped the date was December 31, not January 1<sup>st</sup>. The  
filing of liens without the fee also had a December 31<sup>st</sup> date.

24 The Petitioner also refers to the filing of the claim as a 'requirement' (page  
25 8, line 1); no one has a 'requirement' to file a compensation claim but if  
26 one wishes to take advantage of what the Labor Code can provide then the  
applicant needed to perform the act of filing the claim before September  
27 15, 2013. The court, by being closed, prevented this being done because  
September 14<sup>th</sup> was a Saturday; therefore, under [Code of Civil Procedure  
section 12a] and [California Code of Regulations, title 8, section 10508]  
the application was timely...

1 The application opens the case with the WCAB. The application was filed  
2 September 16, 2013 because it could not have been filed September 14,  
3 2013 because it was a Saturday and the Board was closed thus preventing  
4 the case being filed on the 14<sup>th</sup>.

5 The applicant mailed the notice to the employers on September 16, 2013,  
6 all of whom were out of State. If the applicant would have mailed the  
7 notice on the 14<sup>th</sup>, a Saturday, the notice still would not have been received  
8 by the employers until after the 15<sup>th</sup> of September.

9 The defendant states the claim is deemed filed when the employer receives  
10 the claim form; however, [Labor Code section 3600.5(h)] states the *claim*  
11 *for benefits* which the court interprets to be the applicant for benefits. The  
12 claim form demands no benefits; it is notice to the employer of an injury.

13 The court stands by the fact that the employers had notice of injury by the  
14 fact he was a hockey player but, perhaps the better argument is that the  
15 case is deemed filed by the application and the employers were noticed  
16 simultaneously so there is no harm. The [Labor Code section 3600.5]  
17 argument decides if the case may continue or is barred, not [Labor Code  
18 section 5401(c)]. (Bracketed citations substituted, emphasis in original.)

### 19 DISCUSSION

20 Code of Civil Procedure 12a provides in pertinent part as follows:

21 *If the last day for the performance of any act provided or required by law*  
22 *to be performed within a specified period of time is a holiday, then that*  
23 *period is hereby extended to and including the next day that is not a*  
24 *holiday. For purposes of this section, 'holiday' means all day on*  
25 *Saturdays...* (Emphasis added.)

26 Appeals Board Rules of Practice and Procedure, rule 10508 (Cal. Code Regs., tit. 8, § 10508)  
27 provides as follows:

28 *If the last day for exercising or performing any right or duty to act or*  
29 *respond falls on a weekend, or on a holiday for which the offices of the*  
30 *Workers Compensation Appeals Board are closed, the act or response may*  
31 *be performed or exercised upon the next business day.* (Emphasis added.)

32 Section 3600.5(h) provides in pertinent part as follows: "The amendments made to this section  
33 by the act adding this subdivision *apply to all claims for benefits pursuant to this division filed on or*  
34 *after September 15, 2013...*" (Emphasis added.)

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1 In light of the above quoted provisions, the question in this case is whether the September 15,  
2 2013 date specified in section 3600.5(h) is “the last day for the performance” of an act the law requires to  
3 be performed “within a specified period of time” as set forth in Code of Civil Procedure 12a, and the  
4 “last day for exercising or performing any right or duty to act” as set forth in rule 10508. We conclude  
5 that it is not.

6 The fundamental rule of statutory construction is to effectuate the Legislature’s intent. (*DuBois v.*  
7 *Workers’ Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 387 [58 Cal.Comp.Cases 286, 289] (*DuBois*)).  
8 “When interpreting any statute, it is well-settled that we begin with its words because they generally  
9 provide the most reliable indicator of legislative intent.” (*Smith v. Workers’ Comp. Appeals Bd.* (2009)  
10 46 Cal.4th 272, 277 [74 Cal. Comp. Cases 575, 578] (*Smith*) [internal quotation marks omitted].) “We  
11 are required to give effect to statutes according to the usual, ordinary import of the language employed  
12 ....” (*DuBois*, 5 Cal.4th at p. 388 [58 Cal.Comp.Cases at p. 289].) “If the language is clear and  
13 unambiguous, there is ordinarily no need for judicial construction [and, therefore,] we presume the  
14 Legislature meant what it said and the plain meaning governs.” (*Smith*, 46 Cal.4th at p. 277 [74 Cal.  
15 Comp. Cases at p. 578] [internal quotation marks omitted]; see also *DuBois*, 5 Cal.4th at pp. 387-388 [58  
16 Cal.Comp.Cases at p. 289].)

17 As plainly expressed in the statute, the September 15, 2013 date specified in section 3600.5(h) is  
18 the date on which the amendments to section 3600.5 begin to apply to claims that are filed on or after that  
19 date. Thus, the fact that a claim could not be filed on September 15, 2013, is irrelevant to the question of  
20 whether the section 3600.5 amendments apply, as is the fact that the employer may or may not otherwise  
21 have had “notice of injury by the fact he was a hockey player,” as discussed by the WCJ in her Report.  
22 The dispositive point is when the claim was filed. If the claim was filed before September 15, 2013, the  
23 amendments to section 3600.5 do not apply. If the claim was filed after September 15, 2014, the  
24 amendments to section 3600.5 do apply.

25 Section 5401 addresses the filing of a workers’ compensation claim form, and provides in  
26 subdivision (c) as follows: “a claim form is deemed filed when it is personally delivered to the employer  
27 or received by the employer by first-class or certified mail.” Here, the WCJ writes in her Report that

1 applicant mailed his claim form to defendant and filed his Application for Adjudication of Claim on  
2 Monday, September 16, 2013. Applicant does not challenge that date in his answer, and he essentially  
3 concedes that his claim was filed after September 15, 2013.

4 As shown on pages two and three of the March 25, 2015 Minutes Of Hearing, the parties  
5 stipulated at the trial of the issue that "if it is found that the new law does apply to his case, based on the  
6 filing date, that the new laws under AB-1309 would bar the applicant's claim in its entirety." In this  
7 regard, we note that the "new law" under "AB-1309" that is identified in the stipulation refers to the  
8 amendments to section 3600.5. Those amendments identify additional conditions of compensability for  
9 claims by certain professional athletes. They do not establish a new or different limitation period within  
10 which a claim must be filed.

11 The September 15, 2013 date in section 3600.5 does not establish "the last day for the  
12 performance" of an act the law requires to be performed "within a specified period of time" as set forth in  
13 Code of Civil Procedure 12a, and it does not specify the "last day for exercising or performing any right  
14 or duty to act" as set forth in rule 10508. This is because an applicant may file a claim for workers'  
15 compensation either before or after September 15, 2013. The September 15, 2013 date in section 3600.5  
16 does not change the time period within which an injured worker may file a claim. It only establishes new  
17 conditions on compensability as of the date on which the amendments to section 3600.5 begin to apply.

18 In this case, the claim was filed after September 15, 2013, so the amendments to section 3600.5  
19 apply to it as specified in that section. In that the parties stipulated at trial that workers' compensation  
20 benefits are barred if the section 3600.5 amendments apply to applicant's claim, an order that applicant  
21 take nothing on his claim is entered as part of the Decision After Reconsideration.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that defendant's petition for reconsideration of the March 27, 2015 Findings  
3 Of Fact of the workers' compensation administrative law judge is **GRANTED**.

4 **IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers'  
5 Compensation Appeals Board, that the March 27, 2015 Findings Of Fact of the workers' compensation  
6 administrative law judge is **RESCINDED**, and the following is **SUBSTITUTED** in its place:

7 **FINDINGS OF FACT**

8 1. MATTHEW WALKER born on 04-07-1980 while employed during the alleged period from  
9 September 30, 2000 to June 5, 2010 as a professional athlete, occupational group number 580 by the  
10 Philadelphia Flyers, Tampa Bay Lightning, Chicago Blackhawks and St. Louis Blues, claims to have  
11 sustained injury arising out of and in the course of employment.

12 2. At the time of the alleged injuries all the employers were insured by Federal Insurance/Chubb  
13 Insurance.

14 3. Applicant's claim was filed after September 15, 2013, and the 2013 amendments to Labor  
15 Code 3600.5 apply to his claim as provided in Labor Code 3600.5(h).

16 4. The parties stipulate that compensation for applicant's claim is barred if the 2013 amendments  
17 to Labor Code 3600.5 apply to the claim herein.

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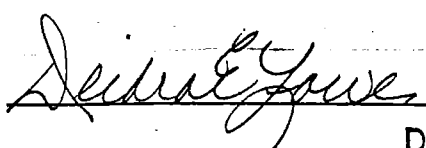
1 IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers'  
2 Compensation Appeals Board that applicant take nothing on his claim in ADJ9097128.

3 WORKERS' COMPENSATION APPEALS BOARD

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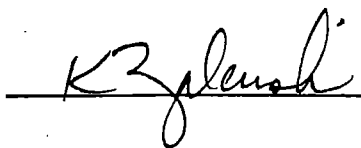
6 RONNIE G. CAPLANE

7 I CONCUR,

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9 

10 DEIDRA E. LOWE



11  
12 

13 KATHERINE ZALEWSKI

14  
15 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

16 JUN 18 2015

17  
18 SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR  
19 ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

20 MATTHEW WALKER  
21 LEVITON, DIAZ & GINOCCHIO  
22 COLANTONI, COLLINS, MARREN, PHILLIPS & TULK

23 JFS/abs 