

PUBLICATION UPDATE

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California Law of Employee Injuries and Workers' Compensation

Publication 270

Release 92

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HIGHLIGHTS

2020 Regulatory Changes

- WCAB rules eff. 1-1-2020 are discussed.

Forms

- Forms updated in light of COVID-19 are included.

Cases

- Recent developments, including recent en bancs, have been added.

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ers' comp developments and build your current awareness to help your clients. This free, weekly eNewsletter covers recent court decisions and noteworthy panel decisions, and much more. Find out why thousands of workers' compensation attorneys, judges, and claims professionals rely on this free eNewsletter published by LexisNexis. To subscribe, go to www.lexisnexis.com/wcnews and request the California eNewsletter.

RULES. Workers' Compensation Appeals Board—Rules of Practice and Procedure. (Note: The section numbers of Hanna are included below for each rule.)

W.C.A.B. Rules § 10302 Rule making notices [§ 1.11[4]]

W.C.A.B. Rules § 10305 Defini-

tions §§ 23.14[2][d], 25.41[2], 26.01[1], 3[1][a], 26.04[2], 30.22[5][a], [6]]

W.C.A.B. Rules § 10320 Appeals Board decisions and orders [§§ 1.11[6][b], 26.10[1]]

W.C.A.B. Rules § 10325 En banc and significant panel decision [§§ 27.10[2][e], 28.35[1], 34.13[1]]

W.C.A.B. Rules § 10330 Authority of Workers' Compensation Judges [§§ 1.11[3][c], [d], [6][a], 21.09[1], 26.03[1], 26.10[1]]

W.C.A.B. Rules § 10338 Authority of Commissioners of the Appeals Board [§§ 1.11[3][c], [d], [6][b], 27.11[3][a]]

W.C.A.B. Rules § 10344 Authority of Commissioners, Deputy Commissioners, and Presiding Workers' Compensation Judges [§ 1.11[3][e]]

W.C.A.B. Rules § 10346 Authority of Presiding Workers; Compensation Judge to assign or transfer cases [§§ 1.11[3][e], 29.04[3][a]]

W.C.A.B. Rules § 10349 [§§ 27.11[2], 23.14[1][c]]

W.C.A.B. Rules § 10355 Appointment and authority of pro tempore Workers' Compensation Judges [§ 1.11[3][f]]

W.C.A.B. Rules § 10360 Testimony of judicial or quasi-judicial officers [§ 1.11[8]]

W.C.A.B. Rules § 10370 Extensions of time during public emergencies [§ 24.10]

W.C.A.B. Rules § 10380 Necessary parties [§ 26.01[2][a]]

W.C.A.B. Rules § 10382 Joinder of parties [§§ 1.11[3][d], 22.10, 23.14[2][f], 25.05[3], 25.10[7], 26.01[2][a], [b], 26.03[1]]

W.C.A.B. Rules § 10390 Proper identification of parties [§ 26.01[1]]

W.C.A.B. Rules § 10396 Consolidation of cases [§ 23.16]

W.C.A.B. Rules § 10398 Assignment of consolidated cases [§ 23.16]

W.C.A.B. Rules § 10400 Attorney representatives [§ 20.01[1][a]]

W.C.A.B. Rules § 10401 Non-attorney representatives [§ 20.01[1][a]]

W.C.A.B. Rules § 10402 Substitution or dismissal of attorneys and non-attorney representatives [§ 20.01[3]]

W.C.A.B. Rules § 10403 Complaints regarding violations of Labor Code Section 4907 [§ 20.01[2]]

W.C.A.B. Rules § 10404 Suspension and removal of a non-attorney representative's privilege to appear before the Workers' Compensation Appeals Board under Labor Code Section 4907 [§ 20.01[2]]

W.C.A.B. Rules § 10410 Ex parte communications [§§ 23.01, 23.14[2][a]]

W.C.A.B. Rules § 10421 Sanctions [§ 23.15]

W.C.A.B. Rules § 10440 Contempt [§ 29.09[1]]

W.C.A.B. Rules § 10445 Disbarred and suspended attorneys [§ 20.01[1][b]]

W.C.A.B. Rules § 10450 Invoking

the jurisdiction of the Workers' Compensation Appeals Board
[§ 25.05[1]]

W.C.A.B. Rules § 10455 Applications [§§ 23.14[1][b], 25.06[1]]

W.C.A.B. Rules § 10460 Request for findings of fact [§ 33.02[2], [3][c], [4][c], [5][d]]

W.C.A.B. Rules § 10462 Subsequent Injuries Benefits Trust Fund application [§§ 23.14[2][p], 25.05[7], 31.20[4][b]]

W.C.A.B. Rules § 10465 Answers [§§ 23.14[2][c], 25.23]

W.C.A.B. Rules § 10470 Labor Code Section 4906(h) statement [§§ 25.06[3], 25.23]

W.C.A.B. Rules § 10480 Venue [§ 25.06[1]]

W.C.A.B. Rules § 10482 Venue when applicant is employee of Division of Workers' Compensation [§ 25.06[1]]

W.C.A.B. Rules § 10488 Objection to venue based on an attorney's principal place of business [§ 25.27]

W.C.A.B. Rules § 10490 Petition for change of venue for good cause [§ 25.27]

W.C.A.B. Rules § 10500 Form pleadings [§§ 23.12[1], 25.05[1], 31.20[2]]

W.C.A.B. Rules § 10510 Petitions and answers to petitions [§§ 25.26, 27.02[5][a], 28.21[1], [2], 31.01, 31.10[2], [3], 31.11[1]]

W.C.A.B. Rules § 10515 Demurrer, judgment on the pleadings, and

summary judgment not permitted [§ 25.25]

W.C.A.B. Rules § 10517 When pleadings deemed amended [§ 25.22[1]]

W.C.A.B. Rules § 10525 Petition for increased or decreased compensation—serious and willful misconduct [§§ 25.05[4], 25.25]

W.C.A.B. Rules § 10528 Petition for increased compensation—discrimination under Labor Code Section 132a [§§ 10.11[4], 25.05[5]]

W.C.A.B. Rules § 10530 Emergency petition for stay [§§ 23.11[2a], 25.08[5]]

W.C.A.B. Rules § 10536 Petition for new and further disability [§§ 25.05[2], 31.05[5]]

W.C.A.B. Rules § 10540 Petitions to terminate liability for continuing temporary disability [§§ 7.02[1], 31.10[1]]

W.C.A.B. Rules § 10545 Petition for costs [§ 23.13[3]]

W.C.A.B. Rules § 10547 Petition for Labor Code Section 5710 attorney's fees [§ 25.41[2]]

W.C.A.B. Rules § 10550 Petition to dismiss inactive case [§§ 23.11[5][c], 23.14[2][j], 31.14[5]]

W.C.A.B. Rules § 10555 Petition for credit [§ 7.04[9][a], [b]]

W.C.A.B. Rules § 10560 Petitions related to orders issued by the Division of Workers' Compensation Administrative Director or the Director

of Industrial Relations [§ 1.11[6][b]]

W.C.A.B. Rules § 10565 Petition appealing denial of return-to-work supplement [§ 7.02[4][d][iii]]

W.C.A.B. Rules § 10567 Petition appealing Independent Bill Review determination [§ 5.02[2][e]]

W.C.A.B. Rules § 10575 Petition appealing Independent Medical Review determination [§ 5.02[2][d]]

W.C.A.B. Rules § 10570 Petition to enforce an Administrative Director determination [§ 5.02[2][e]]

W.C.A.B. Rules § 10580 Petition appealing Medical Provider Network determination of the Administrative Director [§ 5.03[7]]

W.C.A.B. Rules § 10590 Petition appealing audit penalty assessment—Labor Code Section 129.5(g) [§ 10.51[2][d]]

W.C.A.B. Rules § 10600 Time for actions [§§ 30.20[1], 30.22[5][b]]

W.C.A.B. Rules § 10605 Time within which to act when a document is served by mail, fax, or e-mail [§§ 23.14[3], 27.01[4], 28.20, 28.24]

W.C.A.B. Rules § 10610 Filing and service of documents [§§ 23.14[2][b], 25.06[1]]

W.C.A.B. Rules § 10615 Filing of documents [§§ 23.12[2][a], [c], [h], 25.06A[2]]

W.C.A.B. Rules § 10617 Restrictions on the rejection for filing of documents subject to a statute of limitations or a jurisdictional time limitation [§ 23.12[2][b]]

W.C.A.B. Rules § 10620 Filing

proposed exhibits [§ 23.12[2][e]]

W.C.A.B. Rules § 10625 Service [§§ 23.14[2][a], 25.06[1]]

W.C.A.B. Rules § 10628 Service by the Workers' Compensation Appeals Board [§ 23.14[1][a]]

W.C.A.B. Rules § 10629 Designated service [§ 23.14[1][a]]

W.C.A.B. Rules § 10632 [§§ 23.14[1][b], 25.06[1]]

W.C.A.B. Rules § 10635 Duty to serve documents [§§ 23.12[2][d], 25.06A[3], 30.20[3]]

W.C.A.B. Rules § 10637 Service of medical reports, medical-legal reports, and other medical information on a non-physician claimant [§§ 23.12[2][g], 25.06A[6]]

W.C.A.B. Rules § 10640 Subpoenas [§§ 25.10[2][a], 25.29[3][a], 25.43]

W.C.A.B. Rules § 10642 Notice to appear or produce [§§ 25.43, 26.05[3]]

W.C.A.B. Rules § 10644 Subpoenas of electronic records [§ 25.44[1]]

W.C.A.B. Rules § 10647 Witness fees and subpoenas [§§ 23.13[2][b], 26.05[3]]

W.C.A.B. Rules § 10650 [§§ 25.10[2][b], 25.43]

W.C.A.B. Rules § 10655 Subpoenas for medical information by non-physician lien claimants [§ 25.43]

W.C.A.B. Rules § 10660 X-rays [§§ 25.07[6], 25.29[3][a], 25.43, 26.06[12][f]]

W.C.A.B. Rules § 10670 Docu-

mentary evidence [§§ 22.08[4][e], 23.12[2][d], [g], 25.06A[3], 26.03[1], 26.06[9][c], [12][b][iii], [iv]]

W.C.A.B. Rules § 10672 Evidence taken without notice [§§ 23.14[1][d], 26.06[11]]

W.C.A.B. Rules § 10675 Formal permanent disability rating determinations [§§ 23.14[1][a], 26.06[12][d], 32.02[7], 32.05[2], [6][a], [b], [c][i]]

W.C.A.B. Rules § 10677 Over-sized exhibits, diagnostic imaging, physical exhibits, and exhibits on media [§ 23.12[2][f]]

W.C.A.B. Rules § 10680 Reproductions of documents [§§ 23.12[2][h], 25.06A[7]]

W.C.A.B. Rules § 10682 Physicians' reports as evidence [§§ 5.08[2][b], 22.08[3][a], [b], [d], [5][a], [6][b], 23.14[2][g], 25.04[1], 25.10[2][b], 26.06[5], [12][a], [b][ii], 32.06[4][a]]

W.C.A.B. Rules § 10683 Specific finding of fact—Labor Code Section 139.2(d)(2) [§ 1.12[2A][d]]

W.C.A.B. Rules § 10685 Vocational experts' reports as evidence [§ 22.08[7]]

W.C.A.B. Rules § 10702 Service of settlements on lien claimants [§§ 23.14[2][m], 29.03[8], 29.04[3][b], [c], 30.21, 30.24[2][a]]

W.C.A.B. Rules § 10705 Procedures—Labor Code Section 3761 [§§ 2.34, 29.04[7]]

W.C.A.B. Rules § 10742 Declaration of readiness to proceed [§§ 23.14[2][d], 25.05[1], 25.08[1]]

W.C.A.B. Rules § 10744 Objection to declaration of readiness to proceed [§ 25.08[2]]

W.C.A.B. Rules § 10745 Setting the case [§§ 25.08[1], 32.05[6][c][i]]

W.C.A.B. Rules § 10748 Continuances [§§ 25.09[1], 26.02[3]]

W.C.A.B. Rules § 10750 Notice of hearing [§§ 23.14[1][c], 24.11[1][b], 26.03[1], 26.04[1][b]]

W.C.A.B. Rules § 10751 Appearances by non-attorney representatives not identified on notice of representations [§ 20.01[1][a]]

W.C.A.B. Rules § 10752 Appearances required [§§ 26.01[3][a], 30.22[1], [5][a]]

W.C.A.B. Rules § 10755 Failure to appear at mandatory settlement conference in case-in-chief [§ 26.04[2]]

W.C.A.B. Rules § 10756 Failure to appear at trial in case-in-chief [§ 26.01[3][a]]

W.C.A.B. Rules § 10757 Appearances in settled cases [§ 26.01[3][b]]

W.C.A.B. Rules § 10758 Status conferences [§§ 25.09[2], 26.02[1]]

W.C.A.B. Rules § 10759 Mandatory settlement conferences [§ 26.04[2]]

W.C.A.B. Rules § 10761 Submission at conference [§ 26.04[1][c]]

W.C.A.B. Rules § 10782 Expedited hearings calendar [§§ 5.02[2][c], 5.07[3][a], 22.05[6][b][iii], [iv], 24.01[4], 24.11[1][c], 25.09[2], 25.20[4], 26.02[1]]

W.C.A.B. Rules § 10785 Priority

conferences [§§ 24.11[1][c], 26.02[1]]

W.C.A.B. Rules § 10786 Determination of medical-legal expense dispute [§§ 5.08[2][c], 22.09[1]]

W.C.A.B. Rules § 10787 Trials [§ 26.06[3]]

W.C.A.B. Rules § 10788 Petition for automatic reassignment of trial or expedited hearing to another Workers' Compensation Judge [§ 26.03[1A]]

W.C.A.B. Rules § 10789 Walk-through documents [§§ 23.11[2], 23.14[2][m], 25.08[4]]

W.C.A.B. Rules § 10790 Interpreters [§§ 26.05[3], 27.01[8][a]]

W.C.A.B. Rules § 10800 Transcripts [§ 23.12[4]]

W.C.A.B. Rules § 10803 Record of proceedings maintained in adjudication file [§ 23.12[3]]

W.C.A.B. Rules § 10807 Inspection of Workers' Compensation Appeals Board records [§ 23.12[3a]]

W.C.A.B. Rules § 10811 Destruction of records [§ 23.12[3d]]

W.C.A.B. Rules § 10813 Sealed documents [§ 23.12[3c]]

W.C.A.B. Rules § 10818 Recording of proceedings [§ 26.02[4]]

W.C.A.B. Rules § 10820 When certified copies will issue [§ 27.10[3][a]]

W.C.A.B. Rules § 10835 Effect of stipulations [§ 23.11[3]]

W.C.A.B. Rules § 10840 Approval of attorney's fee by Workers' Com-

pensation Appeals Board required [§§ 20.02[1][a], [b], 25.01[4], 30.03[2]]

W.C.A.B. Rules § 10842 Request for increase of attorney's fee [§§ 20.05, 23.14[2][n], 30.03[3]]

W.C.A.B. Rules § 10844 Reasonable attorney's fee [§§ 20.02[1][b], 20.03[1], [2], 29.04[3][e], 30.03[2]]

W.C.A.B. Rules § 10850 Orders dismissing application [§§ 23.11[5][b], 23.14[1][c], 25.26, 31.04[4][b]]

W.C.A.B. Rules § 10900 Mandatory arbitration [§ 33.01[1][b]]

W.C.A.B. Rules § 10905 Voluntary arbitration [§ 33.01[2][a], [b]]

W.C.A.B. Rules § 10910 Selection of arbitrator [§ 33.01[3][b]]

W.C.A.B. Rules § 10912 Disqualification of arbitrator [§ 33.01[3][d]]

W.C.A.B. Rules § 10914 Record of arbitration proceeding [§ 33.01[5]]

W.C.A.B. Rules § 10920 Arbitrator fee and cost disputes [§ 33.01[6]]

W.C.A.B. Rules § 10940 Filing and service of petitions for reconsideration, removal, disqualification, and answers [§§ 28.21[1], [2], 28.23, 28.26]

W.C.A.B. Rules § 10945 Required contents of petitions for reconsideration, removal, disqualification, and answers [§§ 28.21[1], 28.24]

W.C.A.B. Rules § 10955 Petitions for removal and answers [§§ 1.11[3][g], 26.03[4]]

W.C.A.B. Rules § 10960 Petition for disqualification of Workers'

Compensation Judge [§ 26.03[2]]

W.C.A.B. Rules § 10961 Actions by Workers' Compensation Judge after petition for reconsideration is filed [§§ 26.10[1], 28.03[2], 28.25, 30.20[1]]

W.C.A.B. Rules § 10962 Report of Workers' Compensation Judge [§§ 26.03[4], 28.35[2]]

W.C.A.B. Rules § 10964 Supplemental petitions [§ 28.21[3]]

W.C.A.B. Rules § 10966 Correction of errors [§§ 28.03[1][c], [2], 28.20]

W.C.A.B. Rules § 10972 Skeletal petitions [§§ 5.03[7], 28.21[1]]

W.C.A.B. Rules § 10974 Allegations of newly discovered evidence and fraud [§§ 26.04[2], 28.22[2], 28.32, 31.04[2][d]]

W.C.A.B. Rules § 10984 Hearing after reconsideration granted [§ 28.36[1], [2][a]]

W.C.A.B. Rules § 10986 Authority of Workers' Compensation Judge after decision after reconsideration [§§ 28.03[2], 28.36[3]]

W.C.A.B. Rules § 10990 Reconsideration of arbitration decisions made pursuant to Labor Code Sections 3201.5 and 3201.7 [§§ 25.06[1], 28.27, 33.01[7]]

W.C.A.B. Rules § 10995 Reconsideration of arbitrator's decisions or awards made pursuant to the mandatory or voluntary arbitration provisions of Labor Code Sections 5270 through 5275 [§ 28.26]

FORMS. The following updated

forms have been inserted in Appendix D: § F2.01B Application for Adjudication of Claim, § F2.08 Document Cover Sheet, § F5.02 Stipulations with Request for Award (for injury on or after 1/1/2013), § F12.01 Compromise and Release.

CALIFORNIA CASES. The following cases have been added:

Published Cases

Going and Coming Rule. The court of appeal in *Bingener v. City of Los Angeles* (2019) 44 Cal. App. 5th 134, has held that an employer was not liable for the death of the plaintiff survivors' decedent who was struck and killed by one of defendant's employees while driving to work, since the survivors failed to adduce sufficient facts on their claim that the accident was a foreseeable event arising from the employee's employment because nothing about the enterprise for which defendant employed him made hitting a pedestrian while commuting a foreseeable risk of the enterprise. [See Ch. 4, § 4.151[2].]

Fair Employment and Housing Act; Statute of Limitations; Tolling by Workers' Compensation Action. The court of appeal in *Brome v. California Highway Patrol* (2020) 44 Cal. App. 5th 786, has held that that the record did not preclude, as a matter of law, the conclusion that plaintiff's claims were timely and that he was constructively discharged. [See Ch. 10, § 10.72.]

Employer's Duties; Green Card Application; Negligence; Substantial Evidence. The court of appeal in

Reynaud v. Technicolor Creative Services USA, Inc. (2020) 46 Cal. App. 5th 1007, has held that the jury's conclusion that defendant's negligence was a substantial factor in preventing plaintiffs from obtaining "green cards" was supported by substantial evidence. [See Ch. 3, § 3.23.]

Emotional Injury or Distress Claims; Exclusive Remedy Rule; Inapplicability. The court of appeal in *Reynaud v. Technicolor Creative Services USA, Inc.* (2020) 46 Cal. App. 5th 1007, has held that damages awarded to plaintiffs for emotional injury or distress were not barred by the workers' compensation exclusive remedy rule, since defendant's sponsorship of plaintiff's green card application was neither a condition of employment nor a form of compensation, and defendant's negligent handling of the process was not an inherent risk of plaintiff's employment. [See Ch. 4, § 4.112[2], Ch. 11, § 11.01[1].]

Injury AOE/COE; Permanent Disability; Apportionment. The court of appeal in *County of Santa Clara v. W.C.A.B. (Justice)* (2020) 49 Cal. App. 5th 605, has held that, un rebutted substantial medical evidence demonstrated that an employee's permanent disability was caused, in part, by extensive preexisting knee pathology, so that apportionment was required. [See Ch. 8, § 8.06[1].]

WCAB en banc decisions

Subsequent Injuries Benefits Trust Fund; Calculating Benefits. The Appeals Board en banc in *Todd v. Subsequent Injuries Benefits Trust*

Fund, 2020 Cal. Wrk. Comp. LEXIS 35 (Appeals Board en banc opinion) has held that the proper method of determining liability against SIBTF is to award the injured worker the total amount of the combined permanent disability compensation less the amount due to the worker from the subsequent injury and less credits allowed under Labor Code Section 4753. [See §§ 8.09[3].]

State of Emergency; COVID-19; Suspension of Rules by WCAB.

The Appeals Board en banc in *In re: COVID-19 State of Emergency En Banc* (2020) 85 Cal. Comp. Cases 296 (Appeals Board en banc opinion) has suspended applicable rules: (1) regarding dismissal of an application or a lien claim for failure to appear; (2) regarding time limits within which WCJs and arbitrators are required to issue reports in response to petitions for reconsideration or removal and authorizing unlimited extension of time to issue such reports; (3) requiring in compromise and release agreements signatures from two witnesses and permitting signatures on forms from all parties to be electronic; and (4) requiring service by the Appeals Board by mail and permitting service by the Board to be made electronically with or without the parties' consent; the Appeals Board en banc also, in light of the closure of the DWC's district offices from March 17 through April 3, extended all filing deadlines to the next day when district offices reopen for filing. [See ch. 1, § 1.11[4].]

State of Emergency—No. 2;

COVID-19; Filing of Documents.

The Appeals Board en banc in *In re: COVID-19 State of Emergency En Banc—No. 2* (2020) 85 Cal. Comp. Cases 299 (Appeals Board en banc opinion) has ordered that specified documents may be emailed directly to district offices or to the Appeals Board, that documents subject to a statutory time limit may be sent by email directly to district offices, when the filing party could not otherwise e-file, JET file, or file the document by mail, and that documents that may be emailed include, but are not limited to, correspondence relating to a petition for reconsideration that has been granted for further study by the Board. [See Ch. 28, § 28.23.]

State of Emergency-No. 3; COVID-19; Filing of Documents.

The Appeals Board en banc in *In re: COVID-19 State of Emergency En Banc—No. 3* (2020) 85 Cal. Comp. Cases 409 (Appeals Board en banc opinion) has suspended the 20-day requirements regarding the filing of documentary trial exhibits in W.C.A.B. Rules § 10620 and 10670(b)(3) until further notice [See Ch. 22, § 22.08[4][e], Ch. 23, § 23.12[2][d], Ch. 25, § 25.06A[3].]

Exclusive Jurisdiction of Appeals Board; Validity of Administrative Rule. The Appeals Board en banc in *Dennis v. State of California Department of Corrections and Rehabilitation* (2020) 85 Cal. Comp. Cases 389 (Appeals Board en banc opinion) has held that Administrative Director Rule 10133.54 (8 Cal. Code Reg. § 10133.54) is invalid because it

exceeds the statutory authority granted to the Administrative Director under Labor Code Sections 4658.5(c) and 4658.7(h) and restricts the exclusive power of the Appeals Board to adjudicate compensation claims, including disputes over supplemental job displacement benefits. [See Ch. 1, § 1.11[6][b].]

Supplemental Job Displacement Benefit Vouchers; Bona Fide Offer of Regular, Modified, or Alternative Work. The Appeals Board en banc in *Dennis v. State of California Department of Corrections and Rehabilitation* (2020) 85 Cal. Comp. Cases 389 (Appeals Board en banc opinion) has held that a prison employer's inability to offer regular, modified, or alternative work, because the injured prison worker has been released, does not release it from the statutory obligation to provide a supplemental job displacement benefit voucher. [See Ch. 35, § 35.01.]

WCAB decisions denied writ of review

Caution: *The following entries are “writ denied” cases. Practitioners should proceed with caution when citing to these cases and should also verify the subsequent history of these cases.*

Permanent Disability; Rating; Rebuttal of Scheduled Rating. The Appeals Board in *The Conco Companies. v. W.C.A.B. (Sandoval)* (2019) 84 Cal. Comp. Cases 1067 (writ denied) has held that an injured worker was entitled to use vocational evidence to attempt to rebut a perma-

ment disability rating under the permanent disability rating schedule. [See Ch. 8, § 8.02[3], Ch. 32, § 32.03A[1].]

Sanctions; Bad Faith/Frivolous Conduct. The Appeals Board in *Jensen v. W.C.A.B.* (2019) 85 Cal. Comp. Cases 46 (writ denied) has held that an employer was not liable for Labor Code Section 5813 sanctions, beyond the costs and attorney's fees already awarded by the WCJ for its continued and frivolous denial of benefits. [See Ch. 23, § 23.15.]

Penalties; Delay in Payment of Benefits. The Appeals Board in *Jensen v. W.C.A.B.* (2019) 85 Cal. Comp. Cases 46 (writ denied) has held that an injured worker was entitled to a single penalty under Labor Code Section 5814 for the employer's continuous and unreasonable denial of his claim and frivolous delay in providing benefits, but was not entitled to multiple penalties. [See Ch. 10, § 10.40[5].]

Temporary Disability; Wage Loss; Future Earning Capacity. The Appeals Board in *City and County of San Francisco v. W.C.A.B. (Walker)* (2020) 85 Cal. Comp. Cases 140 (writ denied) has held that an employee was entitled to temporary disability indemnity for the period of ongoing temporary disability, when there was no medical dispute that he was temporarily disabled, and although he was hired under a temporary three-year employment contract due to expire prior to the date of his temporary disability. [See Ch. 7, § 7.01[2].]

Presumption of Industrial Causation; Correctional Officers; Exposure to Biochemical Substances.

The Appeals Board in *California Department of Corrections and Rehabilitation v. W.C.A.B. (Boyajian)* (2020) 85 Cal. Comp. Cases 203 (writ denied) has held that the Labor Code Section 3212.85 presumption of industrial causation was applicable to the employee's injury claim based on exposure to biochemical substances, i.e., tear gas and mace, even without a specific intent to cause injury to the employee personally. [See Ch. 4, § 4.138[4][p].]

Death Benefits; Good Cause for Award; Credit and Offset for Special CalPERS Death Benefits.

The Appeals Board in *State of California, Department of Corrections and Rehabilitation v. W.C.A.B. (Cortez)* (2020) 85 Cal. Comp. Cases 216 (writ denied) has upheld an award of workers' compensation death benefits under Labor Code Section 4704 to decedent's totally dependent son and partially dependent daughter, in the amounts of \$250,000 and \$40,000, respectively, and found that defendant was not entitled to credit against its liability based on survival benefits paid by the California Public Employees' Retirement System (CalPERS) to the dependent children or to an offset under Labor Code Section 4707 for basic special death benefits paid by CalPERS to decedent's widow, who elected to receive special death benefits over workers' compensation death benefits [See Ch. 3, § 3.114[1], Ch. 9, § 9.04[1].]

Death Benefits; Statute of Limitations. The Appeals Board in *California Department of Social Services v. W.C.A.B. (Magoulas)* (2020) 85 Cal. Comp. Cases 303 (writ denied) has rescinded the WCJ's finding that a decedent's son's application for death benefits filed on June 16, 2016, as an amendment to the decedent's inter vivos claim was untimely and barred by the statute of limitations, and found instead that the death claim was timely filed pursuant to Labor Code Section 5406 within one year of the decedent's July 4, 2015, death and within 240 weeks from his date of injury, which the Board identified as February 14, 2012, the last date of the decedent's cumulative trauma. [See Ch. 9, § 9.01[4], Ch. 24, § 24.03[4].]

Cumulative Trauma; Single Injury; WCAB's Jurisdiction to Rescind, Alter, or Amend Prior Decision. The Appeals Board in *University of California, Berkeley v. W.C.A.B. (Sedlack)* (2020) 85 Cal. Comp. Cases 311 (writ denied) has held that an employee suffered a single cumulative trauma to her hips and back while employed as a gardener by defendant through January 11, 2008, and rejected defendant's assertion that the WCJ should have found four separate cumulative injuries in 2008, 2009, 2012, and 2015, and apportioned the employee's permanent disability award between all four dates of injury. [See Ch. 24, § 24.13[2], Ch. 27, § 27.01[6].]

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Publication 270 Release 92

September 2020

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