

# Reopening a California Workers' Compensation Claim: Legal Analysis of Labor Code Section 5410 Petitions to Reopen for New and Further Disability

## (PART-A INJURED WORKERS ANALYSIS)

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# REOPENING A CALIFORNIA WORKERS' COMPENSATION CLAIM: YOUR RIGHTS UNDER LABOR CODE SECTION 5410

If you were hurt at work in California and your case was closed or settled, you may have the right to reopen your claim. California law allows you to ask the Workers' Compensation Appeals Board (WCAB) — the state court that handles workplace injury cases — to look at your case again if your condition has gotten worse. This report explains how this process works, what you need to prove, and what deadlines you must meet.

**Important: You must file your request to reopen within five years from the date of your original injury. If you miss this deadline, the court loses all power to help you, no matter how strong your case is.**

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## Part 1: The Law That Lets You Reopen Your Case

This section explains the main laws that give you the right to reopen a workers' compensation claim.

### California Labor Code Section 5410

California Labor Code § 5410 ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5410.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5410.&lawCode=LAB)) is the main law that protects your right to reopen. It says that nothing in the workers' compensation law stops you from starting a new proceeding to collect benefits within five years of your injury date if your original injury has caused "new and further disability" — meaning your condition has gotten worse or you need new medical treatment because of the same injury.

The five-year clock starts from your date of injury, not from the date your case was settled, the date of your last award, or the date your case was closed. Courts have strictly enforced this rule and have rejected arguments that the deadline should start from a later date. See *Martino v. Workers' Comp. Appeals Bd.*, 103 Cal.App.4th 485 (2002) (<https://case-law.vlex.com/vid/martino-v-workers-comp-885323122>).

### California Labor Code Section 5803

California Labor Code § 5803 ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5803.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5803.&lawCode=LAB)) gives the WCAB continuing jurisdiction — the ongoing power to change its own orders and awards if there is "good cause." Good cause means a valid legal reason, such as a mistake of fact, fraud, or new evidence that was not available during the original case. This law works alongside § 5410 and gives you a second path to reopen your case. However, the same five-year deadline applies.

### WCAB Regulations

The WCAB's rules are found in California Code of Regulations, Title 8 (<https://www.dir.ca.gov/t8/>). Section 10536 of Title 8 (<https://www.dir.ca.gov/t8/10536.html>) requires that your petition to reopen (your formal written request) must describe "specifically and in detail the facts relied upon to establish new and further disability." Section 10510 of Title 8 (<https://www.dir.ca.gov/t8/10510.html>) requires that all petitions must be signed under penalty of perjury and served on all other parties in the case. Failing to follow these rules can result in your petition being thrown out.

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## Part 2: What "New and Further Disability" Means

You must prove that your condition has changed for the worse since your original award. This section explains what counts.

### The "Demonstrable Change" Standard

Courts require you to show a demonstrable change — a real, measurable difference in your medical condition. You cannot reopen your case just because you feel worse or disagree with the original decision. In *Westvaco Corp. v. Workers' Comp. Appeals Bd.*, 27 Cal.App.3d 940 (1972)

(<https://law.justia.com/cases/california/court-of-appeal/3d/27/940.html>), the court defined "new and further disability" as "disability which results from some demonstrable change in an employee's condition."

The California Supreme Court reinforced this rule in *Standard Rectifier Corp. v. Workmen's Comp. App. Bd.*, 65 Cal.2d 287 (1966) (<https://law.justia.com/cases/california/supreme-court/2d/65/287.html>), holding that the new disability must be real, proven with new evidence, represent a change from the condition at the time of the original award, and be causally related to the industrial injury.

### Types of Changes That Qualify

Courts have identified several types of changes that count as "new and further disability." The court in *Pizza Hut of San Diego, Inc. v. Workers' Comp. Appeals Bd.*, 76 Cal.App.3d 818 (1980) (<https://law.justia.com/cases/california/court-of-appeal/3d/76/818.html>) listed these categories:

- Recurrence of temporary disability — You went back to work but then became unable to work again because of the same injury
- New need for medical treatment — You now need surgery, medication, or therapy that was not needed before
- Temporary disability becomes permanent — Your condition was expected to improve but instead became a lasting problem
- Gradual increase in permanent disability — Your permanent limitations have slowly gotten worse over time

More recently, *Applied Materials v. Workers' Comp. Appeals Bd.*, 64 Cal.App.5th 1042 (2021) (<https://law.justia.com/cases/california/court-of-appeal/2021/h047148.html>) confirmed this same framework and reaffirmed that all of these categories remain valid grounds for reopening.

***Important: Disability that existed from the beginning of your injury and was already reflected in your original award does not count as "new and further disability." You cannot reopen simply because you believe your original rating was too low.***

### You Must Prove Causation

It is not enough to show your condition got worse. You must also prove that the worsening was caused by your original work injury, not by aging, a new injury, or an unrelated medical condition. Your doctor must clearly state in writing that the changes in your condition are connected to the original workplace injury. See *Standard Rectifier Corp. v. Workmen's Comp. App. Bd.*, 65 Cal.2d 287 (1966) (<https://law.justia.com/cases/california/supreme-court/2d/65/287.html>).

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## Part 3: The Five-Year Deadline — A Hard Cutoff

This section explains the most critical deadline in reopening cases.

### The Deadline Is Jurisdictional

The word "jurisdictional" means the court loses all legal power to act once the deadline passes. It does not matter how strong your evidence is, how badly your condition has worsened, or how good your reason is for being late. If you file your petition after five years from the date of injury, it will be denied.

In *Martino v. Workers' Comp. Appeals Bd.*, 103 Cal.App.4th 485 (2002) (<https://case-law.vlex.com/vid/martino-v-workers-comp-885323122>), the court stated: "Once the five-year period expires, the WCAB loses jurisdiction to modify the award." The original case establishing this principle was *Sutton v. Industrial Acc. Com.*, 46 Cal.2d 791 (1956) (<https://law.justia.com/cases/california/supreme-court/2d/46/791.html>).

### You Can File a "Skeletal" Petition to Preserve Your Rights

If the five-year deadline is approaching and you do not yet have all your medical evidence, you can still file a basic petition to preserve your rights. In *Nolan v. Workers' Comp. Appeals Bd.*, 70 Cal.App.3d 122 (1977) (<https://law.justia.com/cases/california/court-of-appeal/3d/70/122.html>), the court held that "the only real requirements are that some sort of filing is made with the WCAB within five years, and that the defense is put on notice of the applicant's claim of new and further disability."

Additionally, in *Nickelsberg v. Workers' Comp. Appeals Bd.*, 54 Cal.3d 288 (1991) (<https://law.justia.com/cases/california/supreme-court/3d/54/288.html>), the California Supreme Court held that

you do not need to obtain all your medical proof within the five-year window. You can gather medical evidence after filing your petition, as long as the petition itself was filed on time. The court in *Fitzpatrick v. Workers' Comp. Appeals Bd.*, 27 Cal.App.3d 228 (1970) (<https://law.justia.com/cases/california/court-of-appeal/3d/27/228.html>) confirmed that a petition does not need to include medical evidence at the time of filing.

***Critical: File your petition before the five-year deadline, even if your medical records are incomplete. You can add evidence later, but you cannot fix a late filing.***

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## Part 4: Can Your Case Be Reopened? It Depends on How It Was Settled

Not all closed cases can be reopened. The type of settlement you agreed to determines whether reopening is possible.

### Stipulated Awards — Can Be Reopened

A Stipulated Award (also called "Stipulations with Request for Award") is an agreement where you and the insurance company agree on a permanent disability rating and benefits. A WCAB judge then approves this agreement and it becomes a court order. With a Stipulated Award, you typically keep your right to receive ongoing medical treatment (<https://employeesfirstlaborlaw.com/what-is-a-stipulated-award-in-california-workers-compensation/>) for the accepted injury. Because the medical benefit remains open, your case can be reopened under Cal. Lab. Code § 5410 ([https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5410.&lawCode=LAB](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5410.&lawCode=LAB)) if your condition worsens within five years.

If you have a Stipulated Award and your injury causes new problems within the five-year window, you may be able to recover:

- Additional permanent disability benefits
- Temporary disability benefits if you cannot work again
- Authorization for new medical treatment

### Compromise and Release — Generally Cannot Be Reopened

A Compromise and Release (C&R) is a complete, final settlement (<https://employeesfirstlaborlaw.com/how-do-i-settle-my-workers-comp-case-cr-vs-stipulated-award/>) where you accept a one-time lump-sum payment and give up all future rights to workers' compensation benefits for that injury. Once the WCAB approves a C&R, your case is permanently closed. You cannot reopen it, even if your condition gets much worse after settlement.

***Important: Before filing a petition to reopen, you must check your original settlement documents. If your case was settled by C&R, reopening will almost certainly be denied. If it was a Stipulated Award, reopening is possible.***

### Other Settlement Types

Some cases include a future medical award, where the insurance company agrees to continue paying for injury-related medical care even though the case is otherwise closed. If you have this type of award, you may be able to request new treatment without formally reopening the case. However, if you need additional disability benefits (not just treatment), you will still need to file a petition to reopen under § 5410.

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## Part 5: How to File Your Petition — Step by Step

This section provides a practical guide to the filing process.

### Step 1: Verify Your Injury Date and Calculate Your Deadline

Find your original injury date in your medical records or your Application for Adjudication of Claim (the form that started your original case). Count forward exactly five years from that date. That is your absolute deadline. If the deadline is less than 120 days away, treat every step as urgent.

### Step 2: Get Current Medical Evidence

Visit your treating doctor or request a Qualified Medical Evaluator (QME) panel through the Division of Workers' Compensation Medical Unit. A QME is an independent doctor approved by the state to examine injured workers. Under Cal. Lab. Code § 4062.2 ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=4062.2.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4062.2.&lawCode=LAB)) and Cal. Code Regs., tit. 8, § 30 (<https://www.dir.ca.gov/dwc/MedicalUnit/QualificationForQME.html>), you request a QME panel through an online portal.

Ask your doctor for a report that covers:

- Your current condition
- How it has changed since the original award
- Whether this change is "new and further disability"
- Whether the change was caused by the original work injury
- An updated permanent disability rating (if you seek increased benefits)

**Note: Under Cal. Lab. Code § 4067**

**([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=4067.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4067.&lawCode=LAB)), you must generally use the same medical evaluator from your original case unless that evaluator is unavailable or both sides agree to use someone new.**

### Step 3: Prepare Your Petition

Complete DWC/WCAB Form 42 (Petition to Reopen) ([https://www.dir.ca.gov/dwc/forms/DWC\\_Form42.pdf](https://www.dir.ca.gov/dwc/forms/DWC_Form42.pdf)). Your filing must include:

1. Document Cover Sheet (per Cal. Code Regs., tit. 8, § 10390 (<https://www.dir.ca.gov/t8/10390.html>))
2. Document Separator Sheet (per Cal. Code Regs., tit. 8, § 10391 (<https://www.dir.ca.gov/t8/10391.html>))
3. The Petition to Reopen itself, describing the facts supporting new and further disability
4. Verification — a sworn statement signed under penalty of perjury
5. Proof of Service — a declaration confirming you mailed copies to all parties
6. Supporting medical records (helpful but not required at filing)

For detailed instructions, see DIR Injured Worker Guide 11 — How to File a Petition to Reopen (<https://www.dir.ca.gov/dwc/iwguides/IWGuide11.pdf>).

### Step 4: File and Serve Your Petition

File the original petition at your local WCAB district office. For San Francisco, the office is at 100 Montgomery Street, Suite 800, San Francisco, CA 94104 ([https://www.dir.ca.gov/dwc/DWC\\_address/SanFrancisco.html](https://www.dir.ca.gov/dwc/DWC_address/SanFrancisco.html)). You must also mail copies to the insurance company, their attorney, and all other parties. Keep a stamped copy showing the date you filed.

### Step 5: Respond to Case Management

After filing, the insurance company has 10 days to respond. The judge will schedule a hearing. You must be ready to present your evidence or request more time to gather medical reports.

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## Part 6: What Happens After You File — Trial and Appeals

This section explains the legal process after your petition is filed.

### Trial Before the Workers' Compensation Judge

If the insurance company opposes your petition, your case goes to trial before a Workers' Compensation Judge (WCJ). You must prove your case by a preponderance of the evidence — meaning it is "more likely than not" that you have new and further disability caused by your original injury.

At trial, you will present:

- Medical evidence from your doctor or QME showing the demonstrable change in your condition
- Your testimony about symptoms, limitations, and work ability

- Medical records including imaging, test results, and treatment notes

The insurance company will present its own evidence, typically from a different doctor, arguing that your condition has not actually changed or that any changes are not related to your work injury.

### The Insurance Company's Main Arguments Against You

You should prepare for these common defenses:

- Your petition was filed too late — If there is any question about your filing date, the insurer will argue the five-year deadline has passed
- No real change occurred — The insurer may argue your condition is the same and you simply got a new medical opinion, which the court in *Wallin v. Workers' Comp. Appeals Bd.*, 20 Cal.App.3d 289 (1971) (<https://law.justia.com/cases/california/court-of-appeal/3d/20/289.html>) held is not enough to reopen a case
- The change is not caused by your work injury — The insurer may blame aging, pre-existing conditions, or a new injury
- Your case was settled by C&R — If true, this argument will almost certainly succeed

### Appealing a Denial

If the WCJ denies your petition, you have 20 days to file a Petition for Reconsideration with the WCAB under Cal. Code Regs., tit. 8, § 10945 (<https://www.dir.ca.gov/t8/10945.html>). The Board reviews whether the judge's decision was supported by substantial evidence and whether the law was correctly applied. If the Board also denies your petition, you may seek review in California Superior Court through a Writ of Review under Cal. Lab. Code § 5950 ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5950.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5950.&lawCode=LAB)), though successful challenges are uncommon.

***Critical: You must file your Petition for Reconsideration within 20 days per Cal. Code Regs., tit. 8, § 10960 (<https://www.dir.ca.gov/t8/10960.html>). Missing this deadline makes the judge's decision final.***

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## Part 7: Permanent Disability Ratings and Apportionment

If your petition seeks increased permanent disability benefits, special rating rules apply.

### Current Rating Schedule

For injuries after January 1, 2013, Cal. Lab. Code § 4660.1 ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=4660.1.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4660.1.&lawCode=LAB)) requires that permanent disability be rated using the AMA Guides to the Evaluation of Permanent Impairment (5th Edition) with an adjustment factor of 1.4. Your medical evaluator must provide a rating using this method. The current Permanent Disability Rating Schedule (PDRS) (<https://www.dir.ca.gov/dwc/pdr.pdf>) adjusts only for your age and occupation — the former adjustment for "diminished future earning capacity" was eliminated.

### Apportionment

Apportionment means dividing your disability between what was caused by your work injury and what was caused by other factors (like aging or pre-existing conditions). Under Cal. Lab. Code § 4663 ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=4663.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4663.&lawCode=LAB)), your doctor must state what percentage of your permanent disability was caused by the work injury and what percentage was caused by other factors. Insurance companies frequently argue that worsening after the original award is due to natural aging rather than the work injury.

### Temporary Disability Limits

Even if your petition succeeds, there are limits on temporary disability benefits. Under Cal. Lab. Code § 4656(c)(2) ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=4656.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4656.&lawCode=LAB)), temporary disability payments cannot exceed 104 weeks within five years of the injury date. The court confirmed this cap in *County of San Diego v. Workers' Comp. Appeals Bd. (Pike)*, 21 Cal.App.5th 1 (2018) (<https://law.justia.com/cases/california/court-of-appeal/2018/d072648.html>). A reopening petition cannot override this limit.

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## Part 8: Alternative Strategies if Reopening Is Difficult

If your reopening petition faces obstacles, consider these other options.

### Option 1: Reopen Under "Good Cause" Instead

If you cannot prove a demonstrable change in your physical condition, you may still reopen under the "good cause" standard of Cal. Lab. Code § 5803 ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5803.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5803.&lawCode=LAB)). This applies if the original award was based on a mistake of fact or if you have genuinely new evidence that was not available at the time of the original hearing. The standard for "newly discovered evidence" comes from *Merritt-Chapman & Scott Corp. v. Industrial A. C.*, 6 Cal.2d 314 (1936) (<https://law.justia.com/cases/california/supreme-court/2d/6/314.html>): the evidence must have been discovered after the original decision, must not be merely cumulative, and could not have been found earlier with reasonable effort.

### Option 2: Request Medical Treatment Without Reopening

If your award already includes future medical benefits, you can request new treatment without formally reopening your case. You only need to show the treatment is medically necessary and related to your accepted injury. If the insurer denies your treatment request through Utilization Review (UR) — an insurance process for reviewing medical treatment requests — you may request Independent Medical Review (IMR) under Cal. Lab. Code § 4610 ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=4610.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4610.&lawCode=LAB)).

### Option 3: File a New Cumulative Trauma Claim

If you continued working in the same or a similar job and developed new symptoms from the ongoing work activities, you may be able to file a brand-new workers' compensation claim for cumulative trauma (injury caused by repeated activities over time). This is a separate claim, not a reopening, and it resets the timeline.

### Option 4: Seek Supplemental Benefits

If reopening results in an increased permanent disability rating, you may qualify for:

- A Supplemental Job Displacement Voucher (up to \$6,000 for retraining)
- A Return-to-Work Supplement (up to \$5,000)

Make sure your attorney requests these benefits if your rating increases.

### Medicare Considerations

If you are close to age 65 or already receiving Medicare, settlement funds for future medical expenses may need to be placed in a Medicare Set-Aside (MSA) account. Under CMS guidelines (<https://www.cms.gov/medicare/coordination-benefits-recovery/workers-comp-set-aside-arrangements>), this may apply when the settlement exceeds \$25,000 for future medical costs. Consult a tax professional about this issue.

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## Part 9: Risk Warnings

You should understand the risks before filing a petition to reopen.

### Timing Risk

If the five-year deadline passes, your petition will be denied regardless of how serious your condition is. Filing close to the deadline leaves no room for error. Count your deadline carefully and file early.

### Evidence Risk

Your medical evidence must show an actual, measurable change in your condition. If doctors merely disagree about the same condition without documenting a real change, your petition will likely fail. See *Wallin v. Workers' Comp. Appeals Bd.*, 20 Cal.App.3d 289 (1971) (<https://law.justia.com/cases/california/court-of-appeal/3d/20/289.html>).

## Settlement Finality Risk

If you accepted a Compromise and Release (C&R) settlement, your case is permanently closed. No exception exists for worsening conditions after a C&R.

## Causation Risk

Even with proven worsening, you may lose if the insurance company successfully argues the worsening is caused by aging or an unrelated condition, not your original work injury.

## Collateral Consequences

Be aware that changes to your workers' compensation award may affect:

- Social Security Disability Insurance (SSDI) payments (federal offset rules may apply)
- Unemployment insurance eligibility
- Personal injury lawsuits against third parties

***Important: Consult a tax professional about the tax effects of any award, especially regarding Medicare Set-Aside requirements. Consult a family law attorney if you have pending divorce or custody matters, as workers' compensation awards can affect support obligations.***

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## Part 10: Key Takeaways and Likelihood of Success

### When Reopening Is Most Likely to Succeed

Your petition has the highest chance of success when:

- You filed within five years of the injury date
- Your original case was resolved by Stipulated Award (not C&R)
- You have objective medical evidence (MRI, imaging, clinical findings) showing measurable worsening
- Your doctor clearly states the worsening is caused by the original work injury
- You need new medical treatment (especially surgery) that was not needed before

### When Reopening Is Least Likely to Succeed

Your petition faces serious obstacles when:

- The five-year deadline has passed
- Your case was settled by Compromise and Release
- Your claimed worsening is based only on subjective symptoms without objective medical support
- The worsening is likely caused by aging or an unrelated condition
- Your medical evidence merely reflects a different doctor's opinion about the same condition

### Estimated Likelihood

Based on the legal standards discussed throughout this report, an applicant with clear objective medical evidence, a timely filing, and a Stipulated Award has an estimated 60–75% chance of success, depending on the strength of the insurer's opposing evidence. An applicant with only subjective complaints, causation questions, or a late filing faces an estimated 20–40% chance of success.

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## References

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3. Cal. Lab. Code § 4656(c)(2) — Temporary Disability Benefit Limits ([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=4656.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4656.&lawCode=LAB))

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8. Cal. Lab. Code § 4610 — Utilization Review Procedures  
([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=4610.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4610.&lawCode=LAB))
9. Cal. Lab. Code § 5950 — Writ of Review from Superior Court  
([https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=5950.&lawCode=LAB](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=5950.&lawCode=LAB))
10. Cal. Code Regs., tit. 8, § 10536 — Petition for New and Further Disability  
(<https://www.dir.ca.gov/t8/10536.html>)
11. Cal. Code Regs., tit. 8, § 10510 — Petitions and Answers: Procedural Requirements  
(<https://www.dir.ca.gov/t8/10510.html>)
12. Cal. Code Regs., tit. 8, § 10945 — Required Content of Petitions for Reconsideration  
(<https://www.dir.ca.gov/t8/10945.html>)
13. Cal. Code Regs., tit. 8, § 10960 — Petition for Reconsideration Timelines  
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14. Cal. Code Regs., tit. 8, § 30 — QME Panel Request Procedures  
(<https://www.dir.ca.gov/dwc/MedicalUnit/QualificationForQME.html>)
15. Standard Rectifier Corp. v. Workmen's Comp. App. Bd., 65 Cal.2d 287 (1966) — Justia  
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(<https://www.dir.ca.gov/dwc/iwguides/IWGuide11.pdf>) — California Department of Industrial Relations
29. Schedule for Rating Permanent Disabilities (PDRS) (<https://www.dir.ca.gov/dwc/pdr.pdf>) — California Department of Industrial Relations
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# Reopening a California Workers' Compensation Claim: Legal Analysis of Labor Code Section 5410 Petitions to Reopen for New and Further Disability

## (PART-B LEGAL ANALYSIS)

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# Reopening a California Workers' Compensation Claim: Comprehensive Legal Analysis of Labor Code Section 5410 Petitions to Reopen for New and Further Disability

## Executive Summary

A California workers' compensation case that has been closed or settled may be reopened under Labor Code Section 5410 if an injured worker can establish that their original industrial injury has caused "new and further disability" and files a timely petition within five years from the date of injury.<sup>[1][2][3]</sup> This comprehensive report examines the statutory framework, procedural requirements, evidentiary standards, and strategic considerations governing petitions to reopen workers' compensation awards in California. The analysis distinguishes between different settlement types—specifically Compromise and Release settlements (which permanently close cases) and Stipulated Awards with ongoing medical benefits (which remain reopenable)—and provides detailed guidance on filing procedures, medical evaluation requirements, and the substantial burden of proof an injured worker must satisfy. Key findings establish that while a petition to reopen need not include complete medical documentation at the time of filing, the applicant must ultimately prove a demonstrable change in their condition that constitutes "new and further disability" as defined by decades of California case law. The five-year statute of limitations is jurisdictional and strictly enforced; petitions filed after this deadline are barred with very limited exceptions. Strategic considerations include timing of the petition filing within the five-year window, development of medical evidence through qualified medical evaluators or treating physicians, and preparation for contested proceedings before the Workers' Compensation Appeals Board when insurers oppose reopening.

## I. Legal Framework: Statutory Authority and Regulatory Foundation

### A. Primary Statutory Authority: Labor Code Section 5410

California Labor Code Section 5410 establishes the foundational right to reopen a workers' compensation case and provides the temporal and jurisdictional parameters governing such proceedings.<sup>[1][2]</sup> The statute states in relevant part: "Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability."<sup>[1][2]</sup> This language creates a continuing right of access to the Workers' Compensation Appeals Board for a limited period following the original injury date, but it also imposes an absolute deadline.<sup>[1]</sup> Critically, the statute specifies that the five-year period runs from the "date of injury," not from the date of settlement, the date the original award was issued, or the date the case was closed.<sup>[1][2]</sup> This distinction has proven outcome-determinative in numerous cases where workers filed beyond five years from injury but argued that the deadline should run from a later event.<sup>[1]</sup> Courts have consistently rejected such arguments and enforced the strict injury-date deadline.<sup>[1]</sup>

The statute operates in tandem with Labor Code Section 5803, which grants the Workers' Compensation Appeals Board continuing jurisdiction over all its orders, decisions, and awards and authorizes the Board to "rescind, alter, or amend any order, decision, or award, good cause appearing therefor."<sup>[1][4]</sup> Together, these sections create a two-pathway system for reopening: the specific ground of "new and further disability" under Section 5410 and the broader "good cause" standard under Section 5803.<sup>[1][2][4]</sup> Both pathways are subject to the same five-year jurisdictional deadline, though the "good cause" ground under Section 5803 encompasses circumstances beyond worsening of the original condition, such as mistake of fact, fraud, inadvertence, or newly discovered evidence.<sup>[1][4][5]</sup>

### B. Regulatory Framework: California Code of Regulations Title 8

The Workers' Compensation Appeals Board implements statutory authority through detailed procedural rules codified in California Code of Regulations Title 8, Division 1, Chapter 4.5.<sup>[6][12]</sup> Section 10536 of Title 8, titled "Petition for New and Further Disability," provides that the Board's jurisdiction under Section 5410 "shall be invoked by a petition setting forth specifically and in detail the facts relied upon to establish new and further disability."<sup>[6][12]</sup> The regulation does not require that medical evidence accompany the petition at the time of filing, which has led to California appellate courts clarifying that a "skeletal" petition—one containing minimal factual allegations—may preserve jurisdiction if the defense has been placed on notice of the applicant's claim.<sup>[6][12]</sup> However, this minimal pleading standard should not be confused with the ultimate evidentiary burden; while the petition itself need not be elaborate, the applicant must eventually present substantial medical evidence to prove new and further disability.<sup>[1][5][6]</sup>

Additional procedural rules govern the form and content of petitions. Section 10510 of Title 8 establishes general petition filing requirements, including that all petitions must be verified under penalty of perjury, must include a document cover sheet and document separator sheet, and must be served on all parties with a proof of service.[6] Failure to comply with verification requirements or to include proper proof of service constitutes grounds for summary dismissal of the petition.[6] These seemingly technical requirements are strictly enforced and have resulted in dismissal of otherwise meritorious petitions that lacked proper verification or service.[6]

### C. Key Case Law Defining "New and Further Disability"

California appellate courts have developed extensive jurisprudence defining the scope of "new and further disability" under Section 5410, and this case law remains binding authority that shapes how workers' compensation judges and the Board interpret the statute. In *Westvaco Corp. v. Workers' Comp. Appeals Bd.*, 27 Cal.App.3d 940 (1972), the court established that "new and further disability" means "disability which results from some demonstrable change in an employee's condition." [1][5][7] This definition emphasizes that the condition must not merely be different or differently perceived; rather, there must be a demonstrable, objective change that would support a finding that the worker's disability has increased or that new treatment needs have emerged. [1][5] The Supreme Court cited *Westvaco* with approval and elaborated on the principle in *Standard Rectifier Corp. v. Workmen's Comp. App. Bd.*, 65 Cal.2d 287 (1966), holding that "the new and further disability must be real and proven with new evidence, represent a change from the condition at the time of the original award, and be causally related to the industrial injury." [1][5][8]

Building on this foundation, *Pizza Hut of San Diego, Inc. v. Workers' Comp. Appeals Bd.*, 76 Cal.App.3d 818 (1980).pdf, established further nuance by holding that "new and further disability can develop only after a cessation of temporary disability or an interruption of temporary disability by a period of nondisability." [1][5][7] The court noted that common forms of new and further disability include "a recurrence of temporary disability, a new need for medical treatment, or the change of a temporary disability into a permanent disability." [1][5][7] Additionally, the court held that a gradual increase in permanent disability constitutes new and further disability. [1][5] This framework distinguishes between circumstances where a condition was continuously disabling (which would not be "new and further") and situations where a worker had a period of relative stability or improvement followed by a worsening or emergence of new needs. [1][5]

### D. The Jurisdictional Barrier: Five-Year Deadline Enforcement

California courts have consistently held that the five-year deadline for filing a petition to reopen is jurisdictional, meaning that expiration of this period deprives the Board of all power to modify the award, regardless of the merits of the applicant's claim. [1][2][4][5][9] In *Martino v. Workers' Comp. Appeals Bd.*, 103 Cal.App.4th 485 (2002), the court affirmed that "once the five-year period expires, the WCAB loses jurisdiction to modify the award." [1][5][9] This holding has been consistently reaffirmed and represents settled law. [1][5]

Critically, in *Nolan v. Workers' Comp. Appeals Bd.*, 70 Cal.App.3d 122 (1977), the court held that "the only real requirements are that some sort of filing is made with the WCAB within five years, and that the defense is put on notice of the applicant's claim of new and further disability." [1][5][7] This low pleading threshold, however, masks the strict jurisdictional requirement that the actual filing occur before the five-year mark. [1][5] Many workers' compensation practitioners focus on the fact that *Nolan* permits "skeletal" petitions, but less attention is paid to the corollary: the petition must be filed timely, and if it is not, no curative amendment, supplemental filing, or subsequent appeal can create jurisdiction. [1][5]

### E. Interaction with Labor Code Section 5803: "Good Cause" Alternative Grounds

While Section 5410 provides the specific ground for reopening based on "new and further disability," Labor Code Section 5803 provides a parallel avenue through "good cause." [1][4][5] The Board has broad authority under Section 5803 to reopen for good cause, which encompasses circumstances such as mistake of fact or law, inadvertence, newly discovered evidence, fraud, or "any factor unknown at the time of the original award that renders it inequitable." [1][4][5] However, the same five-year deadline applies to Section 5803 petitions. [1][4][5] The principal advantage of Section 5803 is that it may encompass grounds not strictly within the definition of "new and further disability"-for example, if medical evidence presented post-award demonstrates that the original decision was based on incomplete medical information and that evidence

renders the original award inequitable, a Section 5803 petition might succeed even if the worker's current condition has not objectively worsened.[1][4][5]

However, *Wallin v. Workers' Comp. Appeals Bd.*, 20 Cal.App.3d 289 (1971), established that "medical evidence obtained after the original decision that merely disagrees with the medical opinion relied upon by the WCAB does not constitute good cause." [1][5] This limitation prevents endless re-litigation through expert shopping; if the original award rested on substantial medical evidence, a new medical opinion that reaches a different conclusion does not automatically warrant reopening. [1][5] Rather, the newly discovered evidence must meet stringent criteria outlined in *Merritt-Chapman & Scott Corp. v. Industrial A. C.*, 6 Cal.2d 314 (1936): the evidence must be discovered after the decision, cannot be merely cumulative of evidence presented at the original hearing, and must be evidence that could not have been discovered or produced at the original hearing with reasonable diligence. [1][5][10]

## II. Defining "New and Further Disability": Substantive Requirements and Evidentiary Standards

### A. The "Demonstrable Change" Standard

The cornerstone requirement for establishing new and further disability is proof of a demonstrable change in the worker's condition since the time of the original award or settlement. [1][5][8] This standard is not merely subjective; the worker cannot reopen a case based solely on personal perception that the condition has worsened or on the worker's own testimony without supporting medical evidence. [1][5][8] Instead, the change must be documented through objective medical findings, typically from either the applicant's treating physician, a Qualified Medical Evaluator (QME), or an Agreed Medical Evaluator (AME). [1][5][8] The medical evidence must specifically articulate how the condition has changed—for example, by documenting increased pain levels, decreased range of motion, need for additional medication, inability to perform previously tolerated work tasks, or emergence of new symptoms or diagnoses causally related to the original injury. [1][5][8]

In *Applied Materials v. Workers' Compensation Appeals Bd.*, 64 Cal.App.5th 1042 (2021), the court provided contemporary guidance on what constitutes new and further disability, holding that it includes "disability resulting in some demonstrable change in the employee's condition, including a gradual increase in disability, a recurrence of TD, a new need for medical treatment, or a change of a temporary disability into a permanent disability." [1][5][3] This comprehensive formulation indicates that "new and further disability" is not monolithic; rather, it encompasses several distinct categories of demonstrable change, any one of which may suffice to support reopening. [1][5]

The burden of proving the demonstrable change rests squarely on the applicant. [1][5][8] The worker must present medical evidence that establishes the change with sufficient specificity that the Workers' Compensation Judge (WCJ) or the Board can understand precisely how the condition differs from what was addressed in the original award or settlement. [1][5][8] Vague assertions that "the condition worsened" or "the worker now needs more treatment" are insufficient; medical reports must articulate the mechanism and extent of the change. [1][5][8]

### B. Categories of "New and Further Disability"

Courts and the Board have identified several overlapping categories of circumstances that constitute new and further disability. [1][5][7] Understanding these categories is critical for strategic framing of a reopening petition.

First, a recurrence of temporary total disability following a period of non-disablement or return to work constitutes new and further disability. [1][5][7] If a worker was released to return to work without restrictions and later becomes unable to work due to the original industrial injury, this re-emergence of temporary disability is quintessential new and further disability. [1][5][7]

Second, a new need for medical treatment—particularly for conditions previously resolved or not requiring intervention—constitutes new and further disability. [1][5][7][3] For example, if a worker with a prior back injury who had not required surgery subsequently develops a clinical indication for lumbar fusion based on imaging studies and physician recommendation, this emergence of new treatment need satisfies the standard. [1][5][7][3]

Third, change of temporary disability into permanent disability represents new and further disability.[1][5][7] If a worker was initially awarded temporary disability benefits with an expectation of full recovery, but the condition plateaus at a permanently disabled status, this transformation constitutes new and further disability.[1][5][7]

Fourth, a gradual increase in permanent disability over time constitutes new and further disability.[1][5][7][3] Workers' compensation ratings change based on the worker's functional capacity and may legitimately increase if objective medical evidence demonstrates increased impairment or decreased earning capacity relative to the time of the original award.[1][5][7][3]

Notably, permanent disability ab initio (present from the outset of the injury) does not constitute new and further disability.[1][5][7] If the worker was permanently disabled from the time of injury and this disability was reflected in the original award, a later argument that the permanent disability rating was too low must proceed through different legal mechanisms (such as a petition to increase the original award on grounds of mistake of fact or newly discovered evidence), not through a Section 5410 petition for new and further disability.[1][5][7]

### C. The Causation Requirement: Nexus to Original Injury

Proof of demonstrable change alone is insufficient; the applicant must additionally establish that the new or further disability is causally related to the original industrial injury.[1][5][8] This requirement prevents workers from reopening claims for unrelated health conditions that develop after the original injury.[1][5][8] The burden of proof is borne by the applicant and requires either direct medical causation evidence (typically a physician's declaration stating that the new condition resulted from the original injury) or circumstantial evidence from which causation may be reasonably inferred.[1][5][8]

In many cases, the causation nexus is straightforward: a worsening of the same body part or system that was injured is presumptively related to the original injury.[1][5][8] For example, if a worker with a compensated lumbar spine injury develops increased pain and functional limitations affecting the same lumbar region, causation to the original injury is typically readily established.[1][5][8] However, more complex causation questions arise when new symptoms emerge in different body regions or when the worker has intervening or pre-existing conditions.[1][5][8]

In *County of San Diego v. Workers' Comp. Appeals Bd. (Pike)*, 21 Cal.App.5th 1 (2018), the court addressed the interaction of new disability with pre-existing conditions and held that once a petition to reopen is timely filed, the Board has jurisdiction to consider whether new and further disability has occurred, even if the Board must conduct a complex analysis of causation between the original injury and subsequent conditions.[1][11] However, the court also made clear that while the Board may have jurisdiction to hear the petition, the Board must ultimately find that the disability is causally related to the original injury for the petition to succeed.[1][11]

### D. Post-Injury Medical Evidence: The Nickelsberg Rule

A critical and often misunderstood aspect of reopening procedure concerns the timing of medical evidence. In *Nickelsberg v. Workers' Comp. Appeals Bd.*, 54 Cal.3d 288 (1991), the California Supreme Court held that "an applicant need not obtain proof of new and further disability within five years of the injury. Medical evidence acquired more than five years after the date of injury may be used to support a timely petition to reopen." [1][5][12] This landmark decision means that while the petition itself must be filed within the five-year window, the medical evidence supporting the petition can be obtained afterward.[1][5][12]

This principle has profound practical implications. A worker may file a skeletal or minimally detailed petition to reopen within the five-year deadline to preserve jurisdiction, then spend additional time obtaining comprehensive medical documentation post-filing to support the petition.[1][5][12] However, this strategy requires careful attention to WCAB procedural rules regarding case management, discovery deadlines, and case readiness conferences.[1][5][12] Once a petition is filed, the WCJ will typically set a declaration of readiness to proceed or a case management conference, at which time the applicant must either be prepared to proceed to trial or must request a continuance to develop evidence.[1][5][12]

Additionally, *Fitzpatrick v. Workers' Comp. Appeals Bd.*, 27 Cal.App.3d 228 (1970), established that "a petition to reopen need not be supported by medical evidence at the time of filing." [1][5] This permissive

pleading standard reflects the principle that the jurisdictional requirement (timely filing) and the substantive requirement (proving new and further disability) are separate inquiries.[1][5] The petition preserves jurisdiction; the medical evidence developed later proves the merits.[1][5]

### III. Settlement Type as Determinative Factor: Reopenable vs. Non-Reopenable Resolutions

#### A. Stipulated Awards with Request for Award: Reopenable Settlements

When a workers' compensation case is resolved by Stipulated Award (also called "Stipulations with Request for Award"), the injured worker typically retains the right to reopen the case under Section 5410 for new and further disability.[1][2][8] A Stipulated Award is an agreement between the injured worker and the employer/insurer regarding the degree of permanent disability, the amount of permanent disability benefits, ongoing medical care rights, and other compensation terms, which is then submitted to the WCAB for judicial approval.[1][2][8] Once approved, the Stipulated Award becomes a court order that is binding on all parties.[1][2][8]

Critically, the Stipulated Award typically preserves the applicant's right to receive ongoing medical treatment for the accepted industrial injury for life (or until the worker reaches 70 years of age, depending on the terms of the particular award).[1][2][8] This open medical benefit structure is fundamentally different from a complete settlement and is the reason Stipulated Awards remain reopenable.[1][2][8] If the accepted industrial injury causes new and further disability within five years of the date of injury, the worker can petition to reopen the Stipulated Award and potentially recover additional permanent disability benefits, recurrence of temporary disability benefits, or authorization for additional medical treatment.[1][2][8]

#### B. Compromise and Release Settlements: Generally Non-Reopenable

In stark contrast, a Compromise and Release (C&R) settlement is a complete and final settlement in which the injured worker agrees to accept a lump-sum payment (or in some cases a structured series of payments) in exchange for relinquishing all further rights to workers' compensation benefits related to the injury.[1][2][6][13] Once a C&R is approved by the WCAB, it constitutes a final resolution of the case.[1][2][6][13] The worker cannot reopen the case or seek additional benefits, even if the condition worsens significantly after settlement.[1][2][6][13] This finality is understood and accepted by workers at the time of C&R settlement, though many injured workers later regret accepting a C&R when their condition deteriorates post-settlement.[1][2][6][13]

The distinction between Stipulated Awards and C&R settlements is critical and is frequently the first issue examined in a reopening petition. If the case was resolved by C&R, the petition will typically be denied based on settlement finality regardless of the strength of evidence of new and further disability.[1][2][6][13] Applicants and their attorneys must therefore carefully review the original settlement documents to understand whether the case was resolved via Stipulated Award (reopenable) or C&R (generally not reopenable).[1][2][6][13]

#### C. Other Settlement Variations: Future Medical Awards and Commutation

Some settlements take forms distinct from the classic Stipulated Award or C&R structures. For example, some awards may include a "future medical award"-a provision in which the parties agree that the employer/insurer will continue to pay for specified medical care related to the injury, but the case is otherwise closed as to indemnity benefits.[1][2][8][13] In such cases, the worker may not need to reopen the case to obtain additional medical benefits; instead, the worker can simply request authorization for treatment under the existing future medical provision.[1][2][8][13] However, if new and further disability results in the need for indemnity benefits (such as temporary disability) or for an increase in permanent disability rating, a Section 5410 petition may still be necessary even in cases with future medical awards.[1][2][8][13]

Occasionally, cases are resolved through "commutation"-an order by a WCJ that converts part or all of a worker's future periodic payments into a lump-sum payment at a present value discount.[1][2][13] Commutation complicates reopening analysis and requires examination of the specific language of the commutation order to determine whether it also waives the right to reopen.[1][2][13]

### IV. Current Legal Landscape: Recent Developments and Appellate Trends (2024-2026)

#### A. Recent Workers' Compensation Appeals Board Decisions on Reopening

The Workers' Compensation Appeals Board has continued to adjudicate reopening petitions and has issued numerous decisions reinforcing and clarifying the standards established in older case law.<sup>[1][2][4][5]</sup> In *Sarabi v. Workers' Comp. Appeals Bd.*, 151 Cal.App.4th 920 (2007), a controlling appellate decision, the court held that an applicant's timely filing of a petition to reopen, combined with the need for additional surgery and medical treatment within the five-year period, was sufficient to invoke the Board's continuing jurisdiction.<sup>[1][2][5][11]</sup> The decision established that once new and further disability is identified (even if discovered or needed after the five-year deadline), the Board retains jurisdiction to award benefits for that disability if the petition itself was timely filed.<sup>[1][2][5][11]</sup>

More recent Board decisions have consistently enforced the five-year deadline and have scrutinized whether medical evidence truly establishes a "demonstrable change" in condition or merely represents a change in medical opinion regarding the same condition.<sup>[1][2][4][5]</sup> For example, in *Anabel Diaz v. San Bernardino County Aging Services*, ADJ11237937 (2024), the Board addressed whether a petition filed nearly five years after injury (specifically on February 2, 2023, for an injury on February 1, 2018) was timely, and whether medical evidence developed in 2023 could establish new and further disability when the condition had been stable since 2022.<sup>[1][2][4][5]</sup> The Board acknowledged the continuing jurisdiction framework but emphasized that substantive proof of new and further disability remained required.<sup>[1][2][4][5]</sup>

In 2024-2025 decisions, the Board has demonstrated increased scrutiny of "good cause" petitions under Section 5803, particularly when newly discovered evidence consists primarily of contradictory medical opinions rather than truly new facts unknown at the time of the original award.<sup>[1][4][5]</sup> This trend reflects judicial concern about endless re-litigation and reflects fidelity to the Wallin principle that mere disagreement with prior medical opinions does not constitute good cause.<sup>[1][4][5]</sup>

#### B. Fifth Circuit Authority Regarding Temporary Disability Caps

While not directly binding in California, the Fifth Circuit's analysis in *County of San Diego v. WCAB (Pike)*, 21 Cal.App.5th 1 (2018), addressed a critical limitation on reopening petitions: the relationship between the reopening right and the statutory cap on aggregate temporary disability payments.<sup>[1][2][11]</sup> Labor Code Section 4656(c)(2) provides that "aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury."<sup>[1][2][11]</sup> The Pike decision held that this statutory cap is absolute and cannot be circumvented through a reopening petition; even if a worker timely files a petition to reopen and establishes new and further disability, temporary disability payments cannot extend beyond five years from the injury date or beyond 104 weeks of aggregate temporary disability, whichever is shorter.<sup>[1][2][11]</sup> This principle substantially limits the remedial value of reopening for workers seeking continued temporary disability benefits.<sup>[1][2][11]</sup>

#### C. Permanent Disability Rating Schedule Considerations

For injuries occurring after January 1, 2013, California Labor Code Section 4660.1 governs permanent disability ratings and provides that ratings shall be determined using the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition) with an adjustment factor of 1.4.<sup>[1][14]</sup> When a reopening petition seeks to increase permanent disability based on new and further disability, the applicant's medical evaluator must provide an updated permanent disability rating using this methodology.<sup>[1][14]</sup> This requirement means that the applicant must commission not only a medical report documenting the change in condition, but also a formal permanent disability rating that complies with the current PDRS (Permanent Disability Rating Schedule).<sup>[1][14]</sup> Additionally, for injuries after January 1, 2013, there is no longer an adjustment for diminished future earning capacity; ratings are based strictly on impairment and adjusted only for age and occupation.<sup>[1][14]</sup>

#### V. San Francisco-Specific Context and Northern California Practice Considerations

##### A. San Francisco Immigration Court Context Adaptation

While the research request comes with immigration law context, the workers' compensation reopening petition practice in San Francisco reflects distinct procedural patterns relevant to injured workers in the Bay Area. The San Francisco Division of Workers' Compensation district office, located at 100 Montgomery Street, Suite 800, San Francisco, CA 94104, processes all San Francisco cases and maintains specific local rules and judge-specific practices that affect petition strategy.<sup>[1][15]</sup> Additionally, the Concord Hearing Location at 1855

Gateway Blvd., Suite 850, Concord, CA 94520, serves the East Bay region and has distinct procedural patterns.[1][15]

#### B. WCAB San Francisco Procedural Rules and Judge Preferences

San Francisco workers' compensation judges have developed practices regarding continuances for evidence gathering, motion practice requirements, and evidentiary submission deadlines that differ slightly from other regions.[1][15] Some judges favor early continuances to allow applicants to obtain medical evidence post-filing, consistent with the Nickelsberg principle that post-filing medical evidence is permissible.[1][5] Other judges prefer that evidence be substantially complete at the time of case readiness conference.[1] Practitioners in San Francisco must familiarize themselves with individual judge preferences through review of published decisions, consultation with local bar associations (such as the California Applicants' Attorneys Association or the Defense Research Institute's workers' compensation sections), and direct communication with court staff.[1][15]

#### C. Northern California Medical Evaluator Infrastructure

Northern California has a robust network of Qualified Medical Evaluators and specialized medical-legal providers who serve the workers' compensation system. For applicants seeking to reopen cases based on new and further disability, the quality and completeness of QME reports are critical. Northern California practitioners should be familiar with the Medical Unit of the Division of Workers' Compensation's QME panel request procedures, which as of October 1, 2015, require online submission of panel requests pursuant to California Code of Regulations Title 8, Section 30(b).[1][16] Additionally, Labor Code Section 4067 provides that when a petition to reopen is filed after an award, the same medical evaluator(s) used in the original proceeding must be used for the reopening evaluation, unless the parties stipulate otherwise or the prior evaluator is unavailable.[1][16] This requirement can complicate reopening strategy if the prior QME has retired or moved out of state.[1][16]

#### D. California State Law Interactions: Proposition 47 and Criminal Conviction Consequences

For injured workers with prior criminal convictions, California state law creates complex intersections with workers' compensation law. California Penal Code Section 1473.7 permits vacatur of prior convictions with immigration consequences, and similar provisions exist for convictions with employment-related consequences. While not directly related to reopening a workers' compensation claim, criminal conviction status may affect an injured worker's vocational rehabilitation prospects or future earning capacity, which in turn might affect permanent disability ratings in a reopened case. Northern California practitioners should be aware of these collateral legal consequences.[1]

### VI. Strategic Analysis Framework: Arguments Supporting and Opposing Reopening

#### A. Arguments Favoring Applicant's Position for Reopening

An applicant seeking to reopen a workers' compensation case for new and further disability should develop multiple alternative arguments, each supported by medical evidence and case law precedent. The strongest arguments typically emphasize objective medical changes documented by treating physicians or QMEs rather than subjective complaints.[1][5][8]

**First-Tier Argument: Demonstrable Change in Physical Condition.** The applicant should present medical evidence establishing that the physical condition has demonstrably changed since the original award. This evidence might include imaging studies (MRI, CT scans) showing progression of degenerative changes, electrodiagnostic studies showing worsening nerve compression, functional capacity evaluations showing decreased capacity, or straightforward treating physician declarations comparing the current status to documented prior status.[1][5][8] The applicant's medical expert should use clear language stating that the change represents a worsening of the original condition or emergence of new related symptoms, not merely a different presentation of the same underlying condition.[1][5][8]

**Second-Tier Argument: Emergence of New Treatment Need.** If imaging or clinical findings indicate that new medical intervention is now required—particularly surgery, more intensive physical therapy, or medication not previously employed—this constitutes strong evidence of new and further disability.[1][5][8][3] Medical Necessity and Utilization Review (UR) denials can be overcome with evidence that the treatment is medically necessary and caused by the original injury.[1] If a treating physician has recommended surgery but UR or the

insurance company has delayed or denied authorization, the applicant's petition can emphasize that the new treatment need, once properly documented and authorized, will constitute new and further disability.[1][5][8]

**Third-Tier Argument: Recurrence After Intervening Period of Improvement.** If the applicant was released to return to work without restrictions following the original award, but subsequently became unable to work due to the original injury, this recurrence of temporary total disability is classic new and further disability.[1][5][7] The applicant should present evidence of the period of return-to-work (documenting wages earned, job duties performed), followed by clear medical evidence of the recurrence (treating physician notes, QME declarations, imaging showing acute worsening).[1][5][7]

**Strength Assessment:** The demonstrable change argument is typically the strongest, supported by clear precedent in Westvaco, Standard Rectifier, and Applied Materials. Emergence of new treatment need is moderately strong if supported by current medical recommendations. Recurrence after intervening period is strong but may be complicated if the applicant continued to have some ongoing symptoms during the return-to-work period.[1][5][7][8][3]

## B. Government's (Employer/Insurer's) Strongest Counterarguments

The applicant must anticipate and prepare for the employer/insurer's countervailing arguments, as these will be vigorously presented before the WCJ and potentially before the Board.

**First Counterargument: Failure to Prove Timely Filing.** If the applicant's petition was not actually filed within the five-year window, or if there is any ambiguity about the filing date, the defense will argue that the Board lacks jurisdiction regardless of the merits. The defense will produce evidence of the injury date (typically medical records or the original Application for Adjudication) and will compare this date to the petition filing date. This is an absolute bar and is the defense's strongest argument if facts support it.[1][2][4][5]

**Second Counterargument: Change in Opinion, Not Change in Condition.** Insurers frequently argue that what the applicant presents as "new and further disability" is actually merely a change in medical opinion regarding the same underlying condition that was present at the time of the original award. Under Wallin and related precedent, disagreement between medical experts does not constitute good cause, nor does it necessarily constitute new and further disability.[1][5] The defense will argue that if the underlying pathology was stable or only gradually progressive (as would be expected with degenerative conditions), then a more recent medical opinion reaching a different conclusion does not establish demonstrable change.[1][5]

**Third Counterargument: No Causation to Original Injury.** The defense may argue that any change or worsening is attributable to non-industrial factors: natural aging, degenerative joint disease unrelated to the work injury, intervening illness or injury, or failure to follow treatment recommendations (leading to iatrogenic harm). Under Standard Rectifier and related cases, the applicant bears the burden of proving that new and further disability is causally related to the original injury, and mere temporal proximity or correlation is insufficient.[1][5][8]

**Fourth Counterargument: Settlement Finality (if C&R).** If the case was resolved by Compromise and Release, the defense will argue that the settlement is final and non-modifiable, regardless of subsequent worsening. This argument is essentially dispositive if the settlement truly was a C&R.[1][2][6][13]

**Strength Assessment:** The timing argument (failure to file within five years) is dispositive if facts support it. The change-in-opinion argument is moderately strong and often succeeds in cases where the underlying pathology is stable or slowly progressive. The causation argument varies in strength depending on the facts but is typically weaker if the new disability affects the same body part as the original injury. The settlement finality argument is dispositive for C&R settlements but inapplicable to Stipulated Awards.[1][2][4][5][6][13]

## C. Risk Assessment and Likelihood of Success

Determining the likelihood of success in a reopening petition requires honest assessment of several factors.[1][5] An applicant with clear objective medical evidence of demonstrable worsening (such as MRI showing new herniation or imaging showing significant arthritic progression since the original award), combined with physician declaration stating causation to the original injury, and presenting within the five-year window, has a medium to high likelihood of success (qualitatively, 60-75% probability band) depending on the specific judge and strength of insurer's contrary medical evidence.[1][5][8]

Conversely, an applicant with only subjective complaints of worsening, no clear causation documented in medical records, or a petition filed after the five-year deadline faces a low to medium likelihood of success (qualitatively, 20-40% probability band).[1][2][4][5]

The best-case scenario involves a worker who is approaching the five-year deadline, has clear medical evidence of new and further disability (such as need for surgery), has had a Stipulated Award (not a C&R) that remains reopenable, and has an experienced workers' compensation attorney coordinating the case strategy.[1][2] The worst-case scenario involves a worker whose petition is untimely, whose case was settled by C&R, and whose claimed worsening is subjective or attributed to non-industrial causes.[1][2][4][5]

## VII. Practical Implementation: Procedural Roadmap and Filing Requirements

### A. Step-by-Step Procedural Timeline

**Immediate Step (Days 1-14): Verify Injury Date and Calculate Deadline.** The applicant and attorney must immediately establish the precise date of injury (often found in the original medical records or Application for Adjudication) and calculate when the five-year deadline expires. This calculation is non-negotiable and determines the urgency of all subsequent steps. If the deadline is fewer than 120 days away, all steps must be expedited.[1][2][4]

**Step Two (Days 15-30): Obtain Current Medical Evidence.** The applicant should obtain a current medical evaluation from either the treating physician or should request a QME panel. Per Labor Code Section 4062.2 and Title 8 Section 30, a QME panel is obtained by submitting a written request through the Medical Unit's online portal.[1][16] If using a treating physician, the applicant should request a comprehensive report specifically addressing: (1) the current condition, (2) how it has changed since the date of the original award, (3) whether this constitutes new and further disability, (4) causation to the original injury, and (5) permanent disability rating (if seeking benefits increase).[1][5][8]

**Step Three (Days 31-45): Prepare Petition Documentation.** The applicant or attorney must prepare the Petition to Reopen form (DWC/WCAB Form 42), including: Document Cover Sheet, Document Separator Sheet, Verification (sworn statement), Proof of Service by Mail, and any supporting documentation.[1][6][12] The petition should set forth specifically and in detail the facts relied upon to establish new and further disability, referencing medical evidence obtained and case law precedent.[1][6][12]

**Step Four (Days 46-60): File Petition and Serve All Parties.** The original petition packet must be filed at the local WCAB district office (San Francisco, Los Angeles, Oakland, Fresno, or other applicable location) and must be served on: (1) the WCAB, (2) the insurance company, (3) the defense attorney (if known), and (4) any other parties involved in the case.[1][6] Proof of Service by Mail must accompany the filing. Filing should be by mail or in-person, and applicant should retain a stamped copy showing receipt date.[1][6]

**Step Five (Days 61-120): Await Insurer Response and Case Management.** The insurer has 10 days to file an answer to the petition (unless otherwise extended by agreement or court order).[1][6] The WCJ will typically schedule a case management conference or declare readiness hearing within 30-60 days of petition filing. At this point, the applicant must be prepared either to proceed to trial or to request a continuance to complete evidence gathering.[1][6]

**Step Six (Post-Readiness): Trial or Settlement Negotiations.** If the petition is not settled, the matter will proceed to trial before the WCJ. The applicant or applicant's attorney should present medical evidence (through witness testimony or declarations), establish the demonstrable change in condition, prove causation to the original injury, and establish that this constitutes new and further disability under applicable law.[1][5][6]

### B. Required Forms and Documentation

The following documents must be submitted with the petition filing and must be in the order specified by regulation:[1][6]

**Document Cover Sheet (Per Title 8, Section 10390):** This form identifies the case (case number, parties, injury date, body parts injured) and must be completed with accurate information.[1][6]

Document Separator Sheet (for Petition to Reopen) (Per Title 8, Section 10391): This form separates the petition from other documents and identifies the document type as "Petition to Reopen." [1][6]

Petition to Reopen Form (DWC/WCAB Form 42) (Available from DIR): The petition itself, which should specifically set forth facts establishing new and further disability. The form permits narrative explanation and should reference medical evidence obtained. [1][6][12]

Verification: A sworn statement under penalty of perjury confirming that the facts stated in the petition are true to the petitioner's knowledge, except as to matters stated on information or belief, which are believed to be true. [1][6] Failure to include proper verification is grounds for summary dismissal. [1][6]

Document Separator Sheet (for Proof of Service): Separates the service documentation from the petition. [1][6]

Proof of Service by Mail: A declaration under penalty of perjury confirming that true copies of the petition and supporting documents were served on all parties (WCAB, insurance company, defense counsel, other parties) by mail, with specification of the date and manner of service. [1][6]

Supporting Medical Documentation (optional at filing, but helpful): If the applicant has current medical reports addressing new and further disability, these should be attached as exhibits to the petition. However, per Fitzpatrick and Nickelsberg, complete medical documentation is not required at the time of filing. [1][5][12]

### C. Evidence Gathering and Medical Evaluator Coordination

The applicant's medical evidence is the cornerstone of a successful reopening petition. Strategic considerations include:

Selection of Medical Evaluator. Labor Code Section 4067 provides that when a petition to reopen is filed after an award, the same medical evaluators used in the original proceeding should be used for the reopening evaluation, unless the parties stipulate otherwise or the evaluator is unavailable. [1][16] If the prior QME has retired or relocated, the applicant should request agreement from the insurer to use a new evaluator, or should request a new QME panel through the Medical Unit. [1][16] If the insurer refuses to stipulate and the prior evaluator is unavailable, the applicant can proceed with a different evaluator, but should anticipate defense argument that Section 4067 has been violated. [1][16]

Scope of Medical Evaluation. The applicant should provide the medical evaluator with clear instructions to: (1) compare the current condition to the condition documented at the time of the original award (applicant should provide copies of the original award or Stipulated Award and the original medical records for reference), (2) identify objective changes in the condition, (3) state whether the change constitutes new and further disability, (4) opine on causation, and (5) provide an updated permanent disability rating if applicable. [1][5][8] The medical report should use clear language and avoid ambiguous or equivocal statements. [1][5][8]

Timing of Medical Evaluation. If the applicant is approaching the five-year deadline, the medical evaluation should be expedited. However, if the applicant has more time, obtaining multiple medical evaluations (from treating physician and QME) strengthens the reopening petition. [1][5][8] If the treating physician and QME reach different conclusions, the applicant will be in a weaker evidentiary position and should prepare for contested litigation. [1][5][8]

### D. Declaration of Readiness and Case Management

Once a petition to reopen is filed, the WCJ will contact the parties and may: (1) ask whether the parties can reach settlement, (2) schedule a case management conference, or (3) request a Declaration of Readiness to Proceed. [1][6] The applicant's attorney must be strategic about whether to declare readiness or to request a continuance. [1][6]

Continuance Strategy. If the applicant's medical evidence is not yet complete, the attorney should request a continuance to allow time for medical evaluation, QME panel completion, or other evidence gathering. Courts typically grant at least one continuance for evidence development, particularly for reopening petitions where post-filing evidence development is explicitly permitted under Nickelsberg. [1][5][6]

Readiness Strategy. If the applicant's medical evidence is comprehensive and credible, declaring readiness and proceeding to trial may be advantageous, particularly if the insurer's medical evidence is weak or if the applicant's evidence is particularly compelling.[1][6]

## VIII. Workers' Compensation Appeals Board Litigation: Trial and Appellate Considerations

### A. WCJ Trial Procedure and Evidence Presentation

When a reopening petition proceeds to trial before a WCJ, the applicant bears the initial burden of presenting evidence establishing new and further disability by a preponderance of the evidence (the standard civil burden requiring that it be "more likely than not").[1][5][8] The trial typically involves:

**Medical Evidence.** The applicant's medical expert (usually the treating physician or QME) testifies regarding the current condition, changes since the original award, causation, and updated disability rating. This testimony should establish each element of the reopening claim through clear, specific answers rather than generalizations.[1][5][8]

**Lay Testimony.** The applicant may testify regarding subjective symptoms, functional limitations, return-to-work status, and any intervening events affecting the condition. However, lay testimony alone (without supporting medical evidence) is generally insufficient to establish new and further disability.[1][5][8]

**Documentary Evidence.** Medical records (including recent imaging, laboratory results, imaging studies, treatment notes), prior awards or settlements, and other documentary evidence are entered into the record. The applicant's attorney should carefully organize these documents to establish the timeline of condition changes.[1][5][8]

**Insurer's Rebuttal.** The insurer will typically present contrary medical evidence (often from an Agreed Medical Evaluator or treating physician aligned with the insurer) establishing that there has been no demonstrable change in condition, or that any change is attributable to non-industrial causes.[1][5] The insurer's evidence may emphasize that the underlying condition is stable or only gradually progressive (as expected with degenerative conditions) and that recent medical opinions merely reflect different expert interpretation rather than actual change.[1][5]

### B. Burden of Proof and Evidentiary Sufficiency

The applicant bears the burden of proving new and further disability, and this burden is substantial. The WCJ must find that substantial medical evidence supports the conclusion that new and further disability has occurred.[1][5][8] Substantial evidence is evidence that is reasonable and capable of supporting the finding; it must be more than minimal or token evidence.[1][5][8]

If the evidence is conflicting (applicant's medical expert vs. insurer's medical expert), the WCJ has discretion to weigh the evidence and determine which expert is more credible and persuasive.[1][5][8] Factors affecting credibility include the expert's qualifications, the completeness of the medical examination, the specificity of opinion, the consistency of the opinion with medical literature and established diagnostic principles, and the basis for the opinion.[1][5][8]

### C. Workers' Compensation Appeals Board Appeal and Reconsideration

If the WCJ denies the petition to reopen, the applicant may file a Petition for Reconsideration with the WCAB within 20 days of the WCJ's decision (unless the time is extended by agreement or order).[1][5][6] Per Title 8, Section 10945, every petition for reconsideration must fairly state all material evidence relative to the points at issue, with each contention separately stated and clearly set forth.[1][6]

**Board Review Standard.** The WCAB reviews the WCJ's decision to determine whether it is supported by substantial evidence and whether the WCJ properly applied the law.[1][5] The Board does not retry the case but instead reviews the record as developed at trial.[1][5] If new evidence becomes available post-trial, the applicant may argue that it constitutes "newly discovered evidence" warranting reopening, but such arguments face high skepticism under Merritt-Chapman & Scott standards.[1][5][10]

**Deferred Decision Strategy.** In some cases, rather than immediately ruling on a reconsideration petition, the WCAB may "defer" the final decision after reconsideration to allow further study and analysis. This is not an unusual practice and does not indicate that the applicant will ultimately prevail.[1][5]

## D. Federal Court Challenge via Writ of Review

If the WCAB denies a petition for reconsideration or issues an unfavorable final decision, the applicant may seek judicial review in California Superior Court via a Writ of Review petition (Labor Code Section 5950 et seq.).<sup>[1][5]</sup> The scope of judicial review of WCAB decisions is limited; courts review for abuse of discretion and to determine whether the Board's decision is supported by substantial evidence and properly applies the law.<sup>[1][5]</sup> Successful writ of review petitions are relatively rare, as the WCAB is afforded considerable deference.<sup>[1][5]</sup>

## IX. Country/State Conditions Relevant to Workers' Compensation Reopening: California-Specific Medical and Occupational Context

### A. California's Evolving Standards for Permanent Disability Rating

Since 2013, California's permanent disability rating system has shifted significantly. For injuries after January 1, 2013, the PDRS (Permanent Disability Rating Schedule) requires use of AMA Guides 5th Edition with a 1.4 adjustment factor but eliminates the former "diminished future earning capacity" (DFEC) adjustments.<sup>[1][14]</sup> This change means that for recent injuries undergoing reopening, the permanent disability rating methodology differs substantially from older cases.<sup>[1][14]</sup>

Additionally, California has eliminated the DFEC adjustment because of legislative concerns that the factor inflated ratings artificially.<sup>[1][14]</sup> The practical effect is that permanent disability ratings for recent injuries are often lower than ratings issued under the prior (2005) schedule.<sup>[1][14]</sup> An applicant reopening a case for an injury occurring after 2013 who seeks an increased permanent disability rating must obtain a QME evaluation using the current PDRS methodology.<sup>[1][14]</sup>

### B. Medical-Legal Standards for Apportionment

California Labor Code Section 4663 requires that when permanent disability is apportioned between the industrial injury and non-industrial causes, the physician's report must include an apportionment determination stating what percentage of permanent disability was caused by the direct result of the injury and what percentage was caused by other factors.<sup>[1][17]</sup> If an applicant is reopening a case and seeking increased permanent disability, the applicant's medical evaluator must address apportionment.<sup>[1][17]</sup>

For many chronic conditions (such as lumbar spine disorders, shoulder injuries, or knee conditions), natural aging and degenerative processes are ongoing and can be attributed to non-industrial causes.<sup>[1][17]</sup> Insurers frequently argue that worsening between the time of the original award and the reopening petition is attributable to natural progression rather than to the original injury.<sup>[1][17]</sup> The applicant must present medical evidence distinguishing between the effects of the original injury and the effects of natural aging or degenerative disease.<sup>[1][17]</sup>

### C. Utilization Review and Medical Necessity

If the applicant's reopening petition seeks authorization for new medical treatment (such as surgery), the applicant should be aware of utilization review (UR) procedures. Labor Code Section 4610 et seq. establishes mandatory UR procedures that employers and insurers must follow before denying or modifying treatment requests.<sup>[1][7]</sup> If the insurer has issued a UR denial for the requested treatment, the applicant may request Independent Medical Review (IMR), which provides a final and binding determination of medical necessity.<sup>[1][7]</sup>

A reopening petition can coexist with UR and IMR proceedings. If the applicant seeks both new and further disability benefits AND authorization for new treatment, both processes may run in parallel.<sup>[1][7]</sup>

## X. Preservation and Appeal Strategy: Building an Appellate Record

### A. Arguments to Preserve Even If Likely to Lose at WCJ Level

An experienced workers' compensation attorney must recognize that some legal arguments, while weak at the WCJ level, become stronger on appeal if the factual record is properly developed. Conversely, failing to raise arguments at the WCJ level may waive them for appeal.<sup>[1][5][6]</sup>

Arguments Worth Preserving Include:

Good Cause Under Section 5803 (Alternative to Section 5410). Even if the applicant's evidence of "new and further disability" is weak, the applicant should also allege good cause under Section 5803, citing mistake of fact, newly discovered evidence, or inequitable prior award. This gives the Board an alternative ground for reversal if the Section 5410 evidence is insufficient.[1][5]

Apportionment Challenges. If the applicant's medical evidence establishes that a significant portion of any worsening is attributable to the original injury (rather than to non-industrial causes), this should be explicitly preserved in the record for appeal. If the WCJ fails to properly analyze apportionment, the Board may be more receptive to an appeal challenging the apportionment determination.[1][17]

Procedural Defects in Insurer's Opposition. If the insurer's response to the petition is procedurally defective (lacks verification, lacks proof of service, etc.), this should be flagged at trial and preserved in the record. If the WCJ overlooks the defect, the Board may be more receptive on appeal to an argument that the insurer's evidence should be excluded.[1][6]

## B. Standard of Review and Burden Allocation on Appeal

When the WCAB reviews a WCJ's decision denying a reopening petition, the Board applies the "substantial evidence" standard of review.[1][5] The Board does not reweigh evidence or substitute its judgment for the WCJ's; rather, the Board determines whether the record contains "substantial evidence" to support the WCJ's findings.[1][5] Substantial evidence is evidence that is reasonable and capable of supporting the finding; it must be more than minimal or token evidence.[1][5]

If the evidence is conflicting, the WCJ has discretion to weigh it and reach conclusions. The Board will not disturb the WCJ's credibility determinations or weighing of conflicting evidence if substantial evidence supports the WCJ's conclusion.[1][5] However, if the record contains no substantial evidence supporting the WCJ's finding, or if the WCJ has misapplied the law, the Board may reverse.[1][5]

## C. Certification vs. Appeal Strategy

In some cases, rather than appealing directly to the WCAB, the applicant may consider asking the WCJ to "certify" the case to the WCAB for decision instead of having the WCJ issue a decision. Certification is used sparingly and typically only when issues of law are predominant over factual questions.[1] However, if the reopening case involves novel legal questions about the scope of Section 5410, certification could be strategically valuable.[1]

## D. Timing of Appeals and Mandatory Stay Motions

If the applicant intends to appeal a WCJ's denial of a reopening petition, the applicant must file the Petition for Reconsideration with the WCAB within 20 days of the WCJ's decision.[1][5][6] Per Title 8, Section 10960, if the applicant wishes to automatically stay enforcement of the WCJ's order while the appeal is pending, the applicant must file the Petition for Reconsideration within 20 days; failure to do so means the WCJ's order becomes final and enforceable immediately.[1][5][6]

Additionally, if the applicant is facing removal from a rehabilitation program, job loss, or loss of benefits due to the WCJ's order, the applicant may seek an emergency stay pending appeal. Such requests should be made immediately upon learning of the adverse decision.[1][5][6]

## XI. Alternative Strategies and Contingency Planning

### A. Plan B Options When Primary Reopening Strategy Faces Obstacles

If the applicant's reopening petition faces significant obstacles (weak medical evidence, proximity to five-year deadline, insurer strong rebuttal evidence), alternative strategies should be considered.

Strategy One: Reopening Under "Good Cause" (Section 5803) Rather Than "New and Further Disability" (Section 5410). If the applicant has evidence of mistake of fact or newly discovered evidence that renders the original award inequitable, even if there is no clear "new and further disability," the applicant should develop the Section 5803 argument as a backup.[1][4][5]

Strategy Two: Requesting New Medical Treatment Without Reopening. If the applicant's case includes an award of future medical benefits, the applicant may request authorization for new medical treatment without

formally reopening the case. This approach avoids the burden of proving "new and further disability" and simply requires showing that the treatment is medically necessary and related to the accepted injury.[1][2][8]

**Strategy Three: Cumulative Trauma Claim for Related but Distinct Injury.** If the applicant has continued working in the same or similar job and has developed new symptoms attributable to continuation of the same work activities, the applicant might file a NEW workers' compensation claim for cumulative trauma (rather than reopening the prior claim).[1] This strategy essentially "resets" the clock and allows the applicant to proceed through the workers' compensation system as if filing an initial claim, though this also requires proving compensability and may invite insurer argument about apportionment between the prior claim and the new claim.[1]

**Strategy Four: Targeting Smaller Reopening Remedy.** If the applicant cannot establish a substantial increase in permanent disability but can establish entitlement to additional medical treatment or a brief period of temporary disability, the applicant should frame the reopening petition around the achievable remedy rather than seeking a large permanent disability increase that might be difficult to prove.[1][5]

## B. Time-Sensitive Decisions Requiring Immediate Action

**Decision One: Whether to File Skeletal Petition or Wait for Complete Evidence.** If the applicant is within 90 days of the five-year deadline and does not yet have complete medical evidence, the applicant must decide whether to file a skeletal petition immediately (to preserve jurisdiction) or to wait and risk missing the deadline.[1][5][12] The Nickelsberg and Fitzpatrick decisions indicate that a skeletal petition is permissible and preserves jurisdiction for later development of evidence.[1][5][12] However, filing a skeletal petition should be done only after careful consideration of case facts, as it signals weakness and provides the insurer opportunity to prepare its defense.[1][5][12]

**Decision Two: Whether to Settle or Litigate.** As the reopening case proceeds toward trial or settlement conference, the applicant must decide whether to settle the case for a negotiated amount or to proceed to trial and risk a complete denial of the petition.[1][5] Settlement considerations should include: likelihood of success at trial, amount offered by insurer vs. expected value if applicant prevails, applicant's ability to withstand litigation costs and delays, and applicant's health status (if health is declining, obtaining certainty through settlement may be preferable).[1][5]

## C. Discretionary Relief Opportunities and Supplemental Strategies

**Supplemental Job Displacement Voucher (SJDV).** If the applicant's reopening petition results in a permanent disability rating increase that reaches certain thresholds, the applicant may become newly eligible for a Supplemental Job Displacement Voucher (up to \$6,000 for retraining) or a Return-to-Work Supplement (up to \$5,000).[1][2][8] The applicant's attorney should ensure that these supplemental benefits are requested and included in the reopening award if the permanent disability rating is increased.[1][2][8]

**Vocational Rehabilitation.** If the applicant's increased disability prevents return to the prior job, the applicant may seek vocational rehabilitation services to identify and train for alternative employment.[1][2] Vocational rehabilitation is a separate benefit stream from disability payments and can provide real value to applicants facing long-term functional limitations.[1][2]

**Medicare Set-Aside (MSA) Considerations.** If the applicant is approaching Medicare eligibility age (typically 65) and is receiving a substantial settlement or award from the reopening petition, MSA considerations may apply. Under CMS guidelines, if a settlement amount for future medical expenses exceeds \$25,000 and the applicant is a Medicare beneficiary (or will be within 30 months), the parties may be required to establish an MSA to protect Medicare's interests.[1][18][19] This is a complex area requiring specialized expertise and should be addressed with accounting and tax professionals.[1][18][19]

## XII. Ethical and Professional Conduct Considerations

### A. California Rules of Professional Conduct Applicability

An attorney representing an applicant in a workers' compensation reopening proceeding must comply with the California Rules of Professional Conduct. Key provisions include:

Rule 1.1 (Competence). The attorney must provide competent representation, which requires legal knowledge, skill, preparation, and diligence commensurate with the matter.[1] Workers' compensation law is sufficiently specialized that an attorney without specific experience in workers' compensation practice should either obtain that experience through co-counsel, CLE courses, or mentorship, or should decline the representation.[1] Competence is particularly critical in reopening petitions where statutory deadlines and procedural requirements are strictly enforced.[1]

Rule 3.4 (Candor to Tribunal). An attorney must not make false statements of material fact or law to a tribunal, must disclose controlling adverse authority in the jurisdiction if not disclosed by opposing counsel, and must maintain candor throughout proceedings.[1] This rule prohibits an attorney from presenting inflated permanence disability claims or mischaracterizing medical evidence.[1]

Rule 1.7 (Conflict of Interest). Before accepting representation of an applicant in a reopening petition, the attorney must determine whether any conflicts of interest exist—for example, if the attorney previously represented the insurer in an unrelated matter, conflicts could arise.[1] Additionally, if the applicant has claims against a third party (such as a manufacturer of defective equipment that contributed to the injury), the attorney should consider whether pursuing the workers' compensation reopening might affect the third-party claim.[1]

#### B. Fee Arrangements and Applicant Notification

California workers' compensation practice typically involves contingent fee arrangements, where the attorney receives a percentage of any recovery (typically 15-25% of awards or settlements) plus reimbursement of costs.[1] Before commencing representation, the attorney must provide the applicant with a written fee agreement complying with California Rules of Professional Conduct Rule 1.5, which requires that the fee agreement must be in writing, must clearly explain the fee arrangement, and must disclose the applicant's right to seek independent review of the fee by a state bar fee arbitration committee.[1]

Additionally, the applicant should receive written communication explaining the reopening process, likely outcomes, timeline expectations, and the applicant's responsibility to keep medical appointments and provide information requested by the attorney.[1]

#### C. File Documentation and Record Retention Standards

An attorney handling a reopening petition must maintain thorough file documentation, including:

Original petition and all supporting documents filed with the WCAB

All correspondence with opposing counsel

All medical records and evaluations obtained

WCJ decisions and Board rulings

Notes of witness interviews, medical consultation, and strategic discussions

Billing records and expense documentation

Records should be retained for at least three years following case closure, and preferably for the life of the file, as statutes of limitations may run longer.[1]

### XIII. Risk Warnings and Disclaimer Language

#### A. Inherent Risks in Reopening Litigation

Applicants should understand that reopening a workers' compensation claim, while permissible under California law, carries substantial risks:

**Timing Risk.** If the five-year deadline passes, the petition will be denied regardless of the merits. Filing close to the deadline provides minimal margin for error if procedural defects require refiling or if court scheduling delays occur.[1][2][4][5]

Evidentiary Risk. Medical evidence must establish a demonstrable change in condition. If medical opinions are equivocal or merely represent different medical interpretations rather than evidence of actual worsening, the petition may be denied despite reasonable applicant arguments.[1][5][8]

Settlement Finality Risk. If the case was resolved by Compromise and Release settlement, the case cannot be reopened. Applicants who accepted C&R settlements often later regret the decision when conditions worsen, but no legal remedy exists.[1][2][6][13]

Causation Risk. Even if the applicant's condition has worsened, proving that the worsening is causally related to the original industrial injury (rather than to natural aging, degenerative disease, intervening illness, or applicant's failure to follow medical advice) can be difficult and may fail despite the applicant's good-faith efforts.[1][5][8]

Appellate Risk. If the WCJ denies the petition, appellate review is limited and reversal is not assured, even if the applicant's evidence is credible.[1][5]

## B. Irreversible Consequences

Once a reopening petition is filed and decided (whether favorably or unfavorably), the decision generally becomes final except for appeal.[1][5] If the decision is adverse, the applicant cannot simply re-file the same petition; instead, the applicant must seek relief through Petition for Reconsideration to the WCAB or through Writ of Review to Superior Court.[1][5]

Additionally, if the applicant previously settled the case by Compromise and Release, reopening is not possible regardless of subsequent worsening, and this consequence is permanent and cannot be undone.[1][2][6][13]

## C. Collateral Consequences in Other Legal Contexts

An applicant should be aware that workers' compensation proceedings may have impacts in other legal contexts:

Social Security Disability. If the applicant is also receiving Social Security Disability Insurance (SSDI), changes to workers' compensation awards could affect SSDI payments (offset under federal law).[1]

Unemployment Insurance. In some circumstances, workers' compensation benefits might affect unemployment insurance eligibility or payment amounts.[1]

Personal Injury Litigation. If the applicant has a pending personal injury lawsuit against a third party (for example, a manufacturer whose defective equipment caused the industrial injury), the workers' compensation proceeding and results could affect the third-party claim.[1]

Creditor Claims and Bankruptcy. Workers' compensation awards may be subject to garnishment for child support, taxes, or other creditor claims; applicants with debt should consider these consequences.[1]

## D. Information Requiring Expert Consultation

Applicants should be directed to appropriate experts for matters beyond the scope of workers' compensation legal representation:

Tax Issues. A certified public accountant or tax attorney should review MSA accounting, Medicare Set-Aside implications, and the tax treatment of workers' compensation awards.[1][18][19]

Family Law Issues. If the applicant's marital status is in flux or if there are pending family law proceedings, a family law attorney should assess how a workers' compensation award might affect spousal support, child support, or property division obligations.[1]

Estate Planning. If the reopening award results in a substantial lump-sum payment, the applicant should consult an estate planning attorney regarding testamentary documents and asset protection strategies.[1]

Vocational Rehabilitation. If the reopening petition results in increased disability findings, a vocational rehabilitation consultant can assess retraining opportunities and employment prospects.[1]

## XIV. Complete Legal Citations and Statutory References

## A. Statutory Authorities

| Citation | Authority | Reference |

|-----|-----|-----|

| Cal. Lab. Code Section 5400 | Statute of Limitations for Initial Claims | [1][2] |

| Cal. Lab. Code Section 5405 | Statute of Limitations - One Year Deadline | [1][2] |

| Cal. Lab. Code Section 5410 | Five-Year Reopening Right for New and Further Disability | [1][2][3] |

| Cal. Lab. Code Section 5803 | Continuing Jurisdiction and Good Cause | [1][4][5] |

| Cal. Lab. Code Section 4060 | Request for Medical Evaluation | [1][16] |

| Cal. Lab. Code Section 4062.2 | Qualified Medical Evaluator Panel Procedures | [1][16] |

| Cal. Lab. Code Section 4067 | Use of Same Medical Evaluator on Reopening | [1][16] |

| Cal. Lab. Code Section 4610 | Utilization Review Procedures | [1][7] |

| Cal. Lab. Code Section 4656 | Temporary Disability Benefit Limits | [1][2][11] |

| Cal. Lab. Code Section 4660 | Permanent Disability Rating - General | [1][14] |

| Cal. Lab. Code Section 4660.1 | Permanent Disability Rating Schedule (2013 onward) | [1][14] |

| Cal. Lab. Code Section 4663 | Apportionment of Permanent Disability | [1][17] |

| Cal. Lab. Code Section 5950 | Writ of Review from Superior Court | [1][5] |

## B. Regulatory Citations

| Citation | Authority | Reference |

|-----|-----|-----|

| Title 8, Section 10510 | Petitions and Answers - Procedural Requirements | [1][6] |

| Title 8, Section 10534 | Petition to Reopen Under Section 5803 | [1][6] |

| Title 8, Section 10536 | Petition for New and Further Disability | [1][6][12] |

| Title 8, Section 10945 | Required Content of Petitions for Reconsideration | [1][6] |

| Title 8, Section 10960 | Petition for Reconsideration Timelines | [1][5][6] |

| Title 8, Section 30 | Qualified Medical Evaluator Panel Request Procedures | [1][16] |

## C. Landmark Case Holdings

| Case Citation | Key Holding | Reference |

|-----|-----|-----|

| Sutton v. Industrial Acc. Com., 46 Cal.2d 791 (1956) | Five-year deadline is jurisdictional; runs from date of injury | [1][4][14] |

| Standard Rectifier Corp. v. Workmen's Comp. App. Bd., 65 Cal.2d 287 (1966) | "Demonstrable change" standard; change must be real, new, and causally related | [1][5][8][22] |

| Westvaco Corp. v. Workers' Comp. Appeals Bd., 27 Cal.App.3d 940 (1972) | Defines "new and further disability" as "disability resulting from some demonstrable change" | [1][5][7] |

| Fitzpatrick v. Workers' Comp. Appeals Bd., 27 Cal.App.3d 228 (1970) | Medical documentation not required at time of petition filing | [1][5] |

| Nolan v. Workers' Comp. Appeals Bd., 70 Cal.App.3d 122 (1977) | Skeletal petitions permitted; only real requirements are timely filing and notice | [1][5][7] |

| Wallin v. Workers' Comp. Appeals Bd., 20 Cal.App.3d 289 (1971) | Newly discovered evidence requiring mere disagreement with prior opinion is insufficient | [1][5] |

| Merritt-Chapman & Scott Corp. v. Industrial A. C., 6 Cal.2d 314 (1936) | Standards for newly discovered evidence | [1][5][10] |

| Nickelsberg v. Workers' Comp. Appeals Bd., 54 Cal.3d 288 (1991) | Medical evidence obtained post-injury may support timely petition | [1][5][12] |

| Pizza Hut v. Workers' Comp. Appeals Bd., 76 Cal.App.3d 818 (1980).pdf | Categories of new and further disability | [1][5][7] |

| Martino v. Workers' Comp. Appeals Bd., 103 Cal.App.4th 485 (2002) | Five-year deadline is jurisdictional; expiration deprives Board of modification power | [1][5][9] |

| County of San Diego v. Workers' Comp. Appeals Bd. (Pike), 21 Cal.App.5th 1 (2018) | Temporary disability cap applies despite reopening; Section 4656(c)(2) limits aggregate TD | [1][2][11] |

| Applied Materials v. Workers' Comp. Appeals Bd., 64 Cal.App.5th 1042 (2021) | Contemporary definition of new and further disability; includes demonstrable change | [1][5][3] |

| Sarabi v. Workers' Comp. Appeals Bd., 151 Cal.App.4th 920 (2007) | Timely petition filing + need for new medical treatment within 5 years = Board jurisdiction | [1][2][5][11] |

#### D. Administrative Guidance and Forms

| Resource | Authority | Reference |

|-----|-----|-----|

| DWC/WCAB Form 42 (Petition to Reopen) | Official Petition to Reopen Form | [1][6][12] |

| DIR Injured Worker Guide 11 - How to File a Petition to Reopen | Official Procedural Guidance | [1][6] |

| Schedule for Rating Permanent Disabilities (PDRS) | Current Permanent Disability Rating Methodology | [1][14] |

| DWC District Offices and Locations | Contact Information for WCAB Offices | [1][15] |

| WCAB Rules of Practice and Procedure - Full Text | Complete WCAB Rules (Title 8) | [1][6] |

#### XV. Complete Source Citations and Bibliography

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California Labor Code Section 5405 - One-Year Statute of Limitations

California Labor Code Section 5410 - Five-Year Right to Reopen for New and Further Disability

California Labor Code Section 5803 - Continuing Jurisdiction of Appeals Board

California Labor Code Section 4062.2 - Qualified Medical Evaluator Panel Procedures

California Labor Code Section 4067 - Use of Same Medical Evaluator Upon Reopening

California Labor Code Section 4610 et seq. - Utilization Review Requirements

California Labor Code Section 4656 - Temporary Disability Benefits and Aggregate Limits

California Labor Code Section 4660 - Permanent Disability Rating (General)

California Labor Code Section 4660.1 - Permanent Disability Rating Schedule (2013 Onward)

California Labor Code Section 4663 - Apportionment of Permanent Disability

California Labor Code Section 5950 et seq. - Writ of Review

Title 8, California Code of Regulations Section 10510 - Petitions and Answers

Title 8, California Code of Regulations Section 10534 - Petition to Reopen Under Section 5803

Title 8, California Code of Regulations Section 10536 - Petition for New and Further Disability

Title 8, California Code of Regulations Section 10945 - Required Content of Petitions for Reconsideration

Title 8, California Code of Regulations Section 10960 - Petition for Reconsideration Timelines

Title 8, California Code of Regulations Section 30 - Qualified Medical Evaluator Panel Procedures

#### B. Appellate Decisions (Hyperlinked)

Sutton v. Industrial Acc. Commission, 46 Cal.2d 791 (1956) - Five-Year Jurisdictional Deadline

Standard Rectifier Corp. v. Workmen's Comp. App. Bd., 65 Cal.2d 287 (1966) - Demonstrable Change Standard

Westvaco Corp. v. Workers' Comp. Appeals Bd., 27 Cal.App.3d 940 (1972) - Definition of New and Further Disability

Fitzpatrick v. Workers' Comp. Appeals Bd., 27 Cal.App.3d 228 (1970) - Medical Documentation Not Required at Filing

Nolan v. Workers' Comp. Appeals Bd., 70 Cal.App.3d 122 (1977) - Skeletal Petition Requirements

Wallin v. Workers' Comp. Appeals Bd., 20 Cal.App.3d 289 (1971) - Newly Discovered Evidence Standards

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Pizza Hut of San Diego, Inc. v. Workers' Comp. Appeals Bd., 76 Cal.App.3d 818 (1980) - Categories of New and Further Disability.pdf)

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Applied Materials v. Workers' Comp. Appeals Bd., 64 Cal.App.5th 1042 (2021) - Contemporary New and Further Disability Definition

Sarabi v. Workers' Comp. Appeals Bd., 151 Cal.App.4th 920 (2007) - Board Jurisdiction Upon Timely Filing and Medical Need

#### C. WCAB Panel Decisions (Recent 2024-2025)

Anabel Diaz v. San Bernardino County Aging Services, ADJ11237937 (2024) - Timely Filing and Medical Sufficiency

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Warren Harvey v. Employer, ADJ17547374 (2026) - Recent Reopening Decision and Reconsideration Standards

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#### D. Official Government Publications and Forms

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#### Conclusion

The right to petition for reopening of a California workers' compensation claim under Labor Code Section 5410 is a substantial protection for injured workers whose conditions worsen or change after the original award or settlement.<sup>[1][2][3]</sup> However, this right is circumscribed by a jurisdictional five-year deadline running from the date of injury, not from later events such as settlement or case closure.<sup>[1][2][4][5]</sup> The applicant must establish not merely that their condition has worsened, but that it has demonstrably changed in

ways constituting "new and further disability" as defined by controlling California appellate precedent.[1][5][8] Additionally, the applicant's settlement structure—specifically whether the case was resolved by Stipulated Award (reopenable) or Compromise and Release (generally non-reopenable)—determines whether reopening is even possible.[1][2][6][13]

Successful reopening petitions require strategic coordination of legal advocacy, medical evidence development, and procedural compliance. The applicant and their counsel should move expeditiously to gather medical evidence establishing demonstrable change, calculate the precise five-year deadline to ensure timeliness, verify the settlement structure to confirm reopenable status, and prepare comprehensive petition documentation complying with WCAB rules.[1][5][6] An attorney's failure to calculate the deadline correctly or to comply with procedural filing requirements can result in complete loss of the reopening right despite the strength of the underlying merits.[1][2][4][5]

The current legal landscape reflects a consistent body of controlling appellate precedent, with recent WCAB decisions continuing to enforce the five-year deadline strictly and scrutinizing claims of "new and further disability" carefully to ensure that medical opinions reflect genuine condition changes rather than merely different medical interpretations.[1][2][4][5] Nevertheless, for injured workers with clear objective evidence of worsening conditions, medical recommendations for new treatment not previously needed, or emergence of new related disability within the five-year window, the reopening petition remains a valuable and potentially life-changing legal remedy.

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