

Legal Research Report: California Workers' Compensation Petition for New and Further Disability (PART-A INJURED WORKERS ANALYSIS)

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CALIFORNIA WORKERS' COMPENSATION: PETITION FOR NEW AND FURTHER DISABILITY

If you were hurt at work and your workers' compensation case was closed, California law may allow you to reopen it — but only under certain conditions and within strict time limits. This report explains when you can reopen a closed claim, what you must prove, and what steps to take. Whether you can reopen depends on three things: (1) how your original case was settled, (2) whether you are still within five years of the date of your injury, and (3) whether your medical condition has gotten worse in a way that meets the legal definition of "new and further disability."

Important: If your case was settled with a Compromise and Release (C&R) agreement, you generally cannot reopen it. If your case was settled with a Stipulation with Lifetime Medical Award, you may be able to reopen it if you act within five years of the injury date. This deadline is strict and cannot be extended.

Part 1: The Law That Allows Reopening

This section explains the California laws that give you the right to reopen a closed workers' compensation case.

The Main Statute: Labor Code Section 5410

California Labor Code § 5410 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-2/section-5410/>) is the law that allows you to reopen a workers' compensation case. It says that an injured worker can start new proceedings to collect additional compensation within five years after the date of injury, if the original injury has caused new and further disability. This means the Workers' Compensation Appeals Board (WCAB) — the state agency that decides workers' compensation disputes — keeps the power to hear your case during that five-year window.

This law creates an exception to the normal one-year deadline for filing a workers' compensation claim under California Labor Code § 5405 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-2/section-5405/>). However, it is a narrow exception. You can only reopen for new and further disability caused by the same original work injury, and only within the five-year period.

Additional Authority: Labor Code Section 5803

California Labor Code § 5803 (https://app.sullivanoncomp.com/external_resources?type=LAB&number=5803) gives the WCAB broader "continuing jurisdiction" — meaning it can change, cancel, or update any decision or award for "good cause" within five years from the date of injury. Good cause can include mistakes of fact or law, newly discovered evidence, or fraud. Like Section 5410, this power ends after five years.

The Hard Cutoff: Labor Code Section 5804

California Labor Code § 5804 (<https://law.justia.com/codes/california/2007/lab/5900-5911.html>) reinforces the deadline. It says that no award can be changed after five years from the date of injury, except through a petition filed within that five-year window. Once five years pass, the WCAB loses the power to change your award — with very limited exceptions for certain progressive diseases.

Filing Rules and Regulations

When you file a petition to reopen, you must follow the procedural rules in Title 8, California Code of Regulations § 10534 (<https://www.dir.ca.gov/t8/10534.html>), which requires you to describe in specific detail the facts that support your request. For petitions based on new and further disability, Title 8, California Code of Regulations § 10536 (<https://www.dir.ca.gov/t8/10536.html>) requires you to explain specifically what new disability you have and why it is connected to your original work injury. Vague statements like "my condition got worse" are not enough — you must provide detailed facts.

The official form you will use is the DWC/WCAB Form 42 (Petition to Reopen) (https://www.dir.ca.gov/dwc/forms/DWC_Form42.pdf). You must sign this form under penalty of perjury (meaning you swear the facts are true) and send copies to all other parties in the case, including the insurance company.

Part 2: Settlement Types — The Most Important Question

Before anything else, you must determine what type of settlement closed your original case. This is the single most important factor in deciding whether you can reopen your claim.

Stipulation with Request for Award

A Stipulation with Request for Award (sometimes called a "Stipulation settlement" or "Stip") is an agreement where you and the employer or insurance company agree on certain facts about your injury — such as what body parts were hurt, the type of injury, and the permanent disability rating. Under this type of settlement, your future medical care stays open, meaning the insurance company must continue paying for medical treatment related to your injury. Because the case is not fully closed, the WCAB keeps the power to reopen it under Cal. Lab. Code § 5410 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-2/section-5410/>) and Cal. Lab. Code § 5803 (https://app.sullivanoncomp.com/external_resources?type=LAB&number=5803) if your condition gets worse.

Compromise and Release

A Compromise and Release (C&R) settlement is very different. In a C&R, the insurance company pays you one lump sum of money, and in exchange, you give up all your rights to future benefits — including future medical care, additional disability payments, and any claims for complications. A C&R closes your case completely and permanently.

Critical: If your case was settled by Compromise and Release, you generally cannot reopen it. The only exception is extrinsic fraud — meaning the other side actively prevented you from presenting your case through deception. This is an extremely difficult standard to meet. Simply disagreeing with the settlement amount or discovering your condition worsened is not enough. As the court explained in Pizarro v. Workers' Comp. Appeals Bd. (1976) 54 Cal.App.3d 887, even intrinsic fraud (such as lying at a hearing) is not sufficient; only fraud that prevented you from participating in the case at all may justify reopening.

Important: A judge cannot force you to accept a C&R. Only you and the employer can voluntarily agree to this type of settlement. If you are currently considering a C&R, understand that signing it means you can never reopen this claim, no matter how much worse your condition gets.

How to Check Your Settlement Type

Look at the documents from your original case. The settlement agreement will clearly state whether it is a "Stipulations with Request for Award" or a "Compromise and Release Agreement." If you cannot find your documents, you can contact the WCAB office where your case was filed and request copies.

Part 3: The Five-Year Deadline

This section explains the strict time limit for filing a petition to reopen and how it is calculated.

How the Deadline Works

Under Cal. Lab. Code § 5410 (<https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-2/section-5410/>), you have five years from the date of your injury to file a petition to reopen. This is a jurisdictional deadline, which means the WCAB completely loses the power to hear your case once five years have passed.

Important: The five-year clock starts from the date of injury — not the date of your settlement, not the date you last saw a doctor, and not the date your symptoms got worse. You must identify the exact date of injury listed in your original claim.

For cumulative trauma injuries (injuries caused by repeated stress over time, such as repetitive motions or ongoing exposure to harmful conditions), the date of injury is determined under Cal. Lab. Code § 5412 (<https://bpfkfirm.com/labor-code-5500-5-date-of-injury/>). This date is when you first developed a disability that you knew (or should have known) was caused by your work.

The Deadline Is Strictly Enforced

Courts and the WCAB enforce this deadline without exception. In *Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485 (<https://blog.levitzlegalgroup.com/understanding-petitions-to-reopen-in-california-workers--compensation--what-you-need-to-know/>), the court held that once the five-year period expires, the WCAB loses all power to change the award. In *Earl Moss*, Adjudication No. ADJ4668467 (WCAB 2024) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2024/EarlMOSS-ADJ4668467.pdf>), a petition was denied because it was filed ten years after the injury date, even though the worker's condition had clearly worsened. The judge stated that "since the petition to re-open was filed 10 years after the date of injury... applicant's petition to reopen is time barred."

In *Courtney Hilton*, Adjudication No. ADJ10305680 (WCAB 2024) (<https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Courtney-HILTON-ADJ10305680.pdf>), the WCAB rejected an argument that the five-year period had not started because the worker's employment had never formally ended. The board held that the deadline runs from the date of injury as established under the law — not from when employment ended.

Filing Within the Deadline Preserves Your Rights

There is one important protection: if you file your petition before the five-year deadline, the WCAB keeps the power to decide your case even if the actual hearing or decision happens after the five-year anniversary. As stated in the *Hilton* decision, "if a petition to reopen is filed within the five-year period, the Board has jurisdiction to decide the matter beyond the five-year period." You must file the petition on time, but you do not need to finish the entire case within five years.

Part 4: What "New and Further Disability" Means

This section explains the legal standard you must meet to reopen your case. You cannot reopen simply because you are still in pain — you must show your condition has changed in specific ways.

The Legal Standard

The current definition of "new and further disability" comes from the controlling case *Applied Materials v. Workers' Comp. Appeals Bd.* (2021) 64 Cal.App.5th 1042 (<https://law.justia.com/cases/california/court-of-appeal/2021/h047148.html>). The court held that new and further disability means disability resulting from a "demonstrable change" in the worker's condition. This builds on the earlier standard from *Standard Rectifier Corp. v. Workmen's Comp. App. Bd.* (1966) 65 Cal.2d 287 (<https://law.justia.com/cases/california/supreme-court/2d/65/287.html>).

"Demonstrable change" means an objective, measurable, or clinically observable change from your condition at the time of the original award. Simply continuing to have the same pain or symptoms is not enough. You must show something has actually gotten worse or different.

Types of Changes That Qualify

The *Applied Materials* court identified several categories of change that can support reopening:

- Gradual increase in disability — Your condition has slowly worsened over time, with more pain, less ability to move, or reduced ability to work. For example, you originally had limited range of motion, but now it is significantly more restricted.
- Recurrence of temporary disability — You returned to work after the original injury, but your condition flared up and you can no longer work again. Temporary disability means a condition that prevents you from working while you are recovering.
- New need for medical treatment — You now need surgery, therapy, injections, or other treatment that was not needed when the original case closed. The treatment must be new, not a continuation of the same treatment you were already receiving.
- Conversion from temporary to permanent disability — Your injury was originally expected to heal, but it turns out to be lasting. Permanent disability means an ongoing impairment that will not go away.
- New body parts affected — Your original injury has caused problems in other parts of your body. For example, an ankle injury caused you to walk differently, and now your hip is injured as a result.

What Does NOT Qualify

The following do not meet the legal standard for reopening:

- Continuing to have the same symptoms you had when the case closed

- General aging or natural deterioration not caused by the work injury
- Disagreement with the original doctor's opinion (the court in Wallin v. Workers' Comp. Appeals Bd. (1971) 20 Cal.App.3d 289 held that a different medical opinion alone is not newly discovered evidence)
- Subjective pain complaints without objective medical findings supporting a change

Your Burden of Proof

You bear the burden of proof, meaning it is your job to show both that your petition is timely and that new and further disability exists. You must present medical evidence supporting your claim. However, the California Supreme Court in Nickelsberg v. Workers' Comp. Appeals Bd. (1991) 54 Cal.3d 288 (<https://law.justia.com/cases/california/supreme-court/3d/54/288.html>) clarified that you do not need to obtain your medical evidence within the five-year period. You can gather medical evidence after the deadline, as long as you filed the petition itself on time.

Part 5: How to File a Petition to Reopen

This section walks you through the steps to file your petition, from preparation through filing.

Step 1: Confirm Your Settlement Type

Get a copy of your original settlement agreement. If it was a Compromise and Release, you generally cannot reopen. If it was a Stipulation with Request for Award, proceed to Step 2.

Step 2: Calculate Your Deadline

Find the exact date of injury in your original claim documents. Add five years. If that date has not yet passed, you can file. If it has passed, the WCAB cannot hear your case.

Step 3: Gather Medical Evidence

Collect all medical records from the date of your original settlement to the present. Focus on records that show your condition has changed. Talk to your treating doctor and ask whether there is objective evidence that your condition has worsened, you need new treatment, or your disability has increased.

Step 4: Consider the QME Process

A Qualified Medical Evaluator (QME) is a doctor certified by the state to perform independent medical evaluations in workers' compensation cases. Under Cal. Lab. Code § 4067 (<https://blog.levitzlegalgroup.com/understanding-petitions-to-reopen-in-california-workers--compensation--what-you-need-to-know/>), if you had a medical evaluator in your original case, you should return to the same evaluator if possible. This allows the doctor to compare your current condition directly to your condition at the time of the original evaluation. If the original evaluator is unavailable, you can request a new QME panel from the Division of Workers' Compensation (<https://www.dir.ca.gov/dwc/forms.html>).

Step 5: Prepare and File the Petition

Assemble your filing in this order:

1. Document Cover Sheet (identifies your case number, injury date, body parts, and hearing office)
2. Document Separator Sheet (labeled "Petition to Reopen")
3. DWC/WCAB Form 42 (Petition to Reopen) (https://www.dir.ca.gov/dwc/forms/DWC_Form42.pdf) — completed with specific factual details about how your condition has changed
4. Verification page signed under penalty of perjury
5. Document Separator Sheet (for Proof of Service)
6. Proof of Service by Mail confirming you sent copies to all other parties

Send the original to your local WCAB office and copies to the insurance carrier and any defense attorney. Follow the instructions in the DWC Injured Worker Guide 11 — How to File a Petition to Reopen (<https://www.dir.ca.gov/dwc/iwguides/IWGuide11.pdf>). Do not fold or staple your documents. Use a large envelope.

Step 6: Timing

File well before your deadline. If you file in the final weeks and the WCAB finds a problem with your paperwork, you may not have time to fix it.

Important: Aim to file at least 60–90 days before your five-year deadline to allow time for corrections if needed.

Part 6: Medical Evidence You Will Need

Strong medical evidence is the foundation of a successful petition to reopen. This section explains what evidence to gather and how it should be presented.

Treating Physician Records

Your treating doctor's records should document:

- Dates of each visit or treatment
- Objective clinical findings (range of motion measurements, strength tests, diagnostic results)
- Whether your condition is stable, improving, or worsening
- Any new treatments recommended since the original settlement
- A comparison between your current condition and your condition at the time of the original award

QME Report Requirements

If you obtain a supplemental QME evaluation, the report should specifically:

- Compare your current condition to the condition documented in the original evaluation
- Identify specific measurable changes (for example: "range of motion decreased from 45 degrees to 30 degrees")
- Explain whether the change is caused by the original work injury, not by aging or unrelated conditions
- State a clear opinion about whether new and further disability exists under the legal standard
- Recommend any additional medical treatment needed

Note: Effective April 1, 2026, new regulations require QMEs to complete 16 hours of continuing education (<https://www.dir.ca.gov/DIRNews/2026/2026-11.html>) for reappointment, including training in disability impairment rating and workers' compensation case law. This may improve the quality of QME reports.

Evidence Checklist

Prepare the following items to support your petition:

- Copy of the original Application for Adjudication and settlement agreement
- Confirmation of settlement type (Stipulation, not C&R)
- Timeline showing the date of injury and calculation proving you are within five years
- Chronological medical records from the original award to the present
- Records of any new treatments, surgeries, medications, or therapies
- Evidence of reduced ability to work (employer letters, functional capacity evaluations)
- Comparison of the original "permanent and stationary" report with current medical findings
- A written declaration from you describing how your condition has changed, signed under penalty of perjury

Part 7: Arguments For and Against Reopening

This section explains what arguments help your case and what arguments the insurance company will likely use against you.

Arguments That Support Reopening

- Objective medical deterioration — Imaging studies (MRI, X-ray) or clinical tests showing your condition has measurably worsened since the original award

- New surgery or treatment needed — A doctor has recommended a procedure that was not needed when the case closed
- Inability to work again — You returned to work but can no longer perform your duties because of the original injury
- New body parts affected — The original injury has caused problems in areas of your body not covered by the original award
- Continuous treatment — You have remained under medical care since the original settlement, showing an ongoing connection between your current problems and the work injury

Arguments the Insurance Company Will Make

- No real change occurred — Your records show the same symptoms you had before, not new disability
- Natural aging, not the work injury — Any worsening is due to normal aging or pre-existing conditions, not the original work injury
- Gaps in treatment — You did not seek medical care for a long time, suggesting the injury was not causing significant problems
- Records already showed these findings — The current medical findings were already known when the original case was settled
- The settlement was a C&R — If the original case was settled by Compromise and Release, the insurance company will argue the case is permanently closed

Realistic Assessment of Your Chances

Your chances are stronger if you have objective medical evidence of worsening, your doctor clearly states that new disability exists, the worsening is linked to the work injury, and your case was settled by Stipulation (not C&R). Your chances are weaker if your medical evidence is uncertain, there are long gaps in treatment, pre-existing conditions may explain the worsening, or the settlement was a C&R.

Part 8: Alternative Options If You Cannot Reopen

Even if you cannot reopen your case, other remedies may be available.

Independent Medical Review (IMR)

If the insurance company is denying medical treatment your doctor says you need, you may be able to challenge that denial through independent medical review (IMR). Under the Medical Treatment Utilization Schedule (MTUS) (<https://www.dir.ca.gov/dwc/mtus/mtus.html>), treatment that is reasonable and necessary to treat your work injury must be provided. IMR is a separate process from reopening and may allow you to get treatment approved even if your claim stays closed.

Penalties for Unreasonable Delay

If the insurance company is unreasonably delaying or denying benefits, you may seek penalties under Cal. Lab. Code § 5814 (<https://employeesfirstlaborlaw.com/labor-code-%C2%A75814-penalties-for-unreasonable-delay-or-denial/>). This law allows penalties of up to 25% of the delayed benefits or up to \$10,000. This is a separate claim from reopening.

New Cumulative Trauma Claim

If you are still working in a job that involves the same type of physical stress that caused your original injury, you may be able to file a new workers' compensation claim based on the continued exposure. Under Cal. Lab. Code § 5500.5 (<https://www.sullivanoncomp.com/blog/liability-for-cumulative-trauma-injury-under-lc-5500.5>), this would be a new claim — not a reopening of the old one — based on the ongoing harm from your current work.

Subsequent Injuries Benefits Trust Fund (SIBTF)

If you have multiple permanent disabilities that together exceed 70%, you may be eligible for additional benefits from the Subsequent Injuries Benefits Trust Fund under Cal. Lab. Code § 4751 (<https://www.dir.ca.gov/dwc/SIBTF-Report.pdf>). This fund provides extra compensation when a prior disability combines with a new work injury to create a severe combined disability.

Part 9: Costs, Timeline, and Practical Steps

Costs

- Filing fees — There is no charge to file a petition to reopen with the WCAB.
- Attorney fees — If you hire an attorney, the fee is typically 9–12% of any benefits you win, subject to WCAB approval. You do not pay out of pocket; the fee comes from your award. See the DWC Fee Disclosure Statement (Form 3) (<https://www.dir.ca.gov/dwc/forms/dwc3.pdf>).
- Medical evaluation costs — QME evaluations are usually paid by the insurance company. If you choose to get a private evaluation before filing, you may need to pay for that yourself.

Expected Timeline

- Pre-filing preparation: 1–3 months to gather records and consult with doctors
- Filing: Same day once documents are ready
- Insurance company response: 30 days after they receive your petition
- Settlement discussions: 30–90 days (variable)
- Trial scheduling: 60–180 days after filing
- Judge's decision: Several weeks to months after trial
- Appeal (if needed): 6–12 months or longer
- Total typical timeline: 6–18 months from filing to final decision

After Filing: What to Expect

After you file, the insurance company has 30 days to respond. They may agree to reopen voluntarily (especially if the medical evidence is clear), or they may contest it. If the case does not settle, a Workers' Compensation Judge (WCJ) will hold a trial and issue a written decision.

If Your Petition Is Denied

If the judge denies your petition, you can file a Petition for Reconsideration with the WCAB within 20 days under Cal. Lab. Code § 5903 (<https://law.justia.com/codes/california/2007/lab/5900-5911.html>). You must explain specifically why the judge's decision was wrong — for example, the judge overlooked medical evidence or applied the wrong legal standard. The WCAB must act on your petition within 60 days.

Part 10: Risk Warnings and Important Consequences

Warnings You Must Understand

Critical: *If your case was settled by Compromise and Release, it cannot be reopened. This is permanent and irreversible, except in the nearly impossible case of extrinsic fraud.*

Critical: *If five years have passed since your date of injury, the WCAB cannot hear your case. This deadline cannot be extended for any reason, no matter how severe your condition.*

Important: *If the WCAB denies your petition, appeal options are limited. The decision is likely final unless the judge made a clear legal error or ignored significant evidence.*

Important: *By filing a petition to reopen, you authorize the release of your medical information to the WCAB, the insurance company's lawyers, and potentially other parties. This information becomes part of the record.*

Important: *Anything you say in testimony can be used in other legal proceedings, such as a Social Security Disability application. Be truthful and consistent in all statements.*

The Insidious Progressive Disease Exception

A narrow exception to the five-year rule exists for insidious progressive diseases — conditions caused by work exposure that worsen gradually over many years and have a long delay between exposure and symptoms. In *General Foundry Service v. WCAB (Jackson)* (1986) 42 Cal.3d 331 (<https://www.sullivanoncomp.com/blog/wcab-cte-insidious-progressive-disease>), the California Supreme Court held that the WCAB may keep jurisdiction over permanent disability in these cases. Recognized examples include asbestosis, certain cancers, hepatitis C, and chronic traumatic encephalopathy (CTE). In a 2024 WCAB decision (<https://www.sullivanoncomp.com/blog/wcab-cte-insidious-progressive-disease>), CTE was

recognized as qualifying for this exception. This exception applies only in specific circumstances and requires strong medical evidence.

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Comprehensive Legal Research Report: California Workers' Compensation Petition for New and Further Disability

Executive Summary

California Labor Code Section 5410 provides injured workers with a limited but significant mechanism to reopen a closed workers' compensation claim within five years of the date of injury upon demonstration of "new and further disability" caused by the original industrial injury.[54] This research report addresses the statutory framework, case law requirements, procedural mechanisms, and strategic considerations governing petitions to reopen California workers' compensation claims. The ability to reopen depends critically on three dispositive factors: (1) the type of settlement reached (Compromise and Release versus Stipulation with Lifetime Medical Award), (2) the five-year jurisdictional deadline measured from the date of injury-not the settlement date, and (3) proof that the injured worker's condition has undergone a demonstrable change meeting the legal standard articulated in controlling appellate authority.

Client Risk Assessment: Medium to High, depending on settlement classification and temporal proximity to the five-year deadline. If the original claim was resolved by Compromise and Release agreement, the case cannot be reopened under any circumstances absent extrinsic fraud-a virtually insurmountable burden. If resolved by Stipulation with Lifetime Medical Award, the case may be reopened if filed within five years of the original injury date and supported by medical evidence documenting demonstrable change in condition. The window for action is finite and strictly enforced; missing the five-year deadline results in complete loss of jurisdiction regardless of condition severity or equitable considerations.

Qualitative Assessment of Likelihood of Success: Low to Medium, depending on strength of medical evidence. A successful petition to reopen requires more than mere persistence of symptoms or continuation of treatment. Courts require objective medical documentation showing the condition has worsened, new body parts are affected, a new need for medical treatment has arisen, or temporary disability has converted to permanent disability. The treating physician or qualified medical evaluator must link the demonstrable change to the original industrial injury with sufficient specificity to withstand scrutiny. Defendants routinely argue that apparent deterioration represents natural progression of an underlying condition rather than work-related disability, and the Workers' Compensation Appeals Board (WCAB) frequently denies reopening petitions when medical evidence is equivocal.

Primary Strategic Options: Option One involves filing a timely Petition to Reopen supported by current medical evidence from a treating physician or through the Qualified Medical Evaluator (QME) process, emphasizing objective findings and functional decline. This option carries medium risk but preserves access to additional medical care and potential permanent disability benefits. Option Two involves pursuing alternative remedies such as filing for independent medical review (IMR) if the claims administrator is denying reasonably necessary treatment, pursuing Labor Code Section 5814 penalties for unreasonable delay, or investigating whether distinct cumulative trauma claims might be viable based on continued occupational exposure. Option Three involves negotiating directly with the claims administrator for voluntary reopening or settlement of disputed issues without formal litigation, which may prove faster and less costly than full petition proceedings.

I. Legal Framework: Statutory Authority and Regulatory Requirements

Statutory Basis for Reopening Claims

The foundation for all petitions to reopen California workers' compensation claims rests on California Labor Code Section 5410, which provides in pertinent 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. The jurisdiction of the appeals board in these cases shall be a continuing jurisdiction within this period." [54] This statute creates an exception to the general one-year statute of limitations for filing workers' compensation claims established in Labor Code Section 5405. However, Section 5410 operates as a narrow carve-out: it permits reopening only for "new and further disability" caused by the original injury and only within the five-year window from the date of injury.

Complementing Section 5410, California Labor Code Section 5803 grants the Workers' Compensation Appeals Board broader "continuing jurisdiction" to "rescind, alter, or amend" any decision, order, or award

"for good cause" within five years from the date of injury.[16] Good cause under Section 5803 is broader than the "new and further disability" standard and may include mistake of fact or law, newly discovered evidence, or fraud.[16] However, Section 5803 jurisdiction terminates at the five-year mark; after that period expires, the WCAB may not modify an award except in narrowly defined circumstances (such as enforcement of existing awards or certain insidious progressive disease cases).

California Labor Code Section 5804 reinforces the temporal limitation: "No award of compensation shall be rescinded, altered, or amended after five years from the date of the injury except upon a petition by a party in interest filed within such five years and any counterpetition seeking other relief filed by the adverse party within 30 days of the original petition raising issues in addition to those raised by such original petition." [9] This statute establishes that once five years have elapsed from the date of injury, the WCAB's power to modify an award is effectively exhausted-with limited exceptions for insidious progressive diseases and certain enforcement proceedings.

Regulatory Requirements for Filing

The procedural requirements for invoking the WCAB's continuing jurisdiction are established in Title 8, California Code of Regulations Section 10534 (Petition to Reopen), which provides: "Petitions invoking the continuing jurisdiction of the Workers' Compensation Appeals Board under Labor Code section 5803 shall set forth specifically and in detail the facts relied upon to establish good cause for reopening." [33] For cases specifically seeking reopening based on new and further disability under Section 5410, Title 8 Section 10536 (Petition for New and Further Disability) states: "The jurisdiction of the Workers' Compensation Appeals Board under Labor Code section 5410 shall be invoked by a petition setting forth specifically and in detail the facts relied upon to establish new and further disability." [4] These regulations require pleading specificity; vague allegations of worsening condition without detailed factual predicate will not support jurisdiction.

The official petition form is DWC/WCAB Form 42 (Petition to Reopen), a standardized document that must be completed with specific factual allegations, signed under penalty of perjury, and served on all adverse parties and the claims administrator.[35] The form must be accompanied by a Document Cover Sheet and Document Separator Sheet, consistent with WCAB filing requirements. Additionally, Form 42 must include verification language confirming under penalty of perjury that the factual allegations are true and correct. Failure to include proper verification can result in the petition being rejected as deficient.

Settlement Type Determination: Dispositive Legal Distinction

The type of settlement reached on the original claim fundamentally determines whether a petition to reopen is even legally available. This distinction cannot be overstated and represents the single most critical threshold question in analyzing any reopening scenario.

Stipulation with Request for Award (Stipulation Settlement): Under a Stipulation with Request for Award, the injured worker and the employer/claims administrator agree on the facts of the industrial injury, including the compensable body parts, the nature of the injury, and the permanent disability rating (if applicable).[2][5] Critically, the future medical coverage and benefits are left open under a Stipulation settlement.[2][5] This means that the claims administrator retains an ongoing obligation to provide medical treatment for the compensable injury and its consequences. More importantly, because the case is not completely closed, the WCAB retains continuing jurisdiction under Sections 5410 and 5803 to reopen the case if new and further disability develops or if good cause to amend the award exists.[2][5] A Stipulation settlement represents an acknowledgment that the injury and causation are established, but leaves room for the condition to worsen or new manifestations to emerge.

Compromise and Release (C&R) Settlement: In stark contrast, a Compromise and Release settlement involves the employer or claims administrator making one lump-sum payment to the injured worker in exchange for the worker releasing the employer from all past, present, and future liability for the injury.[2][5] A C&R agreement typically closes the case entirely with finality. The critical distinction is that in a C&R, the injured worker is explicitly waiving all rights to seek additional benefits or medical treatment for the industrial injury; the lump sum is deemed to constitute full and final compensation for all aspects of the injury, including permanent disability, future medical care, and any unforeseen complications.[2][5] Importantly, a judge can never order that a case be settled by C&R-only the injured worker and employer can voluntarily agree to this type of settlement.[2]

The legal consequence is absolute: A Compromise and Release settlement cannot be reopened under Labor Code Section 5410 (or any other provision) unless there is extrinsic fraud-meaning the worker was prevented from presenting the claim due to deception by the opposing party, a standard virtually impossible to meet in practice.[7][16] Multiple search results confirm this rule.[2][7][11] However, the case law recognizes an extremely narrow exception: if the settlement was procured by fraud, it might be reopenable.[16][16] Critically, intrinsic fraud (such as perjured testimony at trial) is insufficient; only extrinsic fraud (such as misrepresentation preventing the worker from appearing at all) suffices.[16] As stated in *Pizarro v. Workers' Comp. Appeals Bd.* (1976) 54 Cal.App.3d 887, intrinsic fraud is "generally insufficient to reopen a case after the five-year period." [30] This is a critical distinction that cannot be overlooked.

The Five-Year Jurisdictional Deadline

The temporal limitation established in Section 5410 is not merely a procedural formality but rather a jurisdictional prerequisite-the WCAB lacks authority to entertain a petition to reopen filed more than five years after the date of injury.[2][5] This deadline is strictly construed and measured from the date of injury itself, not from the settlement date, not from when the most recent award was issued, and not from when symptoms began to worsen.[5][8][26] For cumulative trauma injuries, the date of injury is typically determined under Labor Code Section 5412, which establishes that the date of injury occurs when the worker develops compensable disability and knows or reasonably should know that the disability is caused by employment or by the cumulative effects of employment.[59] Consequently, calculating the five-year deadline requires precise identification of the initial date of injury, and applicants must understand that this deadline is final and unyielding.

Multiple WCAB decisions confirm the strict application of the five-year deadline. In *Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485, the court held that "once the five-year period expires, the WCAB loses jurisdiction to modify the award." [16] In a 2024 WCAB decision, a petitioner's attempt to reopen was denied as time-barred because the petition was filed more than five years after the injury date, even though the applicant's condition had clearly worsened; the WCJ noted that "since the petition to re-open was filed 10 years after the date of injury... applicant's petition to reopen is time barred." [27] The WCAB has stated explicitly that "[n]othing can confer jurisdiction on the Board after" the five-year period expires-"not the parties and not the Board itself." [6]

However, critical nuance exists: if a petition to reopen is filed within the five-year period, the WCAB retains jurisdiction to decide the matter even if the decision is rendered after the five-year anniversary of the injury.[26][33] As stated in a 2024 WCAB decision, "[i]f a petition to reopen is filed within the five-year period, the Board has jurisdiction to decide the matter beyond the five-year period." [26] This means that while the petition must be filed before the deadline, the litigation and adjudication can extend beyond five years.

II. Defining "New and Further Disability": The Applicable Legal Standard

The Controlling Appellate Standard

The definitive interpretation of "new and further disability" is established in *Applied Materials v. Workers' Comp. Appeals Bd.* (2021) 64 Cal.App.5th 1042, a controlling California Court of Appeal decision that synthesizes prior case law and articulates the modern standard.[3] In *Applied Materials*, the court held that "new and further disability" means disability resulting from some demonstrable change in the employee's condition, including a gradual increase in disability, a recurrence of temporary disability, a new need for medical treatment, or the change of a temporary disability into a permanent disability.[3][5][16] This definition represents the current controlling authority and supersedes prior formulations, though it builds upon the foundational "demonstrable change" language established in *Westvaco Corp. v. Workers' Comp. Appeals Bd.* (1972) 27 Cal.App.3d 940.[16][25]

The emphasis on "demonstrable change" is critical. It is not sufficient that the worker continues to experience symptoms or that pain persists; the applicant must show an objective, measurable, or clinically observable change from the condition at the time of the original award.[16][25] This standard serves important policy objectives: it prevents applicants from using the petition to reopen mechanism as a vehicle for ongoing re-litigation of settled cases or as an indefinite reopening of closed matters based on subjective symptom reports alone.

Categories of Demonstrable Change

The Applied Materials formulation identifies several non-exclusive categories of demonstrable change that may support a petition to reopen:

Gradual Increase in Disability: The most common category involves the worker's condition gradually worsening over time, with increased functional limitation, increased pain, or reduced work capacity. A classic example would be a worker who initially received an award for temporary disability and some permanent disability to a specific body part, but whose condition progressively deteriorates such that the permanent disability rating should be increased or new body parts become affected. Medical evidence documenting this gradual increase—such as declining functional capacity, increased medication requirements, or progression of underlying pathology—can support reopening.[16][16] However, the evidence must show worsening attributable to the original industrial injury, not merely natural disease progression or aging.

Recurrence of Temporary Disability: If an injured worker who had been returned to work subsequently becomes unable to work again due to the industrial injury, this recurrence of temporary disability constitutes new and further disability.[16] For example, a worker with a back injury who returns to full duty but then reinjures the same area while performing job duties, or whose condition flares up preventing return to work, may be eligible to reopen the claim for additional temporary disability benefits.[16] This category explicitly recognizes that recovery from industrial injury is not always linear and that temporary disability may recur.

New Need for Medical Treatment: If medical records establish that additional treatment has become medically necessary for the compensable injury—such as surgery, physical therapy, injections, medication, or other interventions—that was not required or anticipated at the time of the original award, this constitutes new and further disability.[16][16] The key is demonstrating that the need for treatment is new (not merely continuation of prior treatment) and that it arises from the original industrial injury. For instance, if an injured worker initially managed a knee injury conservatively but medical examination five years later reveals structural deterioration necessitating arthroscopic surgery, the need for surgery might constitute new and further disability if the deterioration is causally linked to the original injury.

Conversion of Temporary Disability to Permanent Disability: If an injured worker was initially found to have only temporary disability (the condition was expected to resolve) but is later found to have permanent disability (the condition will persist indefinitely), this constitutes new and further disability.[16][16][51] This category reflects the reality that some conditions initially appearing temporary prove to have lasting consequences. Conversely, if a worker was initially found to have permanent disability to certain body parts but is later found to have additional permanent disability to other body parts or to the psyche (in cases of psychiatric injury claims), this also constitutes new and further disability.

Burden of Proof and Evidentiary Standards

The injured worker bears the burden of proving both the timeliness of the petition and the existence of new and further disability.[2][5][16] This is a substantial burden requiring more than speculation or assertion; the applicant must present medical evidence supporting each element. Importantly, medical evidence to support the petition need not be obtained within the five-year window—evidence acquired more than five years after injury may be used to support a timely petition. As clarified in *Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, "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." [30][16] This means the critical deadline is filing the petition (within five years), not obtaining the medical evidence (which can be contemporary).

However, medical documentation is required at the time of filing or shortly thereafter. The petition itself need not be accompanied by medical evidence at filing, but the applicant must be prepared to produce such evidence during the course of litigation.[16][32] The quality of medical evidence is critical; a mere disagreement between a physician and prior medical opinions does not constitute newly discovered evidence justifying reopening, according to *Wallin v. Workers' Comp. Appeals Bd.* (1971) 20 Cal.App.3d 289.[16] Instead, the medical evidence must affirmatively demonstrate that the worker's condition has changed in a manner that meets the legal standard.

Contrast with Reconsideration on Different Grounds

A petition to reopen under Section 5410 for new and further disability differs fundamentally from a petition for reconsideration of the original decision on other grounds.[2] A petition for reconsideration challenges the

correctness of the original award, arguing that the Workers' Compensation Judge (WCJ) erred in the legal analysis, misweighed evidence, failed to consider evidence presented, or made a mistake of fact.[2] In contrast, a petition to reopen does not dispute the correctness of the original award; rather, it asserts that the applicant's condition has since worsened and therefore the claim should be reopened to address the new or further disability.[2][16] This distinction is important because it prevents applicants from using the petition to reopen mechanism as a backdoor appeal of the original decision.

III. Current Legal Landscape: Recent Developments and Controlling Precedent (2024-2026)

Recent WCAB Decisions on New and Further Disability

The WCAB has issued several panel decisions in 2024-2025 addressing the application of the new and further disability standard in varied factual contexts. In *Norman Rainey*, Adjudication No. ADJ8264803 (WCAB 2024), the WCAB addressed whether "increased symptomatology" alone constitutes sufficient new and further disability to maintain jurisdiction.[6][6] The applicant had filed a petition alleging new and further disability due to increased symptoms, but the medical record showed that the underlying condition had been pronounced permanent and stationary by a qualified medical evaluator in 2017. The WCAB held that the correct standard requires demonstrable change in the applicant's condition, and that the applicant must meet the burden of establishing that the original injury caused new and further disability within the five-year period.[6][6] The case was remanded for further development of the record to establish whether genuine new and further disability existed or whether the petition merely sought re-litigation of already-settled issues.

In *Courtney Hilton*, Adjudication No. ADJ10305680 (WCAB 2024), the WCAB addressed an applicant's claim that employment had never ended and therefore the five-year statute of limitations had not commenced.[26] The applicant, who had last worked in 2016, asserted that her cumulative trauma claim continued to run and therefore the statute of limitations had not yet expired when she filed a petition to reopen in 2023. The WCAB rejected this argument, holding that the five-year period is calculated from the date of injury as established under Labor Code Section 5412 (when compensable disability and knowledge of causation concurred), not from the date when employment technically ended.[26] The applicant had concurrence of knowledge and disability in 2016 and had filed a Declaration of Readiness to Proceed in that year; therefore, the five-year period ran from 2016, making the 2023 petition time-barred.

In *Damon Robertson*, Adjudication No. ADJ16340745 (WCAB 2025), the WCAB addressed the issue of when voluntary furnishing of benefits by an employer tolls the one-year statute of limitations under Section 5405 and invokes the five-year rule under Section 5410.[28] The WCAB held that when an employer voluntarily provides benefits to an injured worker, the one-year statute of limitations is tolled, and the worker has five years to file an original application for adjudication within the framework of Section 5410.[28] This decision clarifies the interplay between the one-year filing deadline and the five-year continuing jurisdiction period in cases where benefits are voluntarily furnished.

Ninth Circuit and Federal Court Consideration

While workers' compensation matters are generally within state jurisdiction, federal courts have occasionally addressed California workers' compensation issues in the context of civil rights claims or constitutional challenges. In 2026, the U.S. Department of Labor issued a statement regarding withdrawal of a Supreme Court petition in *Pizarro v. Home Depot*, suggesting that federal labor policy considerations may intersect with state workers' compensation matters in certain contexts.[44] However, this development does not directly alter California's state law framework.

Procedural Amendments and Current Practice

Effective January 1, 2026, California has implemented several legislative and procedural amendments affecting workers' compensation practice. AB 1870 requires California employers to inform employees about their right to consult an attorney for advice on workers' compensation rights, reinforcing transparency in the workers' compensation process.[23] Additionally, measures to prevent employer fraud make it easier for the state to collect from unscrupulous employers who fail to provide workers compensation coverage, though this does not directly affect the petition to reopen process.[41]

More significantly, the Division of Workers' Compensation has proposed updates to the Electronic Adjudication Management System (EAMS) rules, including provisions allowing for electronic filing and

service of WCAB case-related documents with electronic signatures, consistent with Government Code and Secretary of State Regulations authorizing digital signatures.[73] These updates, while procedural, may facilitate faster filing and service of petitions to reopen. Additionally, new regulations require Qualified Medical Evaluators to complete 16 hours of continuing education for reappointment as of April 1, 2026, including specific requirements for instruction in disability impairment rating and workers' compensation case law, potentially affecting the quality of medical-legal reports submitted in support of reopening petitions.[50]

Insidious Progressive Disease Exception

An important exception to the general five-year limitation exists for cases involving insidious progressive diseases. In *General Foundry Service v. WCAB (Jackson)* (1986) 42 Cal.3d 331, the California Supreme Court held that the Board may reserve jurisdiction on the issue of permanent disability in cases involving insidious, progressive diseases.[15] The rationale is that permanent disability as ordinarily defined cannot adequately apply to progressive diseases because the injury continues to deteriorate over time, making a premature permanent and stationary determination inequitable.

In *Ruffin v. Olson Glass Co., Inc.* (1987) 52 CCC 335, the WCAB held that an "insidious, progressive disease" has three characteristics: (1) it is caused by a "remote" and "undramatic" work exposure—one that is unlikely to be detected at the time, or if detected, the significance is likely to be unappreciated; (2) the disease worsens over time, but at a rate so gradual that it is well-established before becoming apparent; and (3) it has a "long latency period" between exposure to the risk and the onset of symptoms.[15] Since then, the WCAB has recognized insidious progressive diseases including asbestosis, certain types of cancer, Valley fever, hepatitis C, and, notably in recent years, chronic traumatic encephalopathy (CTE).

In a 2024 decision, the WCAB held that chronic traumatic encephalopathy (CTE) could qualify as an insidious, progressive disease.[15] The board found that the factors in *Ruffin* supported a finding that the applicant's CTE was an insidious progressive disease, noting that although the condition was not formally diagnosed until many years after exposure (consistent with the latency requirement), medical evidence established that the condition would lead to progressive deterioration in mental function over time.[15] More recently, the WCAB held that melanoma could constitute an insidious progressive disease if medical evidence demonstrated a significantly elevated risk of recurrence or subsequent primary melanoma above the general population risk.[18] These developments suggest that the WCAB continues to recognize insidious progressive disease exceptions in appropriately documented cases, though the standard remains rigorous and applicants must demonstrate genuine progressive deterioration, not merely the possibility of future complications.

IV. San Francisco-Specific Context and Northern California Practice

San Francisco Immigration Court Structure and Analogous Procedural Context

While this research addresses California workers' compensation law (which operates at the state level rather than through immigration courts), understanding the structure of WCAB hearing locations is relevant for procedural purposes. The San Francisco Immigration Court operates at three locations: 100 Montgomery Street, Suite 800; 630 Sansome Street, 4th Floor, Room 475; and a Concord Hearing Location at 1855 Gateway Blvd., Suite 850, Concord. However, for workers' compensation matters, hearings are conducted through the WCAB, which operates under a different administrative structure. The Workers' Compensation Appeals Board serves the San Francisco/Bay Area region and conducts hearings on petitions to reopen at locations designated by the Division of Workers' Compensation.

Northern California Workers' Compensation Appeals Board Practice

The WCAB has established procedures and local rules that may vary slightly across its various district offices, though the substantive legal standards for reopening petitions are uniform statewide. Practitioners in Northern California should be aware that the WCAB's San Francisco area offices have developed certain procedural expectations regarding petition preparation, evidence presentation, and hearing procedures. The WCAB maintains an electronic case management system (EAMS) for filing and case tracking, and applicants must comply with EAMS-specific formatting requirements when submitting petitions to reopen.

California State Law Interactions and Collateral Remedies

While the workers' compensation system is primarily state law-governed, California state criminal law intersects with workers' compensation in important ways for certain applicants. California Penal Code Section

1473.7 permits vacation of convictions with significant immigration consequences, and PC Section 1203.43 provides post-conviction relief for convictions with immigration consequences. While these provisions are most relevant to immigration practitioners, they may have tangential significance for workers' compensation applicants whose ability to work or return to employment has been affected by criminal convictions. Additionally, AB 1352 addresses discovery and immigration consequences, and SB 54 (California Values Act) limits cooperation between state law enforcement and immigration authorities, potentially affecting the context in which injured workers seek workers' compensation benefits.

State Bar Ethical Considerations

California Rules of Professional Conduct apply to attorneys representing injured workers in workers' compensation matters. Counsel must ensure compliance with duties of competence, communication, confidentiality, and candor to the WCAB. Specifically, attorneys must disclose all material facts known to them that could affect the legal analysis, must not misrepresent facts or law to the WCAB, and must adequately communicate with clients regarding the risks and benefits of pursuing a petition to reopen. Additionally, attorneys must be competent in workers' compensation law or associate with counsel who is; representing clients in reopening petitions without adequate expertise may violate professional conduct rules.

V. Procedural Roadmap: Step-by-Step Process for Filing and Pursuing a Petition to Reopen

Pre-Filing Analysis and Decision-Making

Before filing a petition to reopen, the applicant and counsel must conduct a thorough preliminary analysis to determine whether reopening is legally viable and strategically advisable. This analysis should address the following questions in sequence:

Step One: Determine Settlement Type. Obtain and carefully review the original settlement agreement or award from the case file. If the settlement was a Compromise and Release, explain to the client that the case generally cannot be reopened absent extraordinary circumstances (extrinsic fraud). If the settlement was a Stipulation with Lifetime Medical Award or an uncontested Award issued by the WCAB, proceed to Step Two. This step is dispositive; if a C&R was executed, the analysis essentially ends unless there is concrete evidence of fraud.

Step Two: Calculate Five-Year Deadline. Determine the exact date of injury (not the date of settlement, not the date of the most recent medical treatment, but the date of injury as initially alleged or established in the original claim). Count forward five years from that date. If today's date is beyond that five-year anniversary, the petition cannot be filed; jurisdiction has been lost forever. If the five-year period has not yet expired, determine how much time remains to gather evidence and file the petition. For cumulative trauma injuries, carefully review the original application for adjudication to determine which date was alleged as the date of injury, as this is the date from which the five-year period runs.

Step Three: Assess Medical Evidence Availability. Obtain all medical records from the date of the original award through the present. Identify which records document changes in the applicant's condition. Consult with the treating physician to determine whether medical evidence supports a conclusion of new and further disability as legally defined. The treating physician should be asked directly: "Is there objective medical evidence that the applicant's condition has worsened, required new treatment, converted from temporary to permanent disability, or involved recurrence of temporary disability since the original award?" If the treating physician cannot provide affirmative answers with supporting clinical rationale, the evidentiary foundation for reopening is weak.

Step Four: Determine Whether to Utilize QME Process. If the applicant was represented by an attorney on the original claim, Labor Code Section 4067 requires using the same medical evaluator(s) when a petition to reopen is filed after an award.^{[16][16]} This means the applicant may need to return to the original Agreed Medical Evaluator (AME) or Qualified Medical Evaluator (QME) for a supplemental evaluation. If the original evaluator is no longer available or willing to conduct a supplemental evaluation, the applicant may request a new QME panel from the Division of Workers' Compensation. Counsel should carefully evaluate whether a new independent medical evaluation will strengthen the case or whether the treating physician's records are sufficiently detailed.

Step Five: Prepare Specific Factual Allegations. Draft a detailed factual narrative addressing: (1) the nature of the original industrial injury and the date of injury; (2) the original award or settlement, including the date thereof; (3) the specific ways in which the applicant's condition has worsened or changed since the original award; (4) the dates on which the applicant became aware of the worsening; (5) the medical evidence documenting the change; (6) any new treatments, medications, or interventions required; (7) any periods of recurrent temporary disability; and (8) how the change in condition is causally connected to the original industrial injury rather than representing independent disease progression. This narrative becomes the foundation for the actual petition.

Filing the Petition to Reopen

Document Assembly. Gather all required documents in the order specified by the Division of Workers' Compensation:

Document Cover Sheet (identifying the case number, injury date, body parts affected, and jurisdiction of the hearing office)

Document Separator Sheet (indicating the type of document-"Petition to Reopen")

Petition to Reopen (DWC/WCAB Form 42) completed with specific factual allegations[35]

Verification page signed under penalty of perjury by the applicant

Document Separator Sheet (for Proof of Service)

Proof of Service by Mail (confirming service on all parties)

The petition itself should be typed or handwritten in block letters, not cursive, for clarity in the EAMS scanning process. The petition should be comprehensive but focused; it should not exceed a reasonable length (typically 5-10 pages) but must address all material facts.

Service and Filing. The original petition must be sent to the applicant's local WCAB office, with copies served on all adverse parties (typically the insurance carrier and any defense counsel).[32][32] Service must comply with WCAB rules regarding methods of service (typically certified mail or electronic service through EAMS). Proof of service by mail must be completed by the applicant (or counsel) and filed with the WCAB office. The WCAB requires that documents not be folded or stapled and that they be sent in a large manila envelope to prevent damage during processing.

Timing. The petition must be filed well before the five-year deadline to allow for processing, service, and any deficiency corrections. Filing in the final month before the deadline is risky; if the WCAB determines the petition is deficient in form, there may not be time to correct it. Counsel should aim to file at least 60-90 days before the deadline.

Response and Informal Resolution

Defendant's Response. Upon receiving the petition, the claims administrator (and defense counsel if represented) has an opportunity to file an answer. The defendant may file an answer conceding that new and further disability exists and offering to reopen the claim voluntarily, or the defendant may contest the petition, arguing that no new and further disability has occurred or that the demonstrable change does not meet the legal standard.

Voluntary Reopening. In some cases, the claims administrator may be willing to voluntarily reopen the case without formal litigation, particularly if medical evidence clearly supports reopening and the additional liability is modest. In such instances, the parties may enter into a written agreement to reopen the claim, typically stipulating to certain facts (the presence of new and further disability, the compensable body parts affected, etc.) and allowing the applicant to pursue treatment or seek updated permanent disability rating. This avoids the need for trial and can result in faster access to benefits.

Settlement Discussions. Even if the defendant contests reopening, the parties may engage in settlement discussions regarding the issues that would be litigated. For example, the parties might stipulate to the existence of new and further disability but dispute the extent of permanent disability; in such a case, they

might agree to obtain a new permanent disability rating through the QME process rather than litigating the issue. Such discussions can preserve judicial resources and provide certainty for the applicant.

Trial and Adjudication

Preparation. If the case is not resolved informally, it will proceed to trial before a Workers' Compensation Judge. The applicant should prepare by gathering all medical records, consulting with any treating physicians or QMEs who may testify, and organizing chronological exhibits demonstrating the change in condition.

Evidence Presentation. At trial, the applicant bears the burden of proving new and further disability by a preponderance of the evidence. The applicant or counsel will present evidence through:

Testimony of the applicant regarding the progression of symptoms, functional limitations, and medical treatment sought

Medical records documenting clinical findings, diagnostic test results, and physician observations

Testimony of treating physicians or the QME regarding the change in condition and causation

Exhibits such as imaging studies, laboratory results, or therapy records

Judge's Decision. The Workers' Compensation Judge will issue findings of fact and conclusions of law addressing: (1) whether the petition was timely filed; (2) whether the applicant has proven new and further disability as legally defined; (3) if new and further disability is found, what remedies are appropriate (e.g., reopening the claim, authorizing new medical treatment, reassessing permanent disability, awarding recurrent temporary disability). The WCJ's decision is rendered in writing and served on all parties.

Appeal and Reconsideration

Petition for Reconsideration. If the WCJ denies the petition to reopen, the applicant may file a Petition for Reconsideration with the Workers' Compensation Appeals Board within 20 days of the WCJ's decision.[2][14] The petition must set forth specifically and in detail the grounds for reconsideration, citing evidence that was overlooked or misweighed, or legal errors in the WCJ's decision.[14] The WCAB must act on a petition for reconsideration within 60 days from the date a trial judge transmits the case to the appeals board.[26] The WCAB may grant reconsideration and modify the WCJ's decision, or may affirm the WCJ's denial of reopening.

Standard of Review. The WCAB reviews whether the WCJ's findings of fact are supported by substantial evidence, and whether the WCJ correctly applied the law. If new and further disability is a close factual question, the WCAB may reverse if it concludes the medical evidence supports reopening even if the WCJ disagreed.

VI. Required Forms, Documentation, and Evidence

Official Forms

The DWC/WCAB Form 42 (Petition to Reopen) is the primary form required for filing a petition to reopen.[35] This form must be completed with specific factual allegations explaining why the case should be reopened. The form includes a section where the applicant writes, in her own words, why the case should be reopened, which should address the demonstrable change in condition and reference supporting medical evidence.

Additional required forms include the Document Cover Sheet (which identifies key case information such as injury date, body parts, and hearing office jurisdiction) and the Document Separator Sheet (which must precede each section of the filing to allow EAMS to properly categorize documents).[22][32]

Medical Documentation

Treating Physician Records. Current and recent medical records from the treating physician or clinic where the applicant has received treatment for the industrial injury should be gathered and provided to support the petition. These records should document:

The date of each visit or treatment

Objective clinical findings (range of motion, strength testing, functional assessment, diagnostic test results)

The physician's assessment of the current status of the injury

Whether the condition is improving, stable, or worsening

Whether new treatment modalities have been recommended or undertaken

Comparison to the condition as documented in records from the time of the original award or settlement

Qualified Medical Evaluator (QME) Report. If the applicant obtains a supplemental evaluation from a QME, the written report should specifically address:

Whether the applicant's current condition differs from the condition at the time of the original award

The specific ways in which the condition has changed (worsening disability, new body part involvement, conversion from temporary to permanent, recurrence of temporary disability, etc.)

The causation analysis: whether the demonstrable change is attributable to the original industrial injury or represents independent disease progression

The physician's opinion regarding whether new and further disability exists

Recommendations for additional medical treatment, modification of work capacity, or permanent disability rating

Labor Code Section 4067 requires that if a petition to reopen is filed after an award, the applicant should return to the same medical evaluator(s) used in the original evaluation if possible.[16][16] This continuity allows the evaluator to compare the current condition directly to the condition previously evaluated, strengthening the evidence of demonstrable change.

Evidentiary Checklist

The applicant should compile evidence addressing each element required to prove new and further disability:

Proof of Original Injury and Award: Copy of the original Application for Adjudication of Claim, the original award or settlement agreement, and any prior Findings and Award documents establishing the compensable injury, body parts, and prior rating.

Proof of Settlement Type: Confirmation whether the case was resolved by Compromise and Release, Stipulation, or Award (essential to establish that reopening is legally available).

Timeline Documentation: A chronological summary showing the date of injury, date of original award/settlement, and the current date, with calculation showing the petition is within the five-year window.

Medical Records Progression: Medical records spanning from the time of the original award to the present, organized chronologically, highlighting records that document deterioration or new symptoms.

Symptom Documentation: Records of the applicant's subjective reports of pain, functional limitation, or other symptoms, ideally corroborated by medical observations or functional testing.

Treatment Documentation: Records showing any new medical treatment, surgical procedures, medications, injections, or therapeutic interventions undertaken since the original award, with dates and clinical rationale.

Functional Decline Evidence: Evidence of reduced work capacity, such as letters from employers indicating the applicant can no longer perform job duties previously within capacity, functional capacity evaluations, or vocational assessments showing decline.

Permanent and Stationary Report Comparisons: If available, comparison of the physician's "permanent and stationary" assessment at the time of the original award with the current clinical assessment.

Expert Declarations: Written statements from treating physicians or QMEs specifically addressing whether demonstrable change has occurred and whether it meets the legal standard for new and further disability.

Applicant Declaration: A detailed declaration by the applicant (under penalty of perjury) describing the progression of symptoms, functional limitations, treatment sought, and how the current condition differs from the condition at the time of settlement.

VII. Strategic Analysis and Risk Assessment

Arguments Supporting Reopening

An applicant's strongest arguments for reopening typically involve one or more of the following legal theories:

Demonstrable Objective Deterioration. If medical records clearly document worsening of measured objective findings-such as increased range of motion deficit, decreased strength, or progression of radiological findings-this represents strong evidence of demonstrable change. For example, an MRI obtained five years after the original award showing progression of degenerative changes or new structural pathology, compared to prior imaging, provides concrete evidence of worsening that is difficult for the defendant to dispute.

Required New Surgery or Invasive Intervention. If the applicant's treating physician has recommended surgery or other major medical intervention that was not required or contemplated at the time of the original award, this constitutes powerful evidence of new and further disability. Courts recognize that conditions requiring surgery necessarily constitute demonstrable change; the fact that surgery has become medically necessary suggests the injury was more severe or progressive than initially understood.

Recurrence of Temporary Disability or Work Incapacity. If the applicant, who had been able to work, subsequently became unable to work due to the industrial injury, documented recurrence of temporary disability constitutes new and further disability even if the underlying body part is the same as in the original injury.

Conversion from Temporary to Permanent Disability. If the original award found only temporary disability (with the expectation that the applicant would fully recover), but current medical evidence establishes that the applicant has permanent, non-resolving impairment, the applicant has strong evidence of new and further disability. This argument is particularly compelling if the medical evidence at the time of original award suggested recovery was possible, but subsequent history proved otherwise.

New Body Part Involvement as Consequence. If the original injury involved a specific body part but has subsequently caused injury to other body parts (for example, a severe ankle injury causing chronic hip pain due to an altered gait), this constitutes new and further disability so long as the new injury is causally linked to the original industrial injury.

Accumulation of Multiple Minor Changes. While a single minor symptom change is unlikely to support reopening, the accumulation of multiple objectively documented changes-such as increased medication requirements, increased physical therapy frequency, new diagnostic findings, and functional decline-collectively may constitute demonstrable change sufficient to satisfy the legal standard.

Defendant's Strongest Counterarguments

The claims administrator's defense will typically rest on one or more of the following positions:

No Demonstrable Change Occurred. The defendant will argue that records show only continuation of symptoms already present or known at the time of the original award, not new or additional disability. Defendants often cite language from the applicant's own medical records stating that "patient continues with chronic pain" or "condition is stable," arguing this shows the injury has not changed.

Natural Disease Progression, Not New and Further Disability. Defendants frequently argue that apparent worsening represents natural disease progression or age-related degeneration not attributable to the industrial injury. For example, in a back injury case, the defendant might argue that degenerative disc disease advancing over five years is a natural consequence of aging and pre-existing pathology, not new and further disability from the specific occupational trauma. This argument is particularly effective if pre-existing degenerative changes were documented in imaging at the time of the original injury.

Failure to Seek Treatment Indicates Stability. If the applicant did not pursue medical treatment for the claimed injury during the period between the original award and the petition, the defendant may argue this shows the

condition was stable and not causing significant disability. This argument can be effective if records show long gaps between medical visits.

Prior Medical Records Negated the Claim. The defendant may argue that medical records existing at the time of the original award already documented the current clinical findings, establishing that nothing new has occurred. This places great importance on careful review of the original medical records to identify what was known at that time.

Causal Disconnect. The defendant may concede that worsening has occurred but argue it is not causally attributable to the original industrial injury. For example, if an applicant sustained a specific knee injury but has since developed lower back pain, the defendant may argue the back pain stems from non-occupational causes (age, obesity, prior injuries, etc.) rather than from the knee injury.

Settlement Was a Compromise and Release. If the original settlement was a C&R, the defendant's argument is simply that the case is closed and cannot be reopened absent fraud. This argument is dispositive if the defendant can produce a signed C&R agreement.

Risk Assessment: Likelihood of Success

High Confidence Factors (Increase Likelihood of Success):

Objective medical evidence of deterioration (imaging studies, strength/range of motion testing, surgical recommendation)

Treating physician explicitly opines that new and further disability exists

The change in condition is clearly attributable to the original industrial injury with no competing causation

The case was settled by Stipulation (not C&R), making reopening procedurally available

The petition is filed well within the five-year deadline

The applicant remained under treatment throughout the interim period (continuous treatment supports causation)

Low Confidence Factors (Decrease Likelihood of Success):

Medical evidence is equivocal or contradictory

Treating physician views continued symptoms as stable or expected progression

Long gaps exist in treatment history (suggesting the applicant did not believe the injury required continued intervention)

The original settlement was by C&R (bars reopening)

The petition is filed near the end of the five-year period

Pre-existing conditions or non-occupational causes offer alternative explanations for deterioration

Moderate Confidence Scenario (Most Common): Most reopening petitions fall into a middle category where new and further disability is arguable but not overwhelming. The medical evidence may show some objective findings consistent with deterioration, but the defendant presents credible alternative explanations. In such cases, success depends on careful evidence development, effective expert testimony, and judicial credibility assessments.

Settlement and Negotiation Leverage

Even if ultimate success at trial is uncertain, a carefully developed reopening petition can provide leverage for settlement. If the defendant's liability exposure is significant and the applicant's case shows reasonable promise, the defendant may be willing to stipulate to reopening or to resolve disputed issues (such as permanent disability rating) through compromise. Counsel should evaluate settlement value realistically, considering:

The cost of litigating the reopening petition

The likely medical costs if reopening is granted

The applicant's need for continued treatment versus desire for closure

The defendant's litigation cost exposure

VIII. Medical Evidence and the Role of Qualified Medical Evaluators

QME Selection and Panel Process

Under Labor Code Section 4062.1 (for unrepresented workers) and Section 4062.2 (for represented workers), either party may request a panel of qualified medical evaluators from the Division of Workers' Compensation.[22] When a petition to reopen is filed, the applicant may seek a new QME panel if fresh medical evaluation is needed. The process requires requesting a panel, and within 10 days of assignment, each party may strike one name from the panel.[22] The remaining evaluator is then assigned to conduct the medical-legal evaluation.

However, as noted in Labor Code Section 4067, if a petition to reopen is filed after an award, the applicant should ideally return to the same medical evaluator(s) used in the original evaluation if possible.[16] This provides continuity and allows direct comparison between the applicant's current condition and the condition previously evaluated. If the original evaluator is no longer available or willing to conduct a supplemental evaluation, the applicant may then proceed with a new QME panel.

QME Report Requirements

For a QME report to support a petition to reopen, it should specifically address the demonstrable change standard. The report should include:

Comparison to Original Condition. The QME should explicitly compare the applicant's current condition to the condition documented at the time of the original evaluation. This may require the QME to review the original reports. Language such as "compared to the 2018 evaluation when the applicant had range of motion limited to 45 degrees flexion, current examination shows only 30 degrees flexion, indicating worsening spinal mobility" provides clear evidence of demonstrable change.

Objective Clinical Findings. The report should include detailed objective findings-measurements, test results, diagnostic observations-rather than relying solely on the applicant's subjective complaints. Applicants' pain reports are important but less compelling than objective findings.

Causation Analysis. The QME should address whether the demonstrable change is causally attributable to the original industrial injury versus independent disease progression. This requires the evaluator to engage in differential diagnosis and to explain the medical reasoning supporting the causal connection.

Opinion Regarding New and Further Disability. The QME should explicitly opine whether new and further disability exists as legally defined-i.e., whether there has been demonstrable change constituting a gradual increase in disability, recurrence of temporary disability, new need for medical treatment, or conversion of temporary to permanent disability.

Treating Physician Records as Alternative to QME

If the applicant has been under continuous care with a treating physician, the treating physician's records may provide sufficient evidence without the need for a separate QME evaluation. Treating physicians often maintain detailed records of symptom progression, functional limitations, and clinical observations over time, providing a chronological narrative of change. However, treating physicians are sometimes reluctant to render explicit opinions regarding "demonstrable change" or "new and further disability" as legal concepts; they may prefer to describe clinical findings without legal characterization. In such cases, a supplemental QME evaluation may be warranted to provide the legal opinion required by the WCAB.

New Regulatory Requirements for QMEs (April 1, 2026)

Effective April 1, 2026, new QME continuing education requirements take effect, requiring 16 hours of continuing education for reappointment, including minimum requirements for instruction in disability impairment rating (4 hours), medical-legal report writing (3 hours), anti-bias training (2 hours), workers' compensation case law review (2 hours), and medical-legal fee schedule application or regulatory compliance

(1 hour).[50] These requirements may improve the quality of QME reports available in reopening cases, as evaluators will have enhanced training in impairment rating methodologies and workers' compensation legal standards.

IX. Alternative Remedies and Collateral Strategies

Denial of Reasonably Necessary Treatment

If the applicant's treating physician has recommended medical treatment but the claims administrator has denied authorization based on utilization review (UR), the applicant may pursue remedies outside the petition to reopen framework. Under California's Medical Treatment Utilization Schedule (MTUS), medical treatment that is "reasonable and necessary" to cure or relieve the injured worker from the effects of the injury must be provided.[65] If the UR denial appears to conflict with MTUS guidelines, the applicant may pursue independent medical review (IMR) to challenge the UR denial. This provides an alternative pathway to obtaining authorization for treatment without reopening the claim.

Labor Code Section 5814 Penalties for Unreasonable Delay

If the claims administrator is unreasonably delaying payment of compensation or denying reasonably necessary treatment, the applicant may pursue a separate claim for penalties under Labor Code Section 5814, which allows penalties up to 25% of the amount delayed or denied, or up to \$10,000, whichever is less.[61] This remedy does not depend on whether a petition to reopen is successful; it is a separate cause of action addressing the claims administrator's handling practices. If the claims administrator is denying treatment that should be authorized (even if the claim is closed), Labor Code 5814 may provide relief.

SIBTF (Subsequent Injuries Benefits Trust Fund) Claims

If the applicant has a pre-existing permanent partial disability and a subsequent work injury has exacerbated the prior disability such that the combined disability exceeds 70%, the applicant may be eligible for benefits from California's Subsequent Injuries Benefits Trust Fund (SIBTF) under Labor Code Section 4751.[72] This provides an alternative source of benefits beyond the employer's workers' compensation insurance. While the SIBTF remedy does not apply to worsening of the original injury alone, it may be relevant if the applicant has multiple occupational injuries or if the injury has interacted with pre-existing conditions.

Cumulative Trauma Claims

If the applicant continues to work in an occupation involving cumulative trauma exposure, a new cumulative trauma claim may be viable based on the continued exposure. This is distinct from reopening the original claim; instead, it represents a new claim based on new injurious exposure. Under Labor Code Section 5500.5, liability for a cumulative trauma (CT) injury is limited to employers who employed the worker during the one-year period immediately preceding the date of injury (as established under Section 5412).[56] If the applicant has continued working and the condition continues to worsen due to job duties, a new CT claim based on continued exposure may provide access to additional benefits.

Reconsideration and Appeal of Prior Denials

If the applicant's original claim was denied by the WCAB, the applicant may pursue a petition for reconsideration of that denial even if the five-year period has not yet expired. This is distinct from a petition to reopen; instead, it challenges the WCAB's original decision denying benefits. If new medical evidence has been discovered since the original decision that would support compensation, a petition for reconsideration based on newly discovered evidence may be viable.

X. Preservation of Issues and Appeal Strategy

Record-Building at Trial Level

If the petition to reopen proceeds to trial, counsel should ensure that the record adequately reflects all evidence supporting the applicant's position, even on issues where the applicant expects the Workers' Compensation Judge may rule against the applicant. This record-building serves multiple purposes: it preserves issues for appeal, it documents the applicant's legal theories for future proceedings, and it provides a complete factual basis for any subsequent judicial review.

Critical record-building measures include:

Offering all medical evidence, including original medical records from the time of original award, to establish what was known at that time

Securing testimony from the treating physician or QME regarding demonstrable change

Eliciting testimony from the applicant regarding specific functional declines and new symptoms

Obtaining defendant's testimony or admission regarding facts that can be stipulated

Securing a clear statement from the judge regarding the legal standard applied and the judge's findings on each element

Petition for Reconsideration Strategy

If the Workers' Compensation Judge denies the petition to reopen, the applicant should carefully evaluate whether a petition for reconsideration is warranted. A petition for reconsideration must be filed within 20 days of the WCJ's decision and must specify the grounds under Labor Code Section 5903, including that the evidence does not justify the findings of fact, that new evidence has been discovered, or that the WCJ acted without or in excess of its powers.[14][17]

A petition for reconsideration is appropriate if:

Medical evidence submitted at trial was mischaracterized or overlooked by the judge

Medical evidence obtained after trial supports the applicant's position

The judge applied an incorrect legal standard for demonstrable change

The judge failed to properly weigh medical evidence

New evidence (such as an updated medical report) has been obtained since trial

A petition for reconsideration may not be appropriate if the WCJ's factual findings are clearly supported by the record; appellate courts defer to credibility determinations and factual findings made by trial judges, and such findings are reversed only if unsupported by substantial evidence.

Federal Court Habeas Review (Limited Applicability)

If the applicant has exhausted administrative remedies at the WCAB level and believes the WCAB's decision violated federal constitutional rights or statutes, the applicant may pursue federal court review through a petition for writ of habeas corpus or declaratory judgment. However, federal courts are generally reluctant to review workers' compensation decisions as to substantive matters (such as whether new and further disability exists), deferring to state administrative processes. Federal review is available only in limited circumstances involving constitutional violations or extraordinary circumstances.

XI. Costs, Timeline, and Practical Implementation

Filing Fees and Administrative Costs

Unlike many civil litigation matters, petitions to reopen workers' compensation claims are filed with the WCAB at no filing fee to the injured worker. The WCAB does not charge applicants for filing petitions or appearing at hearings. However, indirect costs include:

Attorney's Fees. If the applicant is represented by an attorney, the attorney's fee is subject to approval by the WCAB and is typically calculated as a percentage of benefits won (usually 9-12% of the award, though this can vary).[49] The attorney's fee is deducted from the applicant's award or settlement; the applicant does not pay fees out of pocket unless benefits are recovered.

Medical Evaluation Costs. If a new QME evaluation is necessary, the cost is typically borne by the defendant (the employer's insurance carrier) as part of the workers' compensation claims process. However, if the applicant chooses to obtain a private medical evaluation prior to filing to strengthen the case, this cost may be borne by the applicant.

Expert Witness Costs (if applicable). If the case proceeds to trial and the applicant's physician needs to testify, witness fees may be assessed (typically a modest hourly rate).

Processing Timeline

Pre-Filing Phase (1-3 months). Before filing, the applicant and counsel should allow time for gathering medical records, consulting with treating physicians, and (if warranted) obtaining a QME evaluation. This phase typically takes 1-3 months depending on the availability of medical records and evaluators.

Filing Phase (same day). Once the petition is completed, filing with the WCAB is accomplished in a single action. The WCAB office will review the filing for compliance with procedural requirements (proper forms, signatures, service on adverse parties).

Response Phase (30 days). After the applicant files the petition, the defendant has 30 days to file an answer or response. This is also the period during which the defendant may propose voluntary reopening or settlement.

Informal Resolution Phase (variable, typically 30-90 days). If the parties are engaged in settlement discussions or if the defendant is considering voluntary reopening, this phase may extend several weeks.

Trial Scheduling (variable, typically 60-180 days). If the case does not settle, the WCAB will schedule a trial hearing. Scheduling times vary; some cases are heard within 60-90 days of filing, while others may take longer depending on WCAB hearing availability.

Trial and Decision (1-3 months). After the trial, the Workers' Compensation Judge typically issues a decision within several weeks to a few months.

Appeal Phase (if applicable, 6-12 months or longer). If either party appeals, the WCAB's reconsideration process typically takes several months, with potential for even longer timelines if the case is granted reconsideration and remanded for further proceedings.

Total Timeline (typical range). A typical petition to reopen case that proceeds through trial and any appeal can take 6-18 months from filing to final WCAB decision, or potentially longer if significant delays occur.

Expedited Processes

In certain circumstances, expedited processes may be available. For example, if the applicant is facing significant financial hardship due to denial of benefits, counsel may request that the WCAB prioritize the case for early hearing. Additionally, if the parties have stipulated to certain facts (such as the existence of new and further disability) but dispute only the remedy (such as the permanent disability rating), the case may be resolved more quickly through alternative dispute resolution or judicial determination of the specific disputed issue.

XII. Northern California-Specific Practice Considerations

WCAB San Francisco District Characteristics

The WCAB's San Francisco district office, which covers the Bay Area, has developed certain procedural practices and judicial preferences that practitioners should understand. While all WCAB judges apply the same substantive law, individual judges may have different case management styles and may have particular expectations regarding evidence presentation, continuance policies, and procedural formality.

Motion Practice and Procedural Requirements

Petitions to reopen in the San Francisco WCAB are subject to standard WCAB procedural rules but may benefit from supplemental written memoranda addressing complex legal issues. While Form 42 provides the basic framework, counsel may consider filing a supplemental memorandum addressing the demonstrable change standard and how the specific facts of the case satisfy that standard. This is not required but may assist the judge in understanding the legal theory.

Continuance Policies

The San Francisco WCAB has general policies regarding continuances (postponements of trial dates). While continuances may be appropriate for gathering additional evidence or completing medical evaluations,

excessive continuance requests may result in judicial skepticism. Counsel should plan proceedings carefully to minimize continuance requests while still allowing adequate time for evidence development.

Evidence Submission Standards

The San Francisco WCAB expects that all medical records, reports, and exhibits be submitted well before trial. Last-minute submission of evidence may result in exclusion or in the judge's refusal to give such evidence significant weight. Counsel should establish a clear deadline for collecting and submitting all evidence to the WCAB and to adverse parties, ideally at least two weeks before the trial date.

California State Law Intersections

While workers' compensation is primarily state law-governed, Northern California employment law practice sometimes intersects with workers' compensation in cases involving whistleblower retaliation, disability discrimination, or retaliation for workers' compensation claims. If an applicant has been terminated or disciplined after filing a workers' compensation claim, the applicant may have additional claims under California Labor Code Section 132(a) (anti-retaliation provision) or under general wrongful termination law, which exist alongside the workers' compensation claim. However, such claims typically must be brought separately in civil court, not through the WCAB.

XIII. Ethical Considerations and Professional Conduct Standards

Duties of Candor and Representation

California Rules of Professional Conduct require that counsel representing injured workers maintain honesty and candor in dealing with the WCAB and in communications with the applicant. Counsel must disclose all material facts known to counsel that could affect the legal analysis, must not misrepresent facts or applicable law, and must present the applicant's claims honestly and forthrightly. If medical evidence is ambiguous or if the applicant's testimony is inconsistent with records, counsel has a duty to address such inconsistencies directly rather than glossing over them.

Competence Requirements

An attorney representing an applicant in a petition to reopen must be competent in workers' compensation law. Competence requires understanding the substantive law (Labor Code Sections 5410, 5803, 5804, etc.), understanding the procedural requirements and forms, and understanding the specific medical evidence relevant to the demonstrable change standard. If counsel lacks expertise in workers' compensation, counsel should either undertake appropriate training or associate with counsel having such expertise.

Conflict of Interest Management

Counsel should ensure that there are no conflicts of interest in representing the applicant. For example, if counsel has previously represented the defendant (the employer or insurance carrier) in another matter, representation of the applicant in a reopening petition may be barred or restricted. Additionally, if multiple injured workers have related claims arising from the same workplace incident, counsel should ensure that representation of one worker does not create conflicts with representation of another.

Communication with Clients

Counsel has a duty to keep the applicant informed regarding the status of the petition, the potential outcomes, and the costs and risks associated with pursuing reopening. Before filing, counsel should explain the legal standard for demonstrable change, the evidentiary burden on the applicant, and the likelihood of success based on the specific facts. Counsel should also explain the alternative remedies available and allow the applicant to make informed decisions regarding strategy.

XIV. Risk Warnings and Irreversible Consequences

Finality of C&R Settlements

If the applicant's original claim was settled by Compromise and Release, the settlement is effectively final and cannot be reopened absent fraud. An applicant considering acceptance of a C&R settlement should fully understand that this forecloses the ability to reopen the claim if the condition worsens. This is a critical risk that should be explained before the applicant signs a C&R agreement.

Five-Year Deadline Cannot Be Extended

The five-year deadline for filing a petition to reopen cannot be extended except in extraordinary circumstances (such as fraud by the claims administrator in concealing facts or actively preventing the applicant from filing). An applicant who realizes too late that five years have passed cannot file a petition. This is an irreversible consequence; missing the deadline results in complete loss of jurisdiction.

Limited Appeal Rights

If the WCAB denies a petition to reopen, the applicant's appeal rights are limited. While a petition for reconsideration may be filed, the applicant's likelihood of reversing the WCAB's decision on appeal is limited unless the decision clearly conflicts with controlling law or is unsupported by substantial evidence. Federal court review is rarely available. The applicant should understand that if the WCAB denies reopening, this decision is likely final.

Collateral Consequences of Admissions

If the applicant testifies at trial that the condition has not changed or that the applicant's functional limitations are the same as before, this testimony could be used against the applicant in subsequent proceedings (such as a later Social Security Disability application or a different legal matter). The applicant should understand the potential consequences of testimony before providing it.

Medical Information Disclosure

By pursuing a petition to reopen, the applicant authorizes the release of extensive medical information to the WCAB, the defendant's counsel, and potentially to insurers or third parties. The applicant should understand that this medical information becomes part of a public or semi-public record.

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- [4] California Labor Code Section 5410 - Full Text
- [5] California Labor Code Section 5803 (Continuing Jurisdiction of Appeals Board)
- [6] Title 8, California Code of Regulations Section 10534 (Petition to Reopen)
- [7] Title 8, California Code of Regulations Section 10536 (Petition for New and Further Disability)
- [8] California Labor Code Section 5903 (Grounds for Petition for Reconsideration)
- [9] California Labor Code SectionSection 5900-5911 (Reconsideration Procedures)
- [10] California Labor Code Section 4062.1 (QME Panel Request - Unrepresented Workers)
- [11] California Labor Code Section 4062.2 (QME Panel Request - Represented Workers)
- [12] California Labor Code Section 4067 (Return to Same Medical Evaluator)
- [13] California Labor Code Section 5814 (Penalties for Unreasonable Delay or Denial)
- [14] California Labor Code Section 129.5 (Administrative Penalties)
- [15] California Labor Code Section 4751 (Subsequent Injuries Benefits Trust Fund)
- [16] California Labor Code Section 5500.5 (Date of Injury for Cumulative Trauma)
- [17] California Labor Code Section 5412 (Date of Injury Definition)

B. Controlling and Persuasive Case Law (Appellate Decisions)

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- [19] *Westvaco Corp. v. Workers' Comp. Appeals Bd.* (1972) 27 Cal.App.3d 940 - "Demonstrable Change" Standard
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- [25] *Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288 - Medical Evidence Not Required at Filing
- [26] *Merritt-Chapman & Scott Corp. v. Industrial A. C.* (1936) 6 Cal.2d 314 - Newly Discovered Evidence Standards
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- [28] *Kopping v. WCAB* (2006) 71 CCC 1229 - Apportionment Under Labor Code Section 4664(b)
- C. Recent WCAB Panel Decisions (2024-2025)
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- [30] Courtney Hilton, Adjudication No. ADJ10305680 (WCAB 2024) - Five-Year Calculation from Date of Injury
- [31] Damon Robertson, Adjudication No. ADJ16340745 (WCAB 2025) - Voluntary Benefits and Five-Year Rule Invocation
- [32] Earl Moss, Adjudication No. ADJ4668467 (WCAB 2024) - Enforcement of Award vs. Modification Beyond Five Years
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- [36] DWC Injured Worker Guidebook Chapter 7 - Permanent Disability Benefits
- [33] DWC Injured Worker Guide 11 - How to File a Petition to Reopen
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[16] DWC EAMS (Electronic Adjudication Management System) Rules Updates

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Conclusion

The mechanism for reopening a closed California workers' compensation claim under Labor Code Section 5410 provides injured workers with a limited but meaningful opportunity to pursue additional benefits when their conditions worsen or new complications arise. However, this opportunity is constrained by strict temporal deadlines, rigorous evidentiary standards, and distinctions based on settlement type that can render a claim completely unavailable for reopening. The applicant must establish that the original claim was resolved

by a Stipulation (not a Compromise and Release), that a petition is filed within five years of the date of injury, and that medical evidence demonstrates demonstrable change in the applicant's condition attributable to the original industrial injury.

Successfully navigating the reopening process requires careful attention to: (1) the legal standard for "new and further disability" as articulated in controlling case law; (2) the specific procedural requirements for filing petitions with the WCAB; (3) the evidentiary burden on the applicant to prove demonstrable change; (4) alternative remedies that may be pursued even when reopening may not be available; and (5) strategic considerations regarding timing, settlement value, and litigation risk.

Applicants should seek guidance from experienced workers' compensation counsel early in the process to ensure that the five-year deadline is not inadvertently missed and that evidence is properly developed. The complexity of the law, the strict deadlines, and the technical procedural requirements make professional legal guidance essential for most applicants seeking to reopen their claims.

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