

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

CARLOS URIBE, JR., *Applicant*

vs.

XCEL MECHANICAL SYSTEM, INC.; CALIFORNIA INSURANCE GUARANTEE ASSOCIATION, administered by SEDGWICK CMS for RELIANCE/SABLE, in liquidation; ZURICH AMERICAN INSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ487398 (AHM 0087021)
Anaheim District Office**

**OPINION AND DECISION
AFTER REMITTITUR**

On February 22, 2024, the Second District Court of Appeal (Div. 7) certified that its opinion of December 18, 2023 had become final, and the Court remitted this case to the Appeals Board. This is our Decision After Remittitur.¹

In its December 18, 2023 decision, the Court distinguished the circumstances of *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104 [57 Cal.Comp.Cases 493], and found that there was no equitable tolling because it was "CIGA's own inaction that denied it a remedy." (*Zurich American Ins. Co. v. Workers' Comp. Appeals Bd.* (2023) 97 Cal.App.5th 1213, 1239-1240 [89 Cal.Comp.Cases 1].) The Court thus directed the Appeals Board to rescind its June 13, 2022 Opinion and Order Granting Petition for Reconsideration of the California Guarantee Insurance Association ("CIGA") and its August 8, 2022 Opinion and Decision After Reconsideration. (*Id.* at pp. 1240-1241.) The Court also directed the Board to order the dismissal of Zurich American Insurance Company as a defendant, based on the denial of CIGA's Petition for Reconsideration by operation of law under Labor Code section 5909. (*Ibid.*)

¹ Commissioner Marguerite Sweeney signed the Board's prior decisions, i.e., the Opinion and Order Granting Petition for Reconsideration dated June 13, 2022 and the Opinion and Decision After Reconsideration dated August 8, 2022. Commissioner Sweeney is no longer a member of the Appeals Board. A new panel member has substituted in the place of former Commissioner Sweeney.

On April 13, 2021, the parties appeared for an expedited hearing, with CIGA and Zurich appearing, and the minutes indicate that they agreed to proceed to a coverage arbitration.

Unfortunately, the arbitrator did not comply with WCAB Rules 10914 and 10995 (Cal. Code Regs., tit. 8, §§ 10914; 10995) and submit the record of proceedings in the arbitration case. The only relevant pleadings in the record are the Petition for Reconsideration, the Answer, and the Report and Recommendation by the arbitrator. That is, we do not have a transcript of the proceedings, any record of appearances at the proceedings, and any identification of stipulations and issues, and we do not have any evidence. Most significantly, the Findings and Order issued by the arbitrator that was the subject of the Petition for Reconsideration is not in the record.² Thus, from the record before us, we can discern no basis for the Court's order that Zurich be dismissed.

Pursuant to the Court of Appeal's December 18, 2023 decision, we will rescind our June 13, 2022 and August 8, 2022 decisions, and we will order that Zurich be dismissed as a party defendant.

We note that the Court of Appeal ended its opinion with the statement: "Zurich is to recover its costs in this proceeding." As this statement is an order by the Court of Appeal who identified CIGA as the real party in interest in this matter, it is apparent that CIGA should pay Zurich's costs as directed by the Court, subject to adjustment by the two parties and with jurisdiction over costs residing with the Court of Appeal in the event of a dispute.

² Meaningful review of an arbitrator's decision requires that the "decision be based on an ascertainable and adequate record," including "an *orderly identification* in the record of the evidence submitted by a party; and *what evidence is admitted or denied admission.*" (*Lewis v. Arlie Rogers & Sons* (2003) 69 Cal.Comp.Cases 490, 494, emphasis in original.) "An organized evidentiary record assists an arbitrator in rendering a decision, informs the parties what evidence will be utilized by the arbitrator in making a determination, preserves the rights of parties to object to proffered evidence, and affords meaningful review by the Board, or reviewing tribunal." (*Id.*; see also *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753 [a full and complete record allows for a meaningful right of reconsideration].)

For the foregoing reasons,

IT IS ORDERED, as the Decision After Remittitur of the Workers' Compensation Appeals Board, that the Opinion and Order Granting Petition for Reconsideration of June 13, 2022 and the Opinion and Decision After Reconsideration of August 8, 2022 are **RESCINDED**.

IT IS FURTHER ORDERED, as the Decision After Remittitur of the Workers' Compensation Appeals Board, that Zurich American Insurance Company is **DISMISSED** as a party defendant.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 20, 2024

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

**CARLOS URIBE, JR.
SILBERMAN & LAM
GUILFORD SARVAS & CARBONARA
LAW OFFICE OF TRACEY LAZARUS
ROBERT DRAKULICH, ARBITRATOR**

JTL/ara

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