

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

CAROLYN BRIGGS, *Applicant*

vs.

**COUNTY OF LOS ANGELES, permissibly self-insured,
adjusted by SEDGWICK, *Defendants***

**Adjudication Numbers: ADJ9296801; ADJ3724455; ADJ1060711; ADJ9857317;
ADJ300509**

Van Nuys District Office

**OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact and Award and Order (F&A) issued on August 28, 2024, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that notwithstanding the parties' previously approved May 1, 2018 stipulations, applicant's average weekly wage was \$1,210.52, warranting a temporary disability rate of \$807.01. The WCJ modified the stipulations of the parties to indicate this new rate of temporary disability. The WCJ disallowed a credit against the temporary disability award for leave credits that defendant allegedly reimbursed. The WCJ made additional findings of fact as to penalties on medical expenses, including mileage, for which reconsideration is not sought.

Defendant argues that the WCJ erred by altering the terms of the stipulations without defendant's consent and that the WCJ improperly excluded defendant's claim of credit.

We have not received an answer from applicant.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report. Based upon our preliminary review of the record, we will grant defendant's Petition for Reconsideration. Our order granting the Petition is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable

statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.

FACTS

Per the WCJ's Report:

The Applicant filed a claim alleging to have sustained injuries arising out of and in the course of employment to the psych, abdomen, shoulder, neck, jaw, back, heart and hypertension while working as an Operation Assistant II for the Los Angeles County Sheriff's Department.

The initial pre-trial conference statement completed by the prior Applicant's attorney and Defendant's attorney regarding ADJ9296801 is dated August 3, 2017. Therein, the parties stipulated that the Applicant's earnings were \$1,500.00 per week, warranting indemnity rates of "max per code" for temporary disability and permanent disability. (EAMS Doc ID 64513415, pg. 2, Stipulation 3).

A trial commenced before the undersigned on January 11, 2018 regarding ADJ3724455, ADJ1060711, ADJ9857317, ADJ300509, and ADJ9296801. On that date, the parties amended the pre-trial conference statement regarding ADJ9296801 to indicate that the Applicant's temporary total disability rate was "\$1,074.64". (EAMS Doc ID 65964375, pg. 2, Stipulation 3). The Applicant was represented by counsel at the time of the trial.

Due to the lateness of the hour on January 11, 2018, there was only sufficient time to read the Stipulations and Issues into the record regarding solely ADJ9857317, and the trial was continued. In ADJ9857317, the parties stipulated on the record that the applicant's earnings on or about October 27, 2014 (which is also the end date of the CT at issue in the case at hand ADJ9296801), were \$1,500.00 per week, warranting rates of \$1,000.00 per week for temporary disability. (See Applicant's Exhibit 1, MOH 1/11/2018, page 2, Stipulation 3). The matter was continued as there was insufficient time to complete the trial.

At a subsequent trial date on May 1, 2018, that parties submitted to the undersigned Stipulations with Request for Award regarding ADJ9296801, (Joint Exhibit AA, hereinafter "Stipulated Award"), and a one-page Joint Stipulation and Order regarding ADJ372445, ADJ1060711, ADJ9857317, ADJ300509 and ADJ9296801 (Joint Exhibit BB, Joint Stipulation and Order"). The Applicant was still represented by counsel at that time. The undersigned approved the settlement documents on that date.

The Stipulations with Request for Award changed the end date of the continuous trauma from January 16, 2014 to October 27, 2014. The Stipulations with Request for Award dated May 1, 2018 state therein that the date of injury is May 1, 2008 through October 27, 2014, and the temporary disability rate is \$763.87. (See Joint Exhibit AA, pgs. 5-6, paragraphs 1-2).

There was no Petition to for Reconsideration filed thereafter regarding the Stipulated Award. However, the Applicant dismissed her attorney and filed a Declaration of Readiness to Proceed dated April 23, 2019 (EAMS Doc ID 69796811), along with a Petition for Penalties dated April 3, 2019 (EAMS Doc ID 69796806), while in pro per. The Applicant has remained in pro per to date. The Petition for Penalties substantially alleges, inter alia, that the temporary disability rate of \$763.87 is incorrect, inappropriate deductions/credits were taken, and that the Award was not properly paid.

The undersigned treated the Applicant's Petition for Penalties as both a Petition for Penalties and a Petition to Reopen/Amend/Modify the Award regarding the issues raised therein, as the Petition for Penalties provided sufficient information and notice to the Defendant in that regard.

The trial commenced before the undersigned on September 24, 2020 regarding the Applicant's Petition for Penalties and related issues as listed in the Minutes of Hearing from that date.

After the lengthy trial was completed, the undersigned issued the Findings and Award and Opinion on Decision dated August 28, 2024.

The Defendant filed a timely verified Petition for Reconsideration dated September 18, 2024. The Petitioner asserts therein that the Judge acted in excess of her powers by changing the terms of the Stipulated Award more than six years after the date of the Award and penalizing the Defendant for not complying with these terms six years previously and that the Judge acted in excess of her authority when the Judge arbitrarily disallowed deductions from the accrued temporary disability benefits agreed to by the parties.

At the time the undersigned prepared this Report on Reconsideration, the Applicant had not filed a Response to the Defendant's Petition for Reconsideration.

(WCJ's Report, pp. 1-3.)

The May 1, 2018 stipulations contained a provision establishing applicant’s temporary disability rate at \$763.87 per week. (Stipulations with Request for Award, May 1, 2018, p. 6.) It further stated that: “No credit or claims of overpayment by county of Los Angeles.”; and “\$10,640.58 payable to Sedgwick from applicant’s award for reimbursement of long term disability benefits from 4/27/2015-8/30/2015, according to proof. There are no other credits or monies to be paid to Sedgwick.” (*Id.* at pp. 6, 7.)

DISCUSSION

I.

Former Labor Code section 5909¹ provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(§ 5909.)

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

Here, according to Events, the case was transmitted to the Appeals Board on October 2, 2024, and 60 days from the date of transmission is Sunday, December 1, 2024, which by operation of law means this decision is due on or before Monday, December 2, 2024. (Cal. Code Regs., tit. 8, § 10600(b).) This decision is issued by or on December 2, 2024, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on October 2, 2024, and the case was transmitted to the Appeals Board on October 2, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 2, 2024.

II.

We would first note that a petition for reconsideration must fairly state all of the material evidence relative to the point or points at issue. (Lab. Code, § 5902; Cal. Code Regs., tit. 8, § 10945.) Each contention contained in a petition for reconsideration must be stated separately and clearly set forth. (*Id.*) A petition for reconsideration may be denied if it is unsupported by specific references to the record and to the principles of law involved. (Cal. Code Regs., tit. 8, § 10945(a); See *Flores v. Cal. Dept. of Corrections and Rehab.* (2014) 224 Cal.App.4th 199, 204 (“an appellant must do more than assert error and leave it to the appellate court to search the record ... to test his claim”); *City of Santa Maria v. Adam* (2012) 211 Cal. App.4th 266, 287 (“[r]ather than scour the record unguided, we may decide that the appellant has waived a point urged on appeal when it is not supported by accurate citations to the record”); *Salas v. Cal. Dept. of Transp.* (2011) 198 Cal.App.4th 1058, 1074 (“[w]e are not required to search the record to ascertain whether it contains support for [plaintiffs’] contentions”); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246

("[t]he appellate court is not required to search the record on its own seeking error" and "[i]f a party fails to support an argument with the necessary citations to the record, ... the argument [will be] deemed to have been waived".)

Here, the record contains approximately 51 exhibits and spanned approximately 19 trial days with a court reporter over the course of four years. In short, the record is voluminous. Yet defendant has presented a 3-page petition without any citation to the record or any legal authority in support of its contentions. For example, defendant alleges that it credited applicant with leave that applicant took during the period of temporary disability; however, defendant does not cite to a single exhibit that establishes this fact. Accordingly, we admonish attorney David Demshki (CA SBN 173446) that future petitions for reconsideration filed with the Appeals Board in this or any other case shall comply with the Rules of Practice and Procedure, including WCAB Rule 10945 (Cal. Code Regs., tit. 8, § 10945), and shall contain specific citations to the record and shall clearly and fairly state all material evidence. Failure to follow this admonishment may result in future petitions being denied for failure to comply with the rule.

Notwithstanding the deficiencies in defendant's petition, we are bound to conduct a review of the merits in each case as required by the California Supreme Court. (See *Allied Compensation Ins. Co. v. Industrial Acci. Com.* (1961) 57 Cal.2d 115, 120 [when deciding reconsideration, the Appeals Board must achieve a substantial understanding of the record].) However, given the lack of guidance from the parties and the voluminous record involved in this matter it is simply not possible to complete a review and achieve a substantial understanding of this record within the current time constraints.

Accordingly, and to allow all parties due process and to further our obligation to achieve a substantial understanding of the record when deciding reconsideration, we will grant reconsideration to study the issues presented.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact and Award and Order issued on August 28, 2024 is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 2, 2024

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

**CAROLYN BRIGGS, *IN PRO PER*
ROBINSON DI LANDO, APLC
THE LAW OFFICES OF MAX MALMYGIN. APC**

EDL/PAG/mc

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