

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

DAVID HANNA, *Applicant*

vs.

UNITED STAFFING SOLUTIONS, INC.; CALIFORNIA INSURANCE GUARANTEE ASSOCIATION by its servicing facility BROADSPIRE, for SUPERIOR NATIONAL COMPANY, in liquidation; HCA/CHINO VALLEY MEDICAL CENTER; TRANSPORTATION INSURANCE COMPANY, administered by BROADSPIRE, *Defendants*

**Adjudication Number: ADJ756255
Anaheim District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to further study the factual and legal issues in this case. ¹ This is our Opinion and Decision After Reconsideration.

Defendants Transportation Insurance (TI) and California Insurance Guarantee Association (CIGA) both seek reconsideration of the Findings and Order (F&O) issued by a workers' compensation arbitrator (WCA) on November 11, 2021, wherein the WCA found that CIGA was entitled to reimbursement from TI for permanent total disability (PTD) benefits paid to applicant by CIGA based upon a rate of \$490.00 per week, as well as reimbursement for \$93,910.43 for medical payments made on his behalf.

Defendant TI contends that the WCA utilized an incorrect weekly benefit rate, and that the rate should be at the temporary total disability (TTD) rate of \$314.16 per week, and not the PTD rate of \$490.00 per week.

Defendant CIGA asserts that the WCA erred in failing to award CIGA full reimbursement of the monies paid to applicant totaling \$1,424,294.11.

¹ Commissioner Sweeney and Deputy Commissioner Anne Schmitz were members of the panel that granted reconsideration. Commissioner Sweeney no longer serves on the Appeals Board, and Deputy Commissioner Schmitz was unavailable to participate. Other panel members have been appointed in their place.

We received an Answer from both defendants.

The WCA filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that we grant reconsideration and amend the findings of fact as to the reimbursement rate.

We have considered the allegations of the Petitions for Reconsideration, the Answers, and the contents of the WCA's Report. Based on our review of the record, and for the reasons discussed below, we will rescind the F&O and return the matter to the arbitrator due to lack of a proper record. When the WCA issues a new decision, any aggrieved person may timely seek reconsideration.

I.

WCAB Rule 10995 provides that if the arbitrator does not rescind the order, decision or award within 15 days of receiving the petition for reconsideration, the arbitrator is required to forward an electronic copy of their report and the complete arbitration file within 15 days after receiving the petition for reconsideration pursuant to WCAB Rule 10995(c)(3). (Cal. Code Regs., tit. 8, § 10995(c)(1)-(3).)

WCAB Rule 10914 requires the arbitrator to make and maintain the record of the arbitration proceeding, which must include the following:

- (1) Order Appointing Arbitrator;
- (2) Notices of appearance of the parties involved in the arbitration;
- (3) Minutes of the arbitration proceedings, identifying those present, the date of the proceeding, the disposition and those served with the minutes or the identification of the party designated to serve the minutes;
- (4) Pleadings, petitions, objections, briefs and responses filed by the parties with the arbitrator;
- (5) Exhibits filed by the parties;
- (6) Stipulations and issues entered into by the parties;
- (7) Arbitrator's Summary of Evidence containing evidentiary rulings, a description of exhibits admitted into evidence, the identification of witnesses who testified and summary of witness testimony;
- (8) Verbatim transcripts of witness testimony if witness testimony was taken under oath.

(9) Findings, orders, awards, decisions and opinions on decision made by the arbitrator;
and

(10) Arbitrator's report on petition for reconsideration, removal or disqualification.

(Cal. Code Regs., tit. 8, § 10914(c).)

While the WCA issued the Report on December 22, 2021, filing of the arbitration file in EAMS was not completed as required by WCAB Rule 10995, as the *record does not include* all exhibits proffered, including, but not limited to, the Findings and Order and Opinion on Decision of November 11, 2021 of the WCA for which both parties seek reconsideration.

Further, the proffered evidence of both parties is not properly described by the WCA in the transcript of proceedings by date and author, nor separately identified, separated and organized.

With certain limited exceptions, arbitrators shall have all of the statutory and regulatory duties and responsibilities of a workers' compensation judge. (Cal. Lab. Code § 5272.)

These duties and responsibilities include ensuring that the exhibits filed² by the parties are properly organized and separated so they may be electronically uploaded as part of the complete arbitration file. Cal. Code Regs., tit. 8 §10205.12(b) may provide further guidance as to the proper filing of such exhibits.

As with a workers' compensation administrative law judge (WCJ), an arbitrator's decision must be based on admitted evidence and must be supported by substantial evidence. (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10566.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties,

² Cal. Code Regs., tit. 8 § 10205(t) under the Electronic Adjudication Management System Rules states:
(t) To "file" a document means to either deliver a document or cause it to be delivered to the district office with venue or to the appeals board for the purpose of having it included in the adjudication file or to electronically file a document via EAMS in accordance with these regulations.

and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350] [a full and complete record allows for a meaningful right of reconsideration]; *Lewis v. Arlie Rogers & Sons* (2003) 69 Cal.Comp.Cases 490, 494, emphasis in original [“decision [must] 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.*”].) “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.*)

The Appeals Board may not ignore due process for the sake of expediency. (*Barri v. Workers’ Comp. Appeals Bd.* (2018) 28 Cal.App.5th 428, 469 [83 Cal.Comp.Cases 1643] [claimants in workers’ compensation proceedings are not denied due process when proceedings are delayed in order to ensure compliance with the mandate to accomplish substantial justice]; *Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805] [all parties to a workers’ compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions].) “Even though workers’ compensation matters are to be handled expeditiously by the Board and its trial judges, administrative efficiency at the expense of due process is not permissible.” (*Fremont Indem. Co. v. Workers’ Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965, 971 [49 Cal.Comp.Cases 288]; see *Ogden Entertainment Services v. Workers’ Comp. Appeals Bd. (Von Ritzhoff)* (2014) 233 Cal.App.4th 970, 985 [80 Cal.Comp.Cases 1].)

The Appeals Board’s constitutional requirement to accomplish substantial justice means that the Appeals Board must protect the due process rights of every person seeking reconsideration. (See *San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986] [“essence of due process is . . . notice and the opportunity to be heard”]; *Katzin v. Workers’ Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) In fact, “a denial of due process renders the appeals board’s decision unreasonable...” and therefore vulnerable to a writ of review. (*Von Ritzhoff, supra*, 233 Cal.App.4th at p. 985 citing Lab. Code,

§ 5952(a), (c).) Thus, due process requires a meaningful consideration of the merits of every case de novo with a well-reasoned decision based on the evidentiary record and the relevant law.

As with a workers' compensation administrative law judge (WCJ), an arbitrator's decision must be based on admitted evidence and must be supported by substantial evidence. (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) 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].)

We are unable to conduct meaningful review of the Petition or render a decision based on an incomplete record. Accordingly, as our decision after reconsideration, we will rescind the arbitrator's decision and return the matter to the trial level. When the WCA issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the WCA on November 11, 2021 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 24, 2024

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

**DAVID HANNA
BAZIAK & STEEVENS
GUILFORD SARVAS & CARBONARA
TOBIN LUCKS
ROBERT E. DRAKULICH, ARBITRATOR**

LAS/abs

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