

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

ROBERT GONZALES, *Applicant*

vs.

**NORTHROP GRUMMAN SYSTEMS CORPORATION;
*AIG, Defendants***

**Adjudication Number: ADJ9689895
Marina del Rey District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the August 11, 2022 Order issued by a workers' compensation administrative law judge (WCJ) wherein the WCJ ordered defendant to reimburse applicant's attorney \$2,880 for costs related to services performed by applicant's vocational expert, Robert Liebman, based upon a Petition for Costs filed by applicant's attorney.

Defendant contends that the Petition for Costs should be dismissed because the fees billed by Mr. Liebman are unreasonable, applicant's attorney delayed filing for three years, and applicant's attorney failed to serve a written demand sixty days prior to the filing of the Petition for Costs.

We have received an Answer from applicant's attorney. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration (Petition), the Answer, and the contents of the Report. Based upon our review of the record, and for the reasons discussed below, we will rescind the August 11, 2022 Order and return this matter to the trial level for further actions consistent with this decision.

FACTS

Applicant claimed that while employed by defendant as a structural aircraft mechanic for defendant during the period from March 31, 1992 through July 28, 2014, he sustained an industrial injury to his cervical and lumbar spine, bilateral shoulders, bilateral knees, right wrist, and internal body systems (heart disease and hypertension). The parties retained Agreed Medical Evaluator (AME), Dr. Steven Silbart, panel Qualified Medical Evaluator (QME), Dr. Benjamin Simon as medical experts. The parties also retained vocational experts, Mr. Robert Liebman (for applicant) and Mr. Michael Bonneau (for defendant).

The matter proceeded to trial and the WCJ issued a Findings of Fact and Award (F&A) on February 3, 2020 wherein applicant was found to have sustained a 100% permanent disability. This was based upon the AME and QME reports which rated at 97% permanent disability to the cervical and lumbar spine, bilateral shoulders, bilateral knees, right wrist, and internal body systems (heart disease and hypertension) as well as reporting from applicant's vocational expert, Mr. Liebman, who found applicant unable to return to the open labor market. The WCJ noted that the findings of defendant's vocational expert, Mr. Bonneau, were rebutted by applicant's testimony during trial.

DISCUSSION

Labor code section¹ 5313 requires that the WCJ produce "a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (See *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22.) As explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [33 Cal.Comp.Cases 350-351], a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (§§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Aside from providing assurance that due process is being provided, this "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33

¹ All further references are to the Labor Code unless otherwise noted.

Cal.Comp.Cases 350, 351].) In the instant case, it does not appear that a record has been made as there is no summary of evidence received or explanation of the reasons or grounds upon which the WCJ's decision was made with respect to applicant's Petition for Costs.

Further, due process requires that a party be provided with reasonable notice and an opportunity to be heard. (*Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 711-712 [57 Cal.Comp.Cases 230].) 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. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [97 Cal Rptr. 2d 852, 65 Cal.Comp.Cases 805].) A fair hearing is "... one of 'the rudiments of fair play' assured to every litigant ..." (*Id.* at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission ... must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at p. 577.) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157- 158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) Here, defendant issued an Objection to applicant attorney's Petition for Costs on August 2, 2022. Notwithstanding this Objection, the WCJ issued the August 11, 2022 Order without allowing defendant an opportunity to be heard.

It is well established that the WCJ may issue a notice of intention (NIT) for any proper purpose under WCAB Rule 10832(a) (Cal. Code Regs., tit. 8, § 10832 (a).) A proper purpose includes, but is not limited to, (1) Allowing, disallowing or dismissing a lien; (2) Granting, denying or dismissing a petition; (3) Sanctioning a party; (4) Submitting the matter on the record; or (5) Dismissing an application. (*Id.*) Pursuant to WCAB Rule 10832(c) (Cal. Code Regs., tit. 8, § 10832(c)), if an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may: (1) Sustain the objection; (2) Issue an order consistent with the notice of intention together with an opinion on decision; or set the matter for hearing. (Cal. Code Regs., tit. 8, § 10832 (c).) In the case at hand, the WCJ failed to issue a NIT which would have allowed defendant notice and opportunity to be heard. We find this to be in violation of defendant's due

process rights. Accordingly, we will rescind the August 11, 2022 Order and return this matter to the trial level for further proceedings consistent with this opinion.

As a final point, we underscore the fact that defendant's Petition is 171 pages long and contains several exhibits previously submitted and easily located within in the record. This is a violation of WCAB Rule 10945. (Cal. Code Regs., tit. 8, § 10945.) The duplication of these records is excessive and a waste of court resources. Defendant is therefore admonished to follow the Board's Rules of Practice and Procedure, including but not limited to Rule 10945, in all future matters. We also encourage defendant to work with applicant's attorney where possible so as not to waste the scarce resources of the Appeals Board. A better practice would have been to adjust the cost of the vocational expert's services rather than issuing nonpayment and filing a Petition for Costs.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the August 11, 2022 Order is **RESCINDED**, and that this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 9, 2024

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

**ROBERT GONZALES
PENNINGTON & TRODDEN
BLACK AND ROSE**

RL/cs

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