

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

ROBERT POLLOCK, *Applicant*

vs.

**INTEGRITY REBAR PLACERS, INC.;
ALASKA NATIONAL INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ19257864 ADJ19257865
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

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

Defendant Alaska National seeks reconsideration of the Findings and Award (F&A) issued by a workers' compensation arbitrator (WCA) on April 4, 2024. Defendant contends that their due process rights were violated by the arbitrator's refusal to continue the arbitration in order for defendant to review over 800 pages of records that had been provided to Dr. Bakshian, and that they were not timely served with either the records or supplemental reporting. Defendant further asserts that the medical reporting of Dr. Segil and Dr. Tirmizi, is not substantial medical evidence. Additionally, petitioner alleges that the WCA erred in awarding applicant temporary disability indemnity, and in failing to apply the post-termination defense as a bar in this case.

We received an Answer from applicant.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCA, which recommends that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will rescind the F&A 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.

WCAB Rule 10990 provides that if the arbitrator does not rescind the entire order, decision or award within 15 days of receiving the petition for reconsideration per WCAB Rule 10990(f)(1) or 10990(f)(2), WCAB Rule 10990(f)(3) requires the arbitrator to submit to the Appeals Board an electric copy of the *complete record of proceedings* including:

- (A) The transcript of proceedings, if any;
- (B) A summary of testimony if the proceedings were not transcribed;
- (C) The documentary evidence submitted by each of the parties;
- (D) An opinion that sets forth the rationale for the decision; and
- (E) A report on the petition for reconsideration, consistent with the provisions of rule 10962. The original arbitration record shall not be filed.

(Cal. Code Regs., tit. 8, § 10990(f)(3)(A)-(E); see also Lab. Code, §§ 3201.5(a)(1), 3201.7(a)(3)(A).) (emphasis added.)

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).)

On June 24, 2024, we granted reconsideration in order to allow for sufficient opportunity to further study the factual and legal issues in this case. In our grant, we indicated that while the WCA issued the Report on May 7, 2024, to date, an electronic copy of the complete record of proceedings had not been submitted.

Currently, while we received the aforementioned Report of May 7, 2024, and are in receipt of the WCA's Findings and Award, the transcript of proceedings (Transcript), as well as several medical reports from Omar Tirmizi, M.D. and Clive Segil, M.D., *the record still does not include* applicant's deposition transcript, the reports of Dr. Bakshian, as well as most of applicant's exhibits, and all of defendant's exhibits.

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 Award issued by the WCA on April 4, 2024 is **RESCINDED** and the matter is **RETURNED** to the arbitrator for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 14, 2024

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

**ROBERT W. POLLOCK
LAW OFFICES OF MALLERY & STERN
LAW OFFICES OF EDITTE ALSEN
MICHAEL SULLIVAN & ASSOCIATES
MARK KAHN, ARBITRATOR
IWADR PROGRAM, ATTN: ERIC NOBRIGA**

LAS/abs

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