

**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**SHANE STREET, *Applicant***

**vs.**

**JD2 INCORPORATED;  
FEDERAL INSURANCE COMPANY C/O GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ16197947 (IWADR00959)  
Sacramento District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Defendant JD2 Incorporated, insured by Federal Insurance Company c/o Gallagher Bassett (defendant), seeks reconsideration of the May 18, 2024 Findings and Award (F&A), wherein the workers' compensation arbitrator (WCA) found that applicant, while employed as an ironworker from June 16, 2020 to June 16, 2021, sustained industrial injury resulting in temporary total disability (TTD) for the period June 17, 2020 to date and continuing. The WCA awarded temporary disability at a rate to be adjusted by the parties commencing June 16, 2022 and continuing.

Defendant contends that the F&A fails to address the date of injury pursuant to Labor Code<sup>1</sup> section 5412, and that the date of injury should be July 23, 2012 to July 23, 2013. Defendant further contends the submitted medical reporting is not substantial evidence and does not support a finding of injury arising out of and in the course of employment (AOE/COE). Defendant also observes that the date of commencement of TTD in the Findings of Fact is inconsistent with the date of commencement of TTD in the Award, and that the award of TTD does not reflect the statutory limit of TTD to 104 compensable weeks.

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

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<sup>1</sup> All further references are to the Labor Code unless otherwise noted.

dismissed for failure to comply with Workers' Compensation Appeals Board (WCAB) Rule 10990 (Cal. Code Regs., tit. 8, § 10990).

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the WCA 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 after receipt of a petition for reconsideration, an arbitrator must rescind or amend the entire order, decision or award within 15 days (subdivisions (f)(1), (f)(2), or under subdivision (f)(3), the WCA must submit an electronic copy of the complete record of proceedings to the Appeals Board 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).)

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).)

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, 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.*)

Here, the WCA issued the Report on July 1, 2024. However, the record does not include the stipulations or the issues submitted for decision by the parties to the arbitration proceedings. (Cal. Code Regs., tit. 8, § 10914(c)(6).)

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.

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.

We offer the following nonbinding guidance to the parties upon return of this matter to the trial level. The WCA's Report indicates that the parties have framed the issue of injury AOE/COE but have not submitted the issue of injured body parts for decision. We observe, however, that any finding of injury AOE/COE must identify at least one body part which sustained injury. (Lab. Code, § 3600(a); *South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298 [80 Cal.Comp.Cases 489].) Therefore, the parties should consider framing for

decision the body part or parts alleged to have been injured as an adjunct to the issue of injury AOE/COE.

The WCA's Report also notes that the parties have raised the issue of the period of liability pursuant to section 5500.5, which provides that for claims of cumulative injury filed or asserted after January 1, 1981, liability is limited to the applicant's employers in the one-year period prior to either "the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury," or the date of injury as determined pursuant to section 5412, whichever occurs first. (Lab. Code, § 5500.5(a).) In cases involving an alleged cumulative injury, the date of injury is governed by section 5412, which holds:

The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment.

(Lab. Code, § 5412.)

Accordingly, a determination as to the period of liability pursuant to section 5500.5 necessarily requires two determinations: (1) the date of last injurious exposure, and (2) the date of injury pursuant to section 5412. Once both dates have been identified, the period of liability pursuant to section 5500.5 is the year preceding the earlier of the two dates. (Lab Code, § 5500.5(a).) Thus, and insofar as the parties wish to address issues of liability pursuant to section 5500.5, they should also frame the issue of the date of injury pursuant to section 5412. The WCA should then enter a finding as to both the date of injury pursuant to section 5412 and the period of liability pursuant to section 5500.5.

Finally, we observe that to the extent that any periods of TTD are identified and awarded by the WCA, the commencement dates of the indemnity should be consistent as between the Findings of Fact and the Award, and any applicable statutory limitations as to the length of the awarded disability should be specified.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the decision of May 18, 2024 is **GRANTED**.

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 18, 2024 Findings of Fact and Award is **RESCINDED** and that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCA as may be required, consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**August 12, 2024**

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

**SHANE STREET  
EASON & TAMBORNINI  
WAI, CONNOR & HAMIDZADEH  
LAW OFFICE OF ERIC G. ANDERSON  
MELISSA C. BROWN, ARBITRATOR (IWADR)**

**SAR/abs**

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