

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

YOSELIN FORTIN, *Applicant*

vs.

**ALA UNSTOPPABLE SERVICES;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ18875713
Marina del Rey District Office**

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

Applicant seeks reconsideration of the Order of Dismissal of Party Defendant Due to Lack of Coverage (Order of Dismissal) of May 29, 2024, wherein the workers' compensation judge (WCJ) dismissed State Compensation Insurance Fund (SCIF) as a party defendant in the case due to lack of coverage.

Applicant contends that the WCJ should not have dismissed SCIF from the case without holding a hearing on the issue.

We have received an Answer from defendant SCIF.

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, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Reconsideration, rescind the Order of Dismissal, and return this matter to the WCJ for further proceedings.

FACTS

Applicant filed an Application for Adjudication of Claim against ALA Unstoppable Services on February 15, 2024, claiming an industrial injury while working on May 19, 2023. Applicant listed the employer's address as PO Box 65005, Los Angeles, California, 90027.

On April 4, 2024, SCIF filed a Petition For Dismissal For Lack of Coverage on the grounds that it did not insure ALA Unstoppable Services on the date of injury, May 19, 2023. According to the proof of service, SCIF served applicant's attorney, but did not serve applicant.

On April 22, 2024, the WCJ issued a Notice of Intent to Dismiss SCIF as Party Defendant (NOI). The NOI reflects that SCIF was designated to serve. The NOI stated the following:

Notice of Intention to Grant Defendant's petition for dismissal as party defendant for lack of coverage.

Unless Good Cause to the contrary be shown within FIFTEEN (15) days from the date of service of this Notice of Intention. Good Cause will not be found by mere objection, but rather by specific response together with copies of any additional documentary evidence that the parties wish to be considered and an offer of proof as to any oral testimony to be presented at a hearing before the WCAB including the identity of the witnesses and the substance of said testimony.

On April 23, 2024, SCIF served the NOI.

On May 24, 2024, applicant filed an Objection to Petition for Dismissal and Petition for Penalties.

On May 29, 2024, the WCJ issued the Order of Dismissal dismissing SCIF as a defendant and designated SCIF to serve it. The Order of Dismissal stated "GOOD CAUSE APPEARING, and no objection having been received to the Notice of Intention to Dismiss State Fund served on April 23, 2024, IT IS ORDERED that State Fund is hereby dismissed from this case as a party defendant due to Lack of Coverage."

On May 30, 2024, SCIF served the Order.

Applicant filed the Petition for Reconsideration/ Removal on June 24, 2024.

DISCUSSION

The WCJ may issue a notice of intention for any proper purpose, including granting, denying, or dismissing a petition. (Cal. Code Regs., tit. 8, § 10832(a).) WCAB Rule 10629 (Cal. Code Regs., tit. 8, § 10629) allows the WCJ to designate service, and service shall include service

on applicant, whether or not applicant is represented. WCAB Rule 10628(a) (Cal. Code Regs., tit. 8, § 10628) provides that final orders may not be served by designated service. Where an order can be shown to have been defectively served, the time limit begins to run as of the date of receipt of the order. (*Hartford Accident & Indemnity Co. v. Workers' Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1 [43 Cal.Comp.Cases 1193].) Here, SCIF filed its petition to dismiss on April 4, 2024, but failed to serve applicant. In the Petition for Reconsideration, applicant's attorney alleges that he did not receive the NOI. Consequently, there are significant issues with service herein.

More significantly, the WCJ dismissed SCIF from the case without holding a hearing or appropriately admitting evidence into the record. Therefore, we do not have a sufficient record to evaluate the Order of Dismissal.

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313. "The Labor Code and the Board's rules set forth what must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc) (*Hamilton*).) The WCJ's opinion on decision "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." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) "For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

The Appeals Board's record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10803.) The WCJ's decision "must be based on admitted evidence in the record." (*Hamilton, supra*, at p. 476.) In *Hamilton*, we held that the record of proceeding must contain, at a minimum, "the issues

submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Id.* at p. 477.)

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 [65 Cal.Comp.Cases 805].) “Due process requires notice and a meaningful opportunity to present evidence in regards to the issues.” (*Rea v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers’ Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) 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 pp. 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].)

Since the WCJ did not hold a hearing or admit any evidence into the record on the issue of dismissal of SCIF, we do not have a sufficient record to consider the issue in the first instance. Moreover, as a matter of due process, applicant is entitled to a hearing.

Accordingly, we grant the Petition, rescind the Order of Dismissal, and return the matter to the trial level for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved person can timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the May 29, 2024 Order of Dismissal is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the May 29, 2024 Order of Dismissal is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 23, 2024

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

**YOSELIN FORTIN
CLAYTON PERRY
STATE COMPENSATION INSURANCE FUND**

JMR/pm

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