

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

BRENDA DE LEON, *Applicant*

vs.

**ROBINSON PHARMA, INC.;
GREAT AMERICAN INSURANCE COMPANY,
administered by STRATEGIC COMP;
CYPRESS INSURANCE COMPANY,
BERKSHIRE HATHAWAY, *Defendants***

**Adjudication Number: ADJ14930871
Santa Ana District Office**

**OPINION AND ORDER GRANTING
PETITION FOR RECONSIDERATION AND
NOTICE OF INTENTION TO
RESCIND ARBITRATOR'S DECISION**

Defendant Robinson Pharma Inc., by Great American Insurance Company administered by Strategic Comp Cincinnati (Great American), seeks reconsideration of the July 21, 2025 Amended Findings and Order (F&O), wherein the workers' compensation arbitrator (WCA) found that the date of injury in this case is November 7, 2021, creating a period of liability from November 7, 2020 to November 7, 2021; there was no binding agreement between Great American and Cypress Insurance Company (Cypress) as to resolution of the Petition for Contribution; and since Cypress has no coverage during the injurious period, they have no liability. The WCA ordered Great American will take nothing from Cypress because of the issues raised in their Petition for Contribution, further, should the aggrieved party, Great American, file a Petition for Reconsideration, they are ordered to provide a copy of their exhibits through EAMS, attention to the Board (Recon).

Great American contends it was deprived its due process rights as this matter had previously been sent back by the Appeals Board on May 29, 2025 due to lack of a proper record, and they were not afforded the opportunity to frame the stipulations, issues, and or ensure that the summary of evidence was accurate prior the issuance by the WCA of the Amended Findings and

Order. Defendant further asserts that the exhibits as listed by the WCA are not properly designated, and there has been no summary of evidence prepared by the WCA.

Defendant also disputes the WCA's finding of the date of injury based upon defendant's exhibits, alleging the evidence justifies an earlier date.

We have received an Answer from Cypress. The WCA prepared a Report on Reconsideration (Report), recommending that the Petition be dismissed as untimely or denied.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the Report of the WCA. Based on our review of the record, and for the reasons discussed below, we will grant the Petition and issue a Notice of Intention (NIT) to rescind the July 21, 2025 decision by the WCA unless all required documents per WCAB Rule 10995(c)(3) (Cal. Code Regs., tit. 8, § 10995(c)(3) are filed in the Electronic Adjudication Management System (EAMS) within thirty (30) days after service of this decision, plus an additional five (5) days for mailing per WCAB Rule 10605 (Cal. Code Regs., tit. 8, § 10605).

DISCUSSION

I.

Preliminarily, we note that former Labor Code¹ section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

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

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on September 2, 2025 and 60 days from the date of transmission is Saturday, November 1, 2025. The next business day that is 60 days from the date of transmission is Monday, November 3, 2025. (See Cal. Code Regs., tit. 8 § 10600(b).)² This decision was issued by or on November 3, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the WCA, the Report was served on September 2, 2025, and the case was transmitted to the Appeals Board on September 2, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 2, 2025.

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

II. BACKGROUND

We will briefly review the relevant facts from recent events.

Applicant alleged industrial injury to her neck, low back, and left elbow during the period May 12, 2004 through June 22, 2021, while employed by defendant Robinson Pharma.

On March 5, 2024, the applicant and Great American submitted a Compromise and Release (C&R), which was approved on March 6, 2024. The C&R stated the following:

BERKSHIRE HATHAWAY ADMINISTERED BY CYPRESS INSURANCE COMPANY PROVIDED COVERAGE FOR THE PERIOD OF 06/22/2020 TO 10/31/2020 OR 35.79% OF THE CT PERIOD. STRATEGIC COMP PROVIDED COVERAGE FROM 11/01/2020 TO THE END OF THE CT PERIOD OF 06/22/2021 OR 64.21% OF THE CT PERIOD. DEFENDANT STRATEGIC COMP RESERVES ITS RIGHT TO SEEK CONTRIBUTION FROM ALL DEFENDANTS.

(C&R, March 5, 2024, p. 6.)

On March 7, 2024, Great American filed a Petition for Contribution, requesting a panel of arbitrators. Thereafter the parties agreed upon Robert Drakulich as arbitrator, and a hearing was set for August 2, 2024. On October 7, 2024 the WCA found that the date of injury in this case was November 7, 2021, creating an injurious period of November 7, 2020 to November 7, 2021 and that Cypress has no coverage during the injurious period. The WCA ordered the Petition for Contribution filed by Great American denied.

On October 28, 2024, Great American filed for Reconsideration. The matter was transmitted to the Appeals Board on April 16, 2025, and on May 29, 2025, we issued an Opinion and Order granting the petition, rescinding the WCA's decision, and returning the matter to the WCA due to lack of a proper record. (Opinion and Order, 5/29/25.)

On July 21, 2025, the WCJ issued an Amended Findings and Order, in which he found the date of injury to be November 7, 2021, creating a liability period from November 7, 2020 to November 7 2021; there was no binding agreement between the defendants as to resolution of the Petition for Contribution; and that Cypress has no coverage during the period and therefore, no liability. The Petition for Contribution was again ordered denied.

It is from this Amended Findings and Order that Great American seeks reconsideration.

III.

Only the Appeals Board is statutorily authorized to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.) The Appeals Board must conduct de novo review as to the merits of the petition and review the entire proceedings in the case. (Lab. Code, §§ 5906, 5908; see Lab. Code, §§ 5301, 5315, 5701, 5911.) Once a final decision by the Appeals Board on the merits of the petition issues, the parties may seek review under section 5950, but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951.)

A petition for reconsideration of an arbitrator's decision or award made pursuant to the mandatory or voluntary arbitration provisions of sections 5270 through 5275 shall be filed in EAMS or with the district office having venue in accordance with section 5501.5. (Cal. Code Regs., tit. 8, § 10995.)

WCAB Rule 10995 further 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).)

WCAB Rule 10803(a)(2) states in relevant part that:

(a) The Workers' Compensation Appeals Board's adjudication file shall consist of:

(2) The record of proceedings, which consists of: the pleadings, minutes of hearing, summaries of evidence, certified transcripts, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.

(Cal. Code Regs., tit. 8, § 10803(a)(2).)

WCAB Rule 10615 states in relevant part that:

Except as otherwise provided by these rules or ordered by the Workers' Compensation Appeals Board, after the filing and processing of an initial Application for Adjudication of Claim or other case opening document, all documents required or permitted to be filed under the rules of the Workers' Compensation Appeals Board shall be filed only in EAMS³ or with the district office having venue.

(Cal. Code Regs., tit. 8, § 10615.)

The record does not contain the 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. (Cal. Code Regs., tit. 8, § 10914(c)(3).) Nor does the record reflect the pleadings, petitions, objections, briefs and responses filed by the

³ Pursuant to WCAB Rule 10305(j) (Cal. Code Regs., tit. 8, § 10305(j)):

"Electronic Adjudication Management System" or "EAMS" means the computerized case management system used by the Division of Workers' Compensation to electronically store and maintain adjudication files and to perform other case management functions.

parties with the arbitrator, if any. (Cal. Code Regs., tit. 8, § 10914(c)(4).) Additionally, the record does not include the arbitrator's summary of evidence containing evidentiary rulings, a description of exhibits admitted into evidence. (Cal. Code Regs., tit. 8, § 10914(c)(7).) Further, petitioner has asserted that the exhibits, as identified by the WCA, are not the correct designation as they proposed, and that the failure of the WCA to create a record with the parties has deprived them of due process.

The parties may need to see if they can agree with the designation of the Great American exhibits as listed by the WCA in his Amended F&O, and have each item separately identified and filed. The exhibits proposed by Cypress appear to have already been properly filed after the Appeals Board issued its initial Opinion and Order on May 29, 2025.

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].)

Further, with limited exceptions, arbitrators shall have all of the statutory and regulatory duties and responsibilities of a workers' compensation judge. (Cal. Lab. Code § 5272.) This may include delegation to the petitioner and/or the parties, the responsibility of ensuring that an electronic copy of a complete arbitration file is forwarded directly to the presiding workers' compensation judge of the district office having venue over the matter. (Cal. Code. Regs., tit. 8 § 10995(c)(3).)

These duties and responsibilities further include ensuring that the exhibits filed by the parties are properly organized and separated so they may be electronically uploaded as part of the complete arbitration file. AD Rule 10205.12 (Cal. Code Regs., tit. 8 §10205.12(b)) may provide further guidance as to the proper filing of such exhibits, which may be accomplished by the arbitrator or the parties. *Documents and exhibits that are submitted in violation of AD Rule 10205.12 will not be accepted or considered.*

Here, we are unable to conduct meaningful review of the petition or render a decision until we have received a complete record. Thus, this is not a final decision on the merits of the Petition for Reconsideration, and once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

Accordingly, we grant the Petition for Reconsideration, and issue Notice of our Intention to rescind the arbitrator's decision and return the matter to the arbitrator if a complete record of the proceedings as stated in WCAB Rule 10995(c)(3) is not filed in EAMS within thirty (30) days after service of this Notice (plus additional time for mailing) in accordance with AD Rule 10205.12(b).

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration filed by Great American of the decision issued by the WCA on July 21, 2025 is **GRANTED**.

NOTICE IS FURTHER GIVEN that within thirty (30) days after service of this decision plus additional time for mailing per WCAB Rule 10605(a) the required documents per WCAB Rule 10995(c)(3) must be filed in the Electronic Adjudication Management System (EAMS). If all documents are not properly filed in EAMS by that date, the July 21, 2025 decision by the workers' compensation arbitrator will be **RESCINDED** and the matter will be **RETURNED** to the arbitrator for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 3, 2025

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

**BRENDA DE LEON
DIMARCO ARAUJO MONTEVIDEO
VARON, ST. CLAIR & JELENSKY
SCHLOSSBERG & UMHOLTZ
ROBERT DRAKULICH, ARBITRATOR**

SL/abs

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