

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

CHRISTINA AVILES, *Applicant*

vs.

**SAMUEL HALE, LLC & DIBARA MASONRY. LLC;
CLEAR SPRING PROPERTY AND CASUALTY administered by CANNON COCHRAN
MANAGEMENT; ARCH INSURANCE, *Defendants***

**Adjudication Number: ADJ17726478, ADJ15918108
Van Nuys District Office**

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

Applicant seeks reconsideration of the Findings of Fact and Orders (F&O) issued July 11, 2025. The workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant was employed by Samuel Hale, LLC (Hale) as the general employer and DiBara Masonry (DiBara) as the special employer, that applicant's employment with Hale was subject to a valid collective bargaining agreement with the UFCW, that there was a valid alternative dispute resolution agreement, and that the WCAB does not have jurisdiction. The WCJ ordered the case dismissed without prejudice, invalidated applicant's election under Labor Code 5500.5,¹ and ordered the case off calendar.

Applicant argues that defendants have not met their burden of proof that a valid collective bargaining agreement exists between the union and Hale and that there is a valid labor management agreement containing an alternative dispute resolution approved by the Administrative Director.

Defendant filed an Answer. The WCJ issued a Report and Recommendation (Report), recommending denial of the Petition.

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the decision and return the matter to the trial level for further proceedings consistent with this opinion.

FACTS

Applicant filed an application for adjudication of claim alleging a cumulative injury during the period of April 13, 2022 through April 27, 2023 to the neck, shoulders, scalp, and psyche. The alleged employers were DiBara Masonry, LLC and Samuel Hale, LLC. Both entities were insured by Clear Springs Property and Casualty (Clear Springs) from April 13, 2022 through June 30, 2022, and by Arch Insurance (Arch) from July 1 2022 through April 27, 2023. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 2/22/2025, 2:7-9).

On February 14, 2024, the matter proceeded to trial. The issues for trial were “1. employment, 2. jurisdiction of the Appeals Board, 3. Existence of ADR Dispute Resolution Agreement under Labor Code Section 3201.7.” (MOH/SOE, 2/22/2024, 2:11-15). At trial, only Applicant’s Exhibit 1 (subpoenaed records of DiBara Masonry, LLC), Applicant’s Exhibit 2 (Subpoenaed Records of Samuel Hale, LLC), Defendant’s Exhibit A (Samuel Hale, LLC, Client Service Agreement), and Defendant’s exhibit B (Labor Management Workers’ Compensation Agreement between UFCW 8-Golden State and VForce Skilled Trades, LLC) were admitted without objection. (MOH/SOE, 2/22/2024, 2:20-3:7). The remainder of the exhibits, defendant’s C-F, were marked for identification only, “pending authentication by witness testimony.” (MOH/SOE, 2/22/2024, 3:22-23).

Applicant testified that she worked for DiBara as an Operations Manager. (MOH/SOE, 2/22/2024, 4:6). She was hired by DiBara directly but through a staffing agency. (MOH/SOE, 2/22/2024, 4:6-7). She was aware that Hale handles the payroll for DiBara and thought that Hale was a payroll company. (MOH/SOE, 4:9, 4:16-17). She testified that she had no knowledge of being a part of a union or that other employees at DiBara were a part of a union. (MOH/SOE, 2/22/2024:11-13). She did testify regarding some of the exhibits that were marked for identification.

Defendant called the Chief Experience Officer from Hale as a witness. She testified that Hale is a PEO that supplies its clients with HR services, payroll, and workers compensation. (MOH, 2/22/2024, 5:9-11). She testified that Hale was previously known as VForce Skilled

Trades, LLC. (MOH/SOE, 2/22/2024, 5:20-22). She alleges that PACT is an acronym for Professional and Commercial Trade Association which is a “wing” of the UFCW 8-Golden State Union. (MOH/SOE, 2/22/2024, 6:3-5). When employees are hired, they are given information about PACT and provided a PACT membership form. (MOH/SOE, 2/22/2024, 6:5-6). Once the form is completed, the employee becomes a member and union dues are deducted from the employee’s paycheck. (MOH/SOE, 2/22/2024, 6:6).

The matter was continued to May 1, 2024. The Hale representative continued testimony. She noted that the PACT agreement itself is not a union, but that membership in UFCW is incorporated into the PACT agreement. (MOH/SOE, 05/09/2024, 2:6-9). The union deduction from payroll is identified as PACT. (MOH/SOE, 05/09/2024, 2:9). The witness delivers union membership agreements to DiBara, but does not know if DiBara advises their employees of union membership or whether applicant was advised of union membership. (MOH/SOE, 05/09/2024, 2:20-23). The matter was submitted.

WCJ issued a F&O on May 10, 2024. Applicant filed a petition for reconsideration and WCJ vacated the F&O.

The matter was again set for trial on October 21, 2024. Applicant introduced four additional exhibits, applicant’s exhibits 3-6, that were marked for identification only. The WCJ noted that defendant objected to exhibit 3 because of relevancy and late production, as well as objecting to exhibits 4 through 6 as they had not been seen by defendant. (MOH/SOE, 11/5/2024, 2:20-22). Applicant also testified that she called UFCW and was unable to obtain any information regarding alleged union membership. (MOH/SOE, 11/5/2024, 3:5-6).

On December 9, 2024, the matter was continued again. The Minutes of Hearing (MOH) notes, “Due to additional information App. hereby elects against DiBara Masonry/Clear Springs Insurance Co. for employment before implementation of the Samuel Hale/ADR program.” The matter was continued.

The next trial did not occur until June 5, 2025. Additional issues were added: “1. Authenticity of Exhibit C, 2. Compliance with Notice to Produce, July 24, 2024, and 3. Violation of Election under Labor Code section 5500.5.” Defendants called another witness, a compliance officer, on behalf of Hale. She testified that exhibit C, dated May 19, 2016, was a communication from the Administrative Director approving the ADR program. (MOH/SOE, 6/10/2025, 2:12-16). She testified that there are several entities under the larger Samuel Hale company. (MOH/SOE,

6/10/2025, 3:5-8). Samuel Hale was incorporated on April 5, 2016 in Florida and was registered as a foreign corporation operating in California on April 10, 2017. (MOH/SOE, 6/10/2025, 3:9-11). VForce and Hale share the same FEIN after the name change in 2016. (MOH/SOE, 6/10/2025, 3:10-13). She also testified that exhibit B was incomplete with part one, which is the rules and regulations for the labor agreement, missing. (MOH/SOE, 6/10/2025, 3:20-22). The matter was continued to allow applicant the opportunity to offer additional testimony and documentation.

On June 30, 2025, the matter was heard once more. Additional issues were added regarding applicant's demand to produce records and defendant's objection thereto, applicant's election against DiBara, as well as applicant's new objection "to all defense witnesses and exhibits previously listed due to a lack of foundation, since there [was] no one [there] to lay foundation." (MOH/SOE, 07/01/2025, 2:5-11). Applicant was allowed ten days to file additional documentation, and the matter was submitted July 10, 2025.

On July 10, 2025, the WCJ issued an F&O finding the following:

1. Christina Aviles, while employed during the period 4/13/2022 through 4/27/2023, as an Operations Manager, Occupational Group Number unknown, at Glendale, California, by Samuel Hale, LLC, claims to have sustained injuries arising out of and in the course of her employment to her neck, shoulder, psyche, and scalp.
2. At the time of the alleged injury the employer's workers' compensation carrier was Clear Springs Property and Casualty Co.
3. The special employer at the time of the alleged injuries was DiBara Masonry LLC.
4. The Applicant's employment with Samuel Hale LLC was subject to a valid collective bargaining agreement with the UFCW.
5. The UFCW collective bargaining agreement contained a valid Alternative Dispute Resolution agreement under Cal. Lab. Code sec. 3201.7.
6. Under Cal. Lab. Code sec. 3201.7 the WCAB does not have jurisdiction over this case at this time.
7. Applicant was not denied due process of law.
8. Applicant's purported election under Cal. Lab. Code sec. 5500.5 against DiBara Masonry is untimely in that it was made well after the beginning of trial.

(F&O, 07/10/2025, p. 1-2)

DISCUSSION

I

Former 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:

- (2) 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.

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 August 11, 2025 and 60 days from the date of transmission is October 10, 2025. This decision is issued by or on October 10, 2025 so that we have timely acted on the petition as required by section 5909(a).

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on August 4, 2025 and the case was transmitted to the Appeals Board on August 11, 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 August 11, 2025.

II

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*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.) "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.) 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, § 10787.) "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].)

Here, it appears that no decision was rendered as to the admissibility of contested evidence and the relevant evidence was not actually admitted into the record. We note that in the first trial on February 14, 2024 only four exhibits were admitted without objection, and the remainder were marked for identification pending authentication. No opinion was rendered as to whether the contested exhibits were properly authenticated and admitted. On October 21, 2024, applicant offered four more exhibits which were also marked for identification as defendant objected. Then at the trial on June 30, 2025, applicant apparently lodged an objection to all defense exhibits and witnesses. There is an order admitting applicant exhibit 6. As a result, given the numerous objections as to the evidence and without orders clearly admitting the evidence, the record is incomplete, and we cannot meaningfully review the record. Thus, we are unable to consider the merits of the Petition. Upon return, the WCJ should rule on the objections and determine the admissibility of the contested exhibits and witnesses in the first instance.

Moreover, Finding of Fact 2 appears to contain an error. The stipulation made February 14, 2024 lists both Clear Springs Property and Casualty Company and Arch Insurance as covering consecutive periods during the cumulative trauma year plead. (MOH/SOE, 02/22/2024, 2:7-9).

Finding of Fact 2 only lists Clear Springs as the worker's compensation carrier. This should be corrected or clarified in any new decision rendered.

Finally, we address the issue of applicant's notice to produce. While it is discussed in the opinion, there is no finding or order addressing the pleading. Upon return this issue should be addressed.

WCAB Rule 10642 expressly states: "A notice to appear or produce in accordance with Code of Civil Procedure section 1987 is permissible in proceedings before the Workers' Compensation Appeals Board." (Cal. Code Regs., tit. 8, § 10642.) Both the Opinion and the Report fail to address that notices to produce are expressly authorized by regulation.

Pursuant to Code of Civil Procedure 1987:

(b) In the case of the production of a party to the record of any civil action or proceeding or of a person for whose immediate benefit an action or proceeding is prosecuted or defended or of anyone who is an officer, director, or managing agent of any such party or person, the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend before a court, or at a trial of an issue therein, with the time and place thereof, is served upon the attorney of that party or person. The notice shall be served at least 10 days before the time required for attendance unless the court prescribes a shorter time. If entitled thereto, the witness, upon demand, shall be paid witness fees and mileage before being required to testify. **The giving of the notice shall have the same effect as service of a subpoena on the witness**, and the parties shall have those rights and the court may make those orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the court.

(Code. Civ. Proc, § 1987(b), (emphasis added).)

The WCJ notes that there is no provision in the Labor Code authorizing a notice to produce; however, there is no provision precluding the use of a notice to produce. Furthermore, the Labor Code expressly permits the Appeals Board to adopt discovery procedures by regulation, and the regulation expressly permits a notice to produce.

We would further note, as stated in a recent en banc opinion:

The workers' compensation system "was intended to afford a simple and nontechnical path to relief." (*Elkins v. Derby* (1974) 12 Cal.3d 410, 419 [39 Cal.Comp.Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) . . . "[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits." (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal. App.4th 485, 490 [67 Cal.Comp.Cases 1273].)

(*Perez v. Chicago Dogs* (2025) 2025 Cal.Wrk.Comp. LEXIS 29 at *15, (Appeals Board en banc).)

Given the policy of workers' compensation to allow a simple and nontechnical path to relief and the expressed authorization found in the Rules of Practice and Procedure, parties of record in a case are permitted to request documents via a notice to produce. However, the WCJ may narrow the scope of the notice to produce or sustain defendant's objection should it be warranted. Further, personal service is not required for production of a party to the record or its officers, directors, or agents. To the extent the notice to produce sought production of parties excluded from the aforementioned categories, personal service may be required. Particular issues of service may be addressed upon return.

Accordingly, we grant the Petition for Reconsideration, rescind the F&A and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the decision of July 11, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of July 11, 2025 is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 10, 2025

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

**CHRISTINA AVILES
EQUITABLE LAW FIRM
LAW OFFICES OF BRADFORD & BARTHEL**

TF/md

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