

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

GERARD MAHAN, *Applicant*

vs.

**A-1 GUARANTEE ROOFING;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ3214075 (VEN0052606)
Long Beach District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant, in pro per, seeks reconsideration of the Order Approving Compromise and Release (OACR) that was approved by the workers' compensation administrative law judge (WCJ) on June 18, 2025.

Applicant contends, in relevant part, that the OACR should be rescinded as he disputes the deduction of the permanent disability payments in the amount of \$17,325 made in accordance with the Stipulations with Request for Award that was approved on July 21, 1986.

We have received an Answer to the Petition from the defendant.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration be denied.

We have received a supplemental pleading from applicant. He did not request permission as is required by WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964), but since we are sending the matter back to the WCJ to hold a hearing, he can raise any concerns with the WCJ at that time. Thus, we do not accept the supplemental pleading, and we have not considered it.

We have considered the allegations of applicant's Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will dismiss the Petition for Reconsideration and return this matter to the trial level for consideration of the Petition as one to set aside the OACR.

FACTS

Applicant, while employed by defendant as a roofer on March 13, 1985 (listed as March 11, 1985 in the Compromise and Release), sustained an industrial injury to the left eye.

Parties settled the claim by way of a Stipulations with Request for Award for 30½% permanent disability in the amount of \$17,325. Future medical care for the left eye remained opened. The WCJ issued an Award approving the settlement on July 21, 1986.

On April 24, 2025, the parties entered into a Compromise and Release (C&R) to settle out the remaining issues for \$45,000. As part of the settlement, the parties agreed to deduct \$17,325 in PD advances and \$3,491.97 for a Medicare Set Aside Allocation. The WCJ issued an OACR approving the settlement on June 18, 2025.

On July 14, 2025, applicant filed a Petition for Reconsideration.

DISCUSSION

I.

Former Labor Code section 5909¹ 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.

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.”

¹ All section references are to the Labor Code, unless otherwise indicated.

Here, according to Events, the case was transmitted to the Appeals Board on July 29, 2025, and 60 days from the date of transmission is Saturday, September 27, 2025. The next business day that is 60 days from the date of transmission is Monday, September 29, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).² This decision is issued by or on Monday, September 29, 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 workers' compensation administrative law judge, the Report was served on July 29, 2025, and the case was transmitted to the Appeals Board on July 29, 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 July 29, 2025.

II.

All parties in workers' compensation proceedings retain their 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 guarantees all parties the right to notice of hearing and a fair hearing. (*Id.*) A fair hearing includes 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 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.4 703, 710 [57 Cal.Comp.Cases 230].)

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.

A WCJ is required to “make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).) 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.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Additionally, there must be a complete record for our review of the case. “[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc).) 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.)

Here, we agree with the WCJ that the Petition should be treated as a petition to set aside the OACR. However, a hearing is necessary as there is currently no evidence admitted into the record regarding applicant’s contentions. Additionally, the benefits printout showing the permanent disability payments issued does not appear in the record. As such, we are unable to review any evidence regarding benefits paid. (See Cal. Code Regs., tit. 8, § 10803.) We cannot make a decision without giving the parties an opportunity to be heard and for the WCJ to create a complete record for our review.

Accordingly, we will dismiss the Petition for Reconsideration and return this matter to the trial level. Upon return, we recommend that the WCJ treat the Petition as a petition to set aside and set a hearing so the parties will have an opportunity to create a record, raise all relevant issues,

and submit evidence. After the WCJ issues a decision, either party may then timely seek reconsideration of that decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 23, 2025

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

**GERARD MAHAN
STATE COMPENSATION INSURANCE FUND**

JL/abs

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