

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

KEVIN PERRY *Applicant*

vs.

**ASSET PROTECTION AND SECURITY SERVICES L.P.;
INSURANCE COMPANY OF THE STATE OF PA, administered by GALLAGHER
BASSETT SERVICES for AIG CLAIMS, *Defendants***

**Adjudication Number: ADJ18890787; ADJ10622598; ADJ10936287; ADJ11180688
San Diego District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant in pro per seeks reconsideration of the September 24, 2024 Order Dismissing Case with Prejudice (Order Dismissing). Therein, the WCJ stated that “WCAB Case ADJ18890787 is an attempt by the applicant to re-litigate the case be filed against the same party for the same cause of action in which a final judgment was rendered on the merits, in violation of the doctrine of res judicata.”

In a 109-page filing,¹ applicant contends that the Order is not supported by the preponderance of evidence.

We did not receive an answer. However, defendant requested permission to file correspondence dated February 14, 2025 which appears to be a reply to the WCJ’s Report and Recommendation on Petition for Reconsideration. Pursuant to our authority, we accept defendant’s supplemental pleading. (Cal. Code Regs., tit. 8, § 10964.)

We have considered the allegations of the Petition for Reconsideration and the record in this matter. For the reasons discussed below, we will dismiss applicant’s petition as one for

¹ We admonish applicant for attaching documents that were either already part of the record in violation of WCAB Rule 10842(c) (Cal. Code Regs., tit. 8, § 10842(c)) or that were never admitted into evidence, in violation of Appeals Board Rule 10945. (Cal. Code Regs., tit. 8, § 10945(c)(2).) Future compliance with the Appeals Board’s rules is expected.

reconsideration, return the matter to the trial level for consideration of the Petition as one to set aside the Order Dismissing applicant's case in the first instance.

I.

Former Labor Code² 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, Labor Code 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."

Here, according to Events, the case was transmitted to the Appeals Board on January 31, 2025, and 60 days from the date of transmission is April 1, 2025. This decision is issued by or on April 1, 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.

² All further statutory references are to the Labor Code, unless otherwise noted.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on January 31, 2025, and the case was transmitted to the Appeals Board on January 31, 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 January 31, 2025.

II.

On or about February 15, 2024, applicant filed a new Application for Adjudication against Asset Protection for cumulative trauma to the circulatory system, muscular skeletal, stress, psyche, and "other" body parts during the cumulative period October 1, 1989 to February 12, 2024. (ADJ18890787.)

On March 19, 2024, defendant filed a petition to have applicant declared a vexatious litigant in case ADJ18890787. On May 8, 2024, the matter came on for hearing with the presiding workers compensation judge (PWCJ) on the sole issue of whether applicant should be declared a vexatious litigant. On August 2, 2024, the PWCJ issued a Findings and Order declaring applicant a vexatious litigant in case ADJ18890787 per AD rule 10430. (Cal. Code Regs., tit. 8 § 10430.) There was no appeal of this Findings and Order.

On September 3, 2024, defendant filed a petition for dismissal of applicant's case, and on September 16, 2024, applicant filed an objection to defendant's petition for dismissal, which was accepted for conditional filing by the PWCJ on September 24, 2024.³

On September 24, 2024, the WCJ issued the Order Dismissing Case with Prejudice, dismissing applicant's claim against Asset Protection based upon res judicata. In the Report, the WCJ explained:

It is clear that by filing a new case against Asset Protection on February 15, 2024 (which includes a new Labor Code section 132a petition), the applicant intends to relitigate his prior unsuccessful and unappealed case against A[s]set Protection.

³ Cal. Code Regs., tit. 8 § 10430(e) states, in pertinent part: (e) If a vexatious litigant proposes to file, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness to Proceed, petition or other request for action by the Workers' compensation Appeals Board, the request for action shall be conditionally filed.

Mr. Perry was employed by Asset Protection from March 8, 2010, to September 30, 2014. (October 11, 2024, Petition for Reconsideration, p. 64; Stipulated Facts, page 14, consolidated Findings and Award and Orders, November 16, 2022). In his prior case against Asset Protection (ADJ10622598), he alleged a cumulative trauma injury during the entire period of his employment with Asset Protection.

In his most recent case against Asset Protection, he alleged cumulative trauma injury occurring during the period of October 1, 1989, through February 12, 2024, even though he did not work for Asset Protection before March 8, 2010, or after September 30, 2014. All of the same body parts alleged to have been injured were at play in the consolidated proceedings that resulted in a “take nothing” in 2022.

The Application for Adjudication of claim filed by Mr. Perry against Asset Protection and Security Services on February 15, 2024 (ADJ18890787) alleges the same cumulative trauma injury occurring over the entire period of his employment by Asset Protection to the same body parts that were the subject of the adjudication in ADJ10622598. The recently filed case is clearly an attempt to have a “do-over” of the issues previously determined against him with finality.

* * *

The applicant appears to not understand that the doctrine of res judicata applies to bar his second case against Asset Protection. The fundamental legal principle of the doctrine is to ensure the finality of judicial decisions. The matters raised in the second Application for Adjudication of Claim against Asset Protection have already been judged. The doctrine operates to prevent the re-litigation of issues decided in cases involving the same parties that have already been conclusively decided by a court of competent jurisdiction. The doctrine operates to protect parties from repeated litigation. The decision following the consolidated proceeding is final and binding, and all parties must abide by it. The consolidated proceeding involved the same parties, and the same cause of action and final judgment was rendered by the court having proper jurisdiction. The applicant is not entitled to “do-over” of his unsuccessful case against Asset Protection, and the case filed against Asset Protection on February 15, 2024 (ADJ18890787) was properly dismissed for that reason.

(Report, January 20, 2025, pp. 7-8.)

III.

A decision “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), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351]), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v.*

Workmen's Comp. Appeals Bd. (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

Section 5313 provides:

The appeals board or the workers' compensation judge shall, within 30 days after the case is submitted, 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, § 5313.)

As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 478; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22 (Appeals Board 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....” (*Hamilton, supra*, at p. 476.) The Court of Appeal has further observed that pursuant to Labor Code section 5908.5, decisions of the Appeals Board must state the evidence relied upon and specify in detail the reasons for the decision. (*Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351] (Evans).) The purpose of the requirement is “to assist the reviewing court to ascertain the principles relied upon by the lower tribunal, to help that tribunal avoid careless or arbitrary action, and to make the right of appeal or of seeking review more meaningful.” (*Evans, supra*, at p. 755.)

Here, in the absence of a record, we are unable to evaluate applicant's contentions. 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].) 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 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].)

Accordingly, we dismiss the Petition as premature and return the matter to the PWCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, we recommend that the PWCJ treat the Petition for Reconsideration as a petition to set aside the Order Dismissing. After the WCJ issues a decision, any aggrieved person 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/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSE H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 1, 2025

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

**KEVIN PERRY
LAW OFFICES OF BRADFORD & BARTHEL, LLP**

PAG/bp

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