

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

**LUCIANO GONZALEZ MENDOZA, *Applicant***

**vs.**

**CARROL AND STRONG BUILDERS;  
PEDRO PILLAR LOPEZ, individual,  
dba P.L. CONSTRUCTION/LOPEZ P. CONSTRUCTION;  
SOUTHEAST PERSONNEL LEASING COMPANY;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ12768897  
Salinas District Office**

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

Defendant PL Construction/Pedro Lopez seeks reconsideration of the March 24, 2025 Findings and Order (F&O), wherein the workers' compensation arbitrator (WCA) found that Pedro Lopez has presented insufficient evidence to support a finding that the injury to Luciano Gonzalez Mendoza which occurred on or about August 6, 2019 fell within the contract with Real Ventures LTD, signed 1/20/2017; thus, said injury is not covered by the workers' compensation policy between South East Personnel Leasing, INC and State National Insurance Co.; and Pedro Lopez and PL Construction were uninsured for workers' compensation at the time of Mr. Mendoza's injury on or about August 6, 2019. The WCA ordered that Real Ventures LTD, South East Personnel Staffing<sup>1</sup>, and State National Insurance Co. be dismissed as party defendants.

Defendant PL Construction/Pedro Lopez contends that ambiguity in coverage-related contracts is to be resolved in favor of extending coverage and coverage should thereby be extended to this applicant; the plain terms of the agreement should be relied upon; its only obligation of the

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<sup>1</sup> Appearing at the arbitration as South East Personnel Leasing, Inc.

agreement regarding timesheets was to review and verify them, not create them; based on the conduct of the parties to the agreement, there is an implied-in-fact contract extending coverage to applicant; Real Ventures LTD. waived and is estopped from denying coverage; and that unwritten standards have been applied retroactively to deny coverage. Petitioner further asserts it is against public policy to treat PL Construction/Pedro Lopez as if it were uninsured.

We have received an Answer from Real Ventures LTD. The WCA prepared a Report on Reconsideration (Report), recommending that the Petition denied.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the report of the WCA with respect thereto. 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) that the March 24, 2025 decision by the WCA will be rescinded unless the required documents per WCAB Rule 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).

## I.

Former Labor Code<sup>2</sup> 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.

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

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<sup>2</sup> All further references are to the Labor Code unless otherwise noted.

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 April 17, 2025 and 60 days from the date of transmission is June 16, 2025. This decision was issued by or on June 16, 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 April 28, 2025, and the case was transmitted to the Appeals Board on April 17, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on April 17, 2025.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on April 17, 2025.

## II.

WCAB Rule 10995 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).)

The WCA issued the Report on April 28, 2025, however the arbitration record still lacks copies of all exhibits offered by the parties, as well as Part III of the transcript of arbitration proceedings. Further, it is unclear as to what the WCA determined with respect to the issue raised by a party regarding a lost witness.

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. (Lab. Code, § 5272.) This may include delegation of the responsibility to the parties for filing the exhibits and documents required per WCAB Rule 10990(f)(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, upon agreement. Documents and exhibits that are submitted in violation of AD Rule 10205.12 will not be accepted or considered.<sup>3</sup>

We are unable to conduct meaningful review of the Petition or render a decision based on an incomplete 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 defendant PL Construction/Pedro Lopez's Petition for Reconsideration of the decision issued by the WCA on March 24, 2025 is **GRANTED**.

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<sup>3</sup> The purpose of the email box ([WCABArbitration@dir.ca.gov](mailto:WCABArbitration@dir.ca.gov)) is for parties and arbitrators to communicate with the Appeals Board regarding arbitration cases that are pending or will be pending at the Appeals Board. As a courtesy to the parties and the arbitrator, *with the Appeals Board's permission*, documents may be submitted to the email box in EAMS compliant form as set forth in AD Rule 10205.12 (Cal. Code Regs., tit. 8 §10205.12(b)), and the Appeals Board will file the documents in EAMS. The Appeals Board is not responsible for separating, identifying, or otherwise organizing the documents and for any errors in filing in EAMS.

**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 March 24, 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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ PAUL F. KELLY, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**June 16, 2025**

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

**LUCIANO GONZALEZ MENDOZA  
RUCKA, O'BOYLE, LOMBARDO & MCKENNA  
STANLEY LAW OFFICE  
ROXBOROUGH, POMERANCE, NYE & ADREANI  
STATE COMPENSATION INSURANCE FUND  
CBE LAW GROUP  
OFFICE OF THE DIRECTOR-LEGAL UNIT (OAKLAND)  
GEORGE MASON, 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*