

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

MELANIE SANCHEZ, *Applicant*

vs.

**MIANO'S FOOD CORPORATION dba IHOP; HARTFORD INSURANCE COMPANY
OF THE MIDWEST, administered by HARTFORD; *Defendants***

**Adjudication Number: ADJ2548586 (VNO0557073)
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration on November 25, 2024, and issued a Notice of Intention to rescind the decision of the arbitrator in this matter (NIT) due to the lack of a complete record.

Defendant Travelers Casualty & Surety Co. (Travelers) seeks reconsideration of the Findings of Fact (Findings) issued by a workers' compensation arbitrator (WCA) on September 21, 2023, wherein the WCA found that the date of injury in this matter for the purposes of Labor Code¹ section 5500.5 liability is May 13, 2009 through May 13, 2010 in accordance with orthopedic agreed medical examiner Dr. Alexander Angerman. The WCA bifurcated the issue of actual amounts of contribution/reimbursement between the parties.

Defendant asserts that the petition for contribution filed by the Hartford Casualty Insurance Company (Hartford) against Travelers in 2021 was not timely, and further, that the WCA erred in his findings as to the one-year liability period under sections 5500.5 and 5412. Defendant further contends that the evidence supports a section 5500.5 finding of July 1, 2008 to July 1, 2009 as the one-year period of exposure for liability.

We received an Answer from defendant Hartford.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCA recommending denial of the petition.

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

On November 25, 2024 we granted the Petition and issued a Notice of Intention (NIT) that the September 21, 2023 decision by the WCA will be rescinded unless the required documents per WCAB Rule 10995(c)(3) are filed in the Electronic Adjudication Management System (EAMS) within thirty (30) days after service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).

We advised that although the WCA issued the Report on October 31, 2023, the arbitration record still lacked a copy of the transcript of arbitration proceedings occurring on both April 24, 2023 and August 22, 2023, without which we are unable to discern the stipulations, issues, and evidence offered and presented at both of the hearings.

To date, such requested and required documentation has not been filed.

Based on our review of the limited submitted record, and for the reasons discussed below, we will rescind the Findings and return the matter to the arbitrator due to lack of a proper record. When the WCA issues a new decision, any aggrieved person may timely seek reconsideration.

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).) (emphasis added.)

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).)

On November 25, 2024, we granted reconsideration in order to provide the parties sufficient opportunity to provide us with the complete record of the arbitration proceedings. Our NIT to rescind the decision of the arbitrator allowed for thirty (30) days after service of the decision, plus an additional five (5) days for mailing per WCAB Rule 10605² for the required documents per WCAB Rule 10995(c)(3) to be filed in EAMS. To date, however, *the record still does not include* all necessary documents and pleadings.

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

² Cal. Code Regs., tit. 8 § 10605.

[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].)

We are unable to conduct meaningful review of the Petition or render a decision based on an incomplete record. Accordingly, as our decision after reconsideration, we will rescind the arbitrator’s decision and return the matter to the trial level. When the WCA issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued by the WCA on September 21, 2023 is **RESCINDED** and the matter is **RETURNED** to the arbitrator for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 3, 2025

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

**MELANIE SANCHEZ
LAW OFFICE OF DENNIS J. HERSHEWE
TESTAN LAW
LAW OFFICES OF WOOLDFORD & ASSOCIATES
MANNING & KASS, ELLROD RAMIREZ & TRESTER
MARK POLAN, ARBITRATOR**

LAS/abs

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