

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

PHILIP SCHULTZ, *Applicant*

vs.

**SAITEK INDUSTRIES, LTD.; CIGA, by its servicing facility, SEDGWICK
FOR PACIFIC NATIONAL INSURANCE in liquidation, *Defendants***

**Adjudication Numbers: ADJ10160818; ADJ1459849 (AHM 0149908)
Santa Ana District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION AND
NOTICE OF INTENTION**

Travelers Indemnity Company (hereafter Travelers and/or petitioner) seeks reconsideration¹ of our Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (Decision), issued on December 4, 2023, wherein we rescinded a workers' compensation administrative law judge's (WCJ) Findings and Award (F&A) of September 8, 2023, in case number ADJ10160818, substituted new Findings of Fact, and returned the matter to the trial level for further proceedings. Petitioner was previously dismissed from case number ADJ10160818.

Travelers' petition for reconsideration was transmitted to the Appeals Board in the form of a letter, and we will treat the correspondence as a Petition for Reconsideration. (Cal. Code Regs., tit. 8, § 10517.)

Petitioner contends that it is undisputed that Travelers did not provide coverage for Saitek Industries in 2001 and therefore Finding 2 of the substituted Findings of Fact contains a clerical error. We have not received an Answer from any party.

We have considered the allegations in the Petition and the record in this matter. Based on our review of the record, and for the reasons discussed below, we believe that substantial justice requires that we grant reconsideration so as to issue notice of our intention to amend our Decision to amend the F&A to strike Finding 2. In order to provide the parties with an opportunity to address

¹ Travelers' request for relief came in the form of correspondence to the Appeals Board dated May 29, 2025.

the issues raised by our proposed holding, the notice of intention will allow the parties twenty (20) days in which to respond.

BACKGROUND

We will briefly review the relevant facts.

Applicant previously settled case number ADJ1459849 by way of Compromise and Release (C&R). By the terms of the C&R, the parties settled a cumulative injury, during the period from August 22, 2004 to August 22, 2005 (C&R, p. 3, ¶ 1); the body part being settled was listed as 420 back (*Id.*); and the employer's workers' compensation carrier was Travelers. (C&R, p. 2.) The settlement was based on the report of Agreed Medical Evaluator (AME) Peter M. Newton, M.D., dated July 14, 2008. (C&R, p. 7.)

Turning to case number ADJ10160818, applicant filed an application for adjudication on October 22, 2015, claiming injury to his back while employed by defendant as a warehouse manager on October 19, 2001. Applicant listed Travelers as the insurance carrier for defendant.

On December 7, 2015, applicant filed an amended application for adjudication, to identify the insurance carrier as California Insurance Guarantee Association (CIGA).

On January 13, 2016, Travelers filed a Declaration of Readiness on the following issue:

Travelers does not have coverage and requests to be dismissed as a party defendant.

(January 13, 2016, Declaration of Readiness, p. 7.)

Following a hearing on April 6, 2016, the minutes state:

Travelers is dismissed without prejudice for lack of coverage. There is no objection from applicant attorney or defendant CIGA.

(April 6, 2016, minutes, p. 1.)

On June 28, 2016, applicant filed an amended application, to change the nature of injury to a cumulative injury and to amend date of injury to the period from October 16, 1997 to October 19, 2001.

On May 18, 2023, the matter proceeded to trial in ADJ10160818. The parties stipulated that "At the time of injury, the employer's workers' compensation carrier was CIGA by its servicing facility Sedgwick for Pacific National Insurance, in liquidation." (Minutes of Hearing

and Summary of Evidence (MOH/SOE), May 18, 2023 trial, p. 2.) Travelers was not present at the trial.

On September 8, 2023, the WCJ issued a Findings and Award.

On October 3, 2023, CIGA filed a Petition for Reconsideration, contending that there was a single cumulative injury, running from 2004-2005, and that the WCJ erred in finding a cumulative injury through 2001. In the alternative, assuming that multiple cumulative injuries exist, the CIGA contended that the WCJ erred with respect to the apportionment findings.

On December 4, 2023, the Appeals Board issued its Decision, affirming the WCJ's conclusion that the date of the cumulative injury in ADJ10160818 was up to 2001. Unfortunately, as pointed out by Travelers in its Petition, our substituted findings included a finding that was clearly erroneous. Travelers previously resolved ADJ1459849 by way of a C&R, it did not provide workers' compensation coverage to the employer in 2001, and it was dismissed in ADJ10160818. Yet, Finding 2 states:

2. Philip Schultz, while employed as a warehouse manager, occupational group number 360, at Torrance, California, Saitek Industries, up to October 19, 2001, sustained injury arising out of and in the course of employment to his lumbar spine and not to his thoracic spine. At the time of injury, the employer's workers' compensation carrier was Travelers.

(Appeals Board's December 4, 2023 Decision, p. 12.)

On February 7, 2025, Travelers served correspondence, filed in EAMS as "Petition – other," addressed to the Office of the Commissioners of the Workers' Compensation Appeals Board, P.O. Box 429459, San Francisco, CA 94142-9459. As the WCJ noted, this is no longer a valid mailing address for the Appeals Board. Applicant was also served at an outdated address.

On May 29, 2025, the matter came on for hearing. The minutes state:

[T]here are errors in the finding of fact issued by the commissioners after recon. Matter cannot proceed for reimbursement hearing until that is corrected. The request for correction was mailed to a wrong address. Travelers needs to serve it on the correct address for the WCAB and make sure that Mr. Harrison [for CIGA] is served as well. Continued to judge Cervantes calendar as he was the trial judge.

(May 29, 2025 minutes, p. 1.)

On May 29, 2025, Travelers served updated correspondence, again filed in EAMS as “Petition – other.” The Petition states, in pertinent part:

Travelers believes the new Findings of Fact per the Opinion and Order contain a clerical error. On page 12 of the Opinion and Order, paragraph number 2 provides that, “Philip Schultz, while employed as a warehouse manager, occupational group number 360, at Torrance, California, Saitek Industries, up to October 19, 2001, sustained injury arising out of and in the course of employment to his lumbar spine and not to his thoracic spine. At the time of injury, the employer’s workers’ compensation carrier was Travelers.” Please note, it is undisputed that Travelers did not provide coverage for Saitek Industries in 2001. Rather, in accordance with page 12 of the Opinion and Order, paragraph number 1, in 2001 the employer’s workers’ compensation carrier was CIGA by its servicing facility Sedgwick for Pacific National Insurance, in Liquidation.

(May 29, 2025 Petition, p. 1.)

The May 29, 2025 Petition was addressed to Office of the Commissioners of the Workers’ Compensation Appeals Board, 455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102. CIGA was served, but applicant was not served at the address on the Official Address Record.

DISCUSSION

I.

Former Labor Code section² 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.

² All statutory references are to the Labor Code unless otherwise stated.

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 28, 2025, and 60 days from the date of transmission is October 27, 2025. This decision is issued by or on October 27, 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 shall be notice of transmission.

Here, the Petition seeks reconsideration of our prior decision and therefore no report and recommendation was required to be filed by a WCJ. We find no other notice to the parties of the transmission of the case to the Appeals Board in EAMS. Thus, we conclude that the parties were not provided with the notice of transmission 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 August 28, 2025.

II.

Here, the issue before us concerns our ability to correct our own error. Subject to the limitations of section 5804, “[t]he appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] ... At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.” (Lab. Code, § 5803.)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab.

Code, §§ 5903, 5952(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. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) “The Appeals Board or a Workers' Compensation Judge may correct a clerical error at any time and without necessity for further hearings, notwithstanding the lapse of the statutory period for filing a petition for reconsideration.” (*Toccalino v. Workers' Comp. Appeals Bd.* (1982) 128 Cal.App.3d 543, 558, internal citation omitted.)

We emphasize that when the Appeals Board grants reconsideration, it has the power to address all issues, including those not previously raised. In *Pasquotto v. Hayward Lumber* (2006) 71 Cal.Comp.Cases 223, 229, fn. 7 (Appeals Bd. en banc), we noted that once reconsideration has been granted, the Appeals Board has the power under sections 5906 and 5908 to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (Citing *Great Western Power Co. v. I.A.C. (Savercool)* (1923) 191 Cal. 724, 729 (10 I.A.C. 322); *State Comp. Ins. Fund v. I.A.C. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases. 98]; *Tate v. I.A.C.* (1953) 120 Cal.App.2d 657, 663 [18 Cal.Comp.Cases 246]; *Pacific Employers Ins. Co. v. I.A.C. (Sowell)* (1943) 58 Cal.App.2d 262, 266-267 [8 Cal.Comp.Cases 79].)

Additionally, the WCAB maintains original jurisdiction in this matter. (Lab. Code, § 5300.) “The power of original decision invested in the [WCAB] is unrestricted by any limitations of time other than that set forth by sections 5400-5412 of the Labor Code. The [WCAB] therefore can make a valid decision on an original claim any number of years after the injury if the original proceedings are commenced within the time prescribed by section 5405, and quite apart from a consideration of a waiver of the statute.” (*State of California, Subsequent Injuries Fund v. I.A.C. (Busch)* (1962) 198 Cal.App.2d 818, 827 [27 Cal. Comp. Cases 14].)

Here, the parties stipulated at trial that “**At the time of injury, the employer's workers' compensation carrier was CIGA** by its servicing facility Sedgwick for Pacific National Insurance, in liquidation.” (MOH/SOE, May 18, 2023 trial, p. 2, emphasis added.) Moreover, in a Declaration of Readiness dated January 13, 2016, Travelers stated: “Travelers does not have

coverage and requests to be dismissed as a party defendant.” (January 13, 2016 DOR, p. 7.) Minutes from a hearing on April 6, 2016 state: “**Travelers is dismissed without prejudice for lack of coverage.** There is no objection from applicant attorney or defendant CIGA.” (April 6, 2016 minutes, p. 1, emphasis added.)

Thus, as stated by Travelers in its Petition, the finding that Travelers was defendant’s workers’ compensation carrier for a cumulative injury up to October 19, 2001, is not consistent with the record and is clearly a clerical error.

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. (*Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant . . .” (*Id.*, at 158.) The “essence of due process is simply notice and the opportunity to be heard.” (*San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936.) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties’ rights to due process. (*Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, 157-158.)

Accordingly, we grant Traveler’s Petition for Reconsideration and issue Notice of our Intention to amend our Decision, and correct the F&A to strike Finding 2.

For the foregoing reasons,

IT IS ORDERED that Traveler's Petition for Reconsideration is **GRANTED**.

NOTICE IS HEREBY GIVEN that the Workers' Compensation Appeals Board intends to issue the following Decision After Reconsideration:

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the December 4, 2023, Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration is **AMENDED** to strike Finding of Fact 2 as follows:

FINDINGS OF FACT

2. Philip Schultz, while employed as a warehouse manager, occupational group 360 at Torrance, California, Saitek Industries, up to October 19, 2001, sustained injury arising out of and in the course of employment to his lumbar spine, and not to his thoracic spine. At the time of injury, the employer's workers' compensation carrier was Travelers.

NOTICE IS FURTHER GIVEN that any aggrieved person may file a response to this Notice of Intention. Responses shall only address the issue identified above. Responses shall be filed within twenty (20) days of service of this Notice of Intention, plus five (5) days under WCAB Rule 10605 (Cal. Code Regs., tit. 8, § 10605) and any additional day(s) as applicable under WCAB Rule 10600 (Cal. Code Regs., tit. 8, § 10600), and shall only be filed in EAMS.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 27, 2025

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

**PHILIP SCHULTZ
THOMAS LAW ALLIANCE
GUILFORD, SARVAS & CARBONARA
DIMACULANGAN & ASSOCIATES**

JB/pm

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