

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

VERONICA JIMENEZ, *Applicant*

vs.

ABM INDUSTRIES administered by ESIS CHATSWORTH, *Defendants*

**Adjudication Number: ADJ16131890
(Anaheim District Office)**

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

Applicant seeks reconsideration of the Findings of Fact and Award (F&A) issued on June 20, 2025, wherein the workers' compensation arbitrator (WCA) found, in relevant part, that applicant sustained injuries to the back, bilateral knees, bilateral shoulders and bilateral wrists, but did not sustain injuries to the psyche or develop insomnia as a result of her industrial injuries.

Applicant contends that the reporting of panel Qualified Medical Evaluator (QME) Ravi Srinivas, M.D., is not substantial medical evidence and there is good cause to further develop the record. Applicant further contends that the WCA erred in excluding her proposed exhibits, and that the sub rosa video should be stricken from the record due to the lack of authentication by the investigator during his testimony at trial.

We have received an Answer from defendant. The WCA prepared a Report on Reconsideration (Report), recommending that the Petition be denied or dismissed as untimely.

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we will grant the Petition and issue a Notice of Intention (NIT) that the June 20, 2025 decision by the WCA will be rescinded unless the required documents per WCAB Rule 10990 are filed in the EAMS within thirty (30) days after service of this decision, plus an additional five (5)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 Code¹ 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 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 13, 2025 and 60 days from the date of transmission is Sunday, October 12, 2025, a weekend. The next business day that is 60 days from the date of transmission is Monday, October 13, 2025. (See Cal. Code Regs., tit. 8 § 10600(b).)² This decision was issued by or on October 13, 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

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

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.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, there is no proof of service for the Report and Recommendation by the WCA, and thus it is unclear as to what parties, or on what date, service of the Report occurred. The Report was filed in EAMS on August 8, 2025, and the case was transmitted to the Appeals Board on August 13, 2025. Service of the Report and transmission of the case to the Appeals Board does not appear to have not occurred on the same day. Thus, we conclude that service of the Report may not have provided 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 August 13, 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 August 13, 2025.

II.

A petition for reconsideration from an arbitration decision made pursuant to section 3201.5(a)(1) or section 3201.7(a)(1) (known as “carve-out” cases) shall be filed directly with the office of the Appeals Board within 20 days of the service of the final order, decision or award made and filed by the arbitrator or board of arbitrators. A copy of the petition for reconsideration shall be served on the arbitrator or arbitration board. (Cal. Code Regs., tit. 8 § 10990(a).)

There are 20 days allowed within which to file a petition for reconsideration from a “final” decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903.) This time is extended by 5 calendar days if service is made upon the parties within California, and 10 calendar days if service is made to an address outside of California but within the United States. (Cal. Code Regs., tit. 8, § 10605(a)(2).) While applicant and her attorney received service of the decision within California, defendant was served at an address outside of California. Accordingly, and to observe due process for all parties, we interpret WCAB Rule 10605 as extending the time to file for all parties being served.

Here, the Findings and Award were served upon the parties on June 20, 2025, and the petition was filed with the Office of the Commissioners 25 days later, or on July 15, 2025. As such, we find applicant's petition timely filed.

III.

WCAB Rule 10990 provides that after receipt of a petition for reconsideration, an arbitrator must rescind or amend the entire order, decision or award within 15 days (subdivisions (f)(1), (f)(2), or under subdivision (f)(3), the WCA must submit an electronic copy of the complete record of proceedings to the Appeals Board including:

- (A) The transcript of proceedings, if any;
- (B) A summary of testimony if the proceedings were not transcribed;
- (C) The documentary evidence submitted by each of the parties;
- (D) An opinion that sets forth the rationale for the decision; and
- (E) A report on the petition for reconsideration, consistent with the provisions of rule 10962. The original arbitration record shall not be filed.

(Cal. Code Regs., tit. 8, § 10990(f)(3)(A)-(E); see also Lab. Code, §§ 3201.5(a)(1), 3201.7(a)(3)(A); 5313.)

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).)

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).) An adequate and complete record is necessary to understand the basis for the WCA or the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10566.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . .

For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350] [a full and complete record allows for a meaningful right of reconsideration]; *Lewis v. Arlie Rogers & Sons* (2003) 69 Cal.Comp.Cases 490, 494, emphasis in original ["decision [must] 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."].) "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.*)

With certain limited exceptions, arbitrators shall have all of the statutory and regulatory duties and responsibilities of a workers' compensation judge. (Lab. Code, § 5272.) These duties and responsibilities include creating a full record, identifying the stipulations and issues on the

record, and ensuring that the exhibits filed³ by the parties are properly organized and separated so they may be electronically uploaded as part of the complete arbitration file. (See Cal. Code Regs., tit. 8 §10205.12(b) [proper filing of exhibits].) This may also include delegation of the responsibility to the parties for filing the exhibits and documents required per WCAB Rule 10990(f)(3).

Here, while the WCA issued the Report and filed same on August 8, 2025, filing of the arbitration file in EAMS was not completed as required by WCAB Rule 10990. The record does not contain a Summary of Evidence, which should properly identify the stipulations and issues, exhibits, any testimony, as well as all evidentiary rulings.

Additionally, the exhibits offered by the parties at the arbitration have not been filed to date. 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].)

³ Rule 10205(t) (Cal. Code Regs., tit. 8 § 10205(t)) states:

(t) To "file" a document means to either deliver a document or cause it to be delivered to the district office with venue or to the appeals board for the purpose of having it included in the adjudication file or to electronically file a document via EAMS in accordance with these regulations.

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.

Again, as with a 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].)

Here, we are unable to conduct meaningful review of the petition or render a decision until we have received a complete 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 accept the Petition for Reconsideration for filing, 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 10990(f)(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 applicant's Petition for Reconsideration of the decision issued by the WCA on June 20, 2025 is **GRANTED**.

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 10990 must be filed in the Electronic Adjudication Management System (EAMS). If all documents are not properly filed in EAMS by that date, the June 20, 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 13, 2025

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

**VERONICA JIMENEZ
EQUITABLE LAW
SCHOCHET SOLOMON
LINDA DAVIDSON-GUERRA, 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*