

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

WILLIAM WARREN, *Applicant*

vs.

**MK TRUCKING SERVICES, INC./MAKI BNS, INC.;
PROTECTIVE INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ13783750; ADJ16743471
Marina del Rey District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the May 14, 2025 Findings and Award (F&A) wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that while employed as a truck driver for defendant during the period from September 3, 2019 through October 19, 2020 (ADJ13783750), applicant sustained injury arising out of and in the course of employment (AOE/COE) to the head, cervical spine, back, arm, and knees. The WCJ also found a separate July 25, 2020 (ADJ16743471) injury AOE/COE to the head, cervical and lumbar spine, knees, and legs. The WCJ found no injury AOE/COE for applicant's internal claims of diabetes, hypertension, and hyperlipidemia.

Applicant contends that Labor Code section 5313, WCAB Rule 10560, and his due process rights were violated when the WCJ found no injury AOE/COE for applicant's internal claims of diabetes, hypertension, and hyperlipidemia. (Petition for Reconsideration (Petition), pp. 2-3) Applicant argues that the WCJ's findings on the internal claims should be rescinded to allow further development of the record. (*Id.* at p. 4.)

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the May 14, 2025 F&A and substitute it with a new Findings and Order which reflects that the issue of injury AOE/COE for applicant's diabetes, hypertension, and hyperlipidemia is deferred, pending further development of the record.

FACTS

Applicant claims that, while employed by defendant as a truck driver during the period from September 3, 2019 through October 19, 2020 (ADJ13783750), he sustained injury AOE/COE to the knee, back, neck, arm, and head. On September 15, 2022, the claim was amended to include diabetes, hyperlipidemia, hypertension, eyes, ears, and psyche. The original Application for Adjudication of Claim was filed October 27, 2020, and on March 23, 2022, defendant filed an Answer denying the claim.

On September 28, 2022, applicant filed a separate claim for an October 14, 2020 specific injury (ADJ16743471) to the neck, head, headaches, knees, legs, back, eyes, ears, diabetes, hypertension, and cholesterol. On July 5, 2023, the claim was amended to include sleep, erectile dysfunction, incontinence, GERD, brain (TBI), headaches, psyche, eyes, ears, dry mouth, teeth, and jaw. On September 27, 2023, applicant submitted a request to amend the injury date to July 25, 2020.

The parties proceeded with discovery and retained Dr. Martine Levine as the neurological panel Qualified Medical Evaluator (PQME), Dr. Marc Meth as the internal PQME, and Dr. Marshall Lewis as the orthopedic PQME. Dr. Lewis was later replaced with Dr. Basem Attum.

In a report dated April 19, 2022, Dr. Levine found injury AOE/COE to the cervical and lumbar spine, bilateral knees, and head (headaches) as a result of the specific injury. (Joint Exhibit CC, p. 19.)

In a report dated April 7, 2021, Dr. Lewis expressed some confusion regarding the cumulative trauma injury date but ultimately found injury AOE/COE to the head, neck, back, arm and knee. (Joint Exhibit BB, pp. 41-42.)

In a report dated May 9, 2023, Dr. Attum also found injury AOE/COE to the head, cervical and lumbar spine, right shoulder, and bilateral knees. (Joint Exhibit AA, p. 51.)

In a report dated February 13, 2024, Dr. Meth opined that applicant's pre-diabetes, hypertension, and hyperlipidemia were non-industrial. (Joint Exhibit EE, p. 39.)

On August 1, 2023, defendant filed a Declaration of Readiness to Proceed to a priority conference.

On October 1, 2024, the matter was set for trial on the issue of injury AOE/COE for both claims. At the hearing, the claims were consolidated by the WCJ and continued to a further trial date on November 25, 2024, then, January 22, 2025.

On May 14, 2025, the WCJ issued an F&A which found, in relevant part, that while employed as a truck driver for defendant, during the period from September 3, 2019 through October 19, 2020 (ADJ13783750), applicant sustained injury AOE/COE to the head, cervical spine, back, arm, and knees; and on July 25, 2020 (ADJ16743471), sustained injury AOE/COE to the head, cervical and lumbar spine, knees, legs, and head (internal). The WCJ did not find injury AOE/COE for applicant's diabetes, hypertension, or hyperlipidemia.

DISCUSSION

I.

Preliminarily, 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.

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

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 under the Events tab 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 June 23, 2025, and 60 days from the date of transmission is August 22, 2025. This decision was issued by or on August 19, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on June 23, 2025, and the case was transmitted to the Appeals Board on June 23, 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 June 23, 2025.

II.

Turning now to the merits of the Petition, it is well established that a decision "must be based on admitted evidence in the record" and supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476, 478 (Appeals Bd. en banc); *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].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) “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*, at pp. 473, 475.) 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.” (*Id.* at p. 475.) This “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

It is also well established that 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].) Accordingly, the Appeals Board has the discretionary authority to develop the record when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see also *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) As explained in *Tyler*, “The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers’ compensation claims.” (*Tyler, supra*, at p. 394.)

Under both the California and United States Constitutions, all parties to a workers’ compensation proceeding retain the fundamental right to due process and a fair hearing. (*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 p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, “the commission ... must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law.” (*Id.* at p. 577.) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses, introduce and inspect exhibits, and 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 p. 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].)

Here, applicant contends that he was “not provided adequate notice that findings on nature and extent of injury (specifically, internal conditions)” would be adjudicated since the “parties explicitly limited the [trial] issues to [injury] AOE/COE.” (Petition pp. 2-3.) The WCJ’s issuance of a final decision with respect to applicant’s claims of diabetes, hypertension, and hyperlipidemia therefore “constitutes a violation of Applicant’s due process rights” since causation with respect to numerous other body parts, including the head, cervical and lumbar spine, arm, knees, and legs, had already been established. (Petition, pp. 2-3; F&A pp. 2-3.) Applicant contends that further discovery including a “post-trial deposition of [internal PQME] Dr. Meth” is necessary with respect to his internal claims. (Petition, p. 2.)

Taking into consideration the fact that the WCJ’s AOE/COE findings on applicant’s internal claims are final and weighing that finality against the Appeal Board’s duty and authority to develop the record when appropriate to provide due process and/or fully adjudicate the issues, in an abundance of causation, we grant applicant’s Petition, rescind the May 14, 2025 Findings and Award, and substitute it with a new Findings and Order which reflects that the issue of injury AOE/COE for applicant’s diabetes, hypertension, and hyperlipidemia is deferred, pending further development of the record.

For the foregoing reasons,

IT IS ORDERED that applicant’s Petition for Reconsideration of the May 14, 2025 Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers’ Compensation Appeals Board, that the May 14, 2025 Findings and Award is **RESCINDED** and **SUBSTITUTED** with a new Findings and Order, as provided below, and that this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

FINDINGS OF FACT

1. William Warren, born [], while employed as a truck driver, occupational code number deferred, at Torrance, California, by Maki BNS, Inc. during the period from September 3, 2019 through October 19, 2020 (ADJ13783750), claims to have sustained injury arising out of and in the course of employment to the ear, eye, circulatory system, nervous system, brain, back, diabetes, hypertension, cholesterol, sleep, GERD, incontinence, jaw, teeth, and erectile dysfunction.
2. William Warren, born [], while employed as a truck driver, occupational code number deferred, at Torrance, California, by Maki BNS, Inc. on July 25, 2020

(ADJ16743471), claims to have sustained injury arising out of and in the course of employment to the head, neck, knee, leg, brain, back, eyes, ears, diabetes, hypertension, cholesterol, sleep, GERD, incontinence, jaw, teeth, and erectile dysfunction.

3. At the time of the above injuries, the employer's workers' compensation carrier was Protective Insurance company.
4. There is substantial evidence of injury arising out of and in the course of employment, during the period from September 3, 2019 through October 19, 2020 (ADJ13783750) to the head, neck, back, arm, and knees.
5. There is substantial evidence of injury arising out of and in the course of employment on July 25, 2020 (ADJ16743471) to the head, cervical spine, knees, legs, lumbar spine, and head (internal).
6. The issue of injury AOE/COE as to all other body parts alleged, including diabetes, hypertension, and hyperlipidemia, is deferred, pending further development of the record.
7. The evidence does not support the finding that the Statute of Limitations defense bars the applicant from bringing this claim for his industrial injuries while employed with MK Trucking Services, Inc. and Maki BNS, Inc.

ORDER

All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 14, 2025

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

**WILLIAM WARREN
ABDI & ASSOCIATES
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK**

RL/cs

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