WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ALFRED WASLEY, *Applicant*

vs.

TULLY-WIHR COMPANY, INC.[1];
PREFERRED EMPLOYERS INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ9744423
Sacramento District Office

OPINION AND ORDERS GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the "Findings of Fact, Order; with Opinion on Decision" (F&O) issued on January 7, 2026, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant was not entitled to a reissued supplemental job displacement voucher (SJDV) where defendant mailed the voucher to applicant's address on the official address record, but applicant had moved and not received the SJDV.

Applicant contends that defendant did not furnish the voucher as required by regulation because defendant mailed the voucher to an incorrect address.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record we will grant applicant's Petition for Reconsideration and as our Decision After Reconsideration, we will rescind the

[1] The employer is listed in EAMS as "GKM Corp." However, throughout the pleadings and in the Minutes of Hearing and Summary of Evidence, the parties list the employer as "Tully-Wihr Company, Inc." If the employer is not correctly listed in EAMS, the parties must correct this error forthwith.

January 7, 2026 F&O and substitute a new F&O, which finds that applicant did not receive the voucher mailed on or around December 24, 2019, and defers all other issues.

FACTS

Applicant was employed on June 27, 2014, when he sustained an admitted industrial injury to his back. (Minutes of Hearing and Summary of Evidence (MOH/SOE), December 18, 2025, p. 2, lines 5-7.)

The sole issue presented for trial was: "Whether applicant received the SJDB voucher that defendant served." (*Id*. at p. 2, lines 9-10.)

The sole exhibit offered at trial was a SJDV dated December 24, 2019, which included a proof of service indicating it was mailed to applicant at an address in Nevada. (Joint Exhibit FF.)

Applicant testified at trial that he did not receive the SJDV. (MOH/SOE, supra at p. 3, lines 7-10.) Applicant was not living at the service address when defendant mailed the voucher. (*Ibid*.) Applicant moved to Missouri on a temporary basis, but after the COVID pandemic hit, it lengthened his stay. (*Id*. at p. 3, lines 11-15.)

According to the court's record applicant's attorney filed a formal change of address notice on June 8, 2020, which updated the Official Address Record to reflect that applicant was living in Missouri.

DISCUSSION

I.

Former Labor Code section 5909[2] 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] Unless otherwise stated, all further statutory references are to the Labor Code.

> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(§ 5909.)

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 January 26, 2026, and 60 days from the date of transmission is Friday, March 27, 2026. This decision is issued by or on March 27, 2026, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on January 26, 2026, and the case was transmitted to the Appeals Board on January 26, 2026. 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 January 26, 2026.

II.

The WCJ shall ". . . make and file findings upon all facts involved in the controversy[.]" (§ 5313; see also, *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).)

Section 5313 requires a WCJ to state the "reasons or grounds upon which the determination was made." The WCJ's opinion on decision "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." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision "must be based on admitted evidence in the record" (*Hamilton*, *supra*, at p. 478), and 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].) 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." (*Hamilton*, *supra*, at p. 475.)

The sole issue listed for trial is whether applicant received the SJDV.

The requirements for service by mail are set forth in WCAB Rule 10625, which states, in pertinent part:

> (c) "Proof of service" means a dated and verified declaration identifying the document(s) served and the parties who were served, and stating that service has been made and the method by which it has been made. If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served represents. If a document is served electronically, the proof of service must also state the names and email addresses of the person serving electronically and the person served electronically.
>
> (d) Where a party receives notification that the service to one or more parties failed, the server shall re-serve the document on all intended recipients and execute a new proof of service, or provide a courtesy copy to the recipient on whom service failed, within a reasonable amount of time.

(Cal. Code Regs., tit. 8, § 10625.)

Evidence Code section 641 creates a rebuttable presumption that a correctly addressed and mailed letter has been received. "Whether that presumption has been rebutted is a question of fact

to be resolved in the trial court." (*Glasser v. Glasser* (1998) 64 Cal.App.4th 1004, 1011, 75 Cal.Rptr.2d 621.)

The presumption of receipt may be rebutted by testimony denying receipt. (*Bear Creek Master Assn. v. Edwards* (2005) 130 Cal.App.4th 1470, 1486, 31 Cal.Rptr.3d 337; *Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 421-422, 100 Cal.Rptr.2d 818; *Slater v. Kehoe* (1974) 38 Cal.App.3d 819, 832, fn. 12, 113 Cal.Rptr. 790.)

Once the presumption has been rebutted, it is removed, and it is within the province of the trier of fact to weigh the conflicting evidence to determine whether the correspondence was received. (*Craig v. Brown & Root, Inc.*, *supra.)* "'[I]f the adverse party denies receipt, the presumption is gone from the case. *The trier of fact must then weigh the denial of receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received*.' [Citation]" (*Id*. at p. 422, italics in original.)

Here, the WCJ issued a finding that defendant mailed the SJDV to applicant's address on the Official Address Record, which appears correct. However, the unrebutted testimony of applicant is that he was not living at that address at the time of service and that he did not receive the voucher. The WCJ found applicant's testimony credible. (See *Garza*, *supra*.) Thus, the evidentiary presumption is rebutted, and we will find that applicant did not receive the SJDV that defendant mailed in 2019.

The WCJ further ordered that defendant was not required to reissue the voucher; however, that issue was not listed as an issue for trial. As the issue was not set before the WCJ, it is not properly raised on reconsideration, and we can make no decision as to the legal effect of applicant not receiving the voucher. (See *Gangwish v. Workers' Comp. Appeals Bd*. (2001) 89 Cal. App. 4th 1284.) Upon return, the parties may wish to frame the issue as whether defendant is required to reissue the voucher.

Accordingly, we grant applicant's Petition for Reconsideration and as our Decision After Reconsideration, we rescind the January 7, 2026 F&O and substitute a new F&O, which finds that applicant did not receive the voucher mailed on or around December 24, 2019, and defers all other issues.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact, Order issued on January 7, 2026, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, Order issued on January 7, 2026, by the WCJ is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant did not receive the supplemental job displacement voucher mailed on or around December 24, 2019.
2. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 27, 2026

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

ALFRED WASLEY
SHATFORD LAW
MICHAEL SULLIVAN & ASSOCIATES LLP

EDL/mt

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