

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

ARTURO GARCIA, *Applicant*

vs.

ALL DIAMETER GRINDING INSURANCE CO OF THE WEST, *Defendants*

**Adjudication Number: ADJ8431928 ADJ9638917
Pomona District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

On February 5, 2025, guardian ad litem, Ciria Coronado Garcia, in pro per, filed a Petition for Reconsideration of the September 24, 2014 Joint Order Approving Compromise and Release, which resolved the underlying claim of injury by Arturo Garcia to multiple body parts and stroke on December 23, 2011 for the amount of \$7,500.00. We have considered the allegations of the petition and the record in this matter. For the reasons discussed below, we will dismiss reconsideration as premature and return this matter to the trial level so that the petition can be treated as a Petition to Set Aside.

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, Labor Code 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.

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

(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 February 18, 2026, and 60 days from the date of transmission is Sunday, April 19, 2026. The next business day that is 60 days from the date of transmission is Monday, April 20, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, April 20, 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.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on February 18, 2026, and the case was transmitted to the Appeals Board on February 18, 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 February 18, 2026.

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.

II.

A decision “must be based on admitted evidence in the record” (*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]), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (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. Workers’ Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

Section 5313 provides:

The appeals board or the workers’ compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

(Lab. Code, § 5313.)

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. 478; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22 (Appeals Board en banc).)

The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision....” (*Hamilton, supra*, at p. 476.) The Court of Appeal has further observed that pursuant to Labor Code section 5908.5, decisions of the Appeals Board must state the evidence relied upon and specify in detail the reasons for the decision. (*Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351] (Evans).) The purpose of the requirement is “to assist the reviewing court to ascertain the principles relied upon by the lower tribunal, to help that tribunal avoid careless or arbitrary action, and to make the right of appeal or of seeking review more meaningful.” (*Evans, supra*, at p. 755.)

Here, in the absence of a record, we are unable to evaluate petitioner’s contentions. All parties in workers’ compensation proceedings retain their 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 includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to 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 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].)

Accordingly, we dismiss the Petition for Reconsideration as premature and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, we recommend that the WCJ treat the petition as a petition to set aside the September 24, 2014 Joint Order Approving Compromise and Release, obtain a translation of the petitioner's statement, and conduct any further proceedings deemed appropriate by the WCJ to enable a decision based on the record. After the WCJ issues a decision, any aggrieved person may then timely seek reconsideration of that decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 20, 2026

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

**ARTURO GARCIA
CIRIA CORONADO DE GARCIA
NICHOLAS WEBBER
DIETZ GILMOR**

PAG/bp

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