

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

CLEMENTINA LOPEZ, *Applicant*

vs.

**AVO'S & COMPANY, INC. dba AVO'S CASTING;
REPUBLIC INDEMNITY COMPANY OF CALIFORNIA, *Defendants***

**Adjudication Number: ADJ9903090
Van Nuys District Office**

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.¹ We now issue our Opinion and Decision After Reconsideration.

Defendant employer, Avo's and Company, Inc. dba Avo's Casting (Avo's), seeks reconsideration of a decision issued by a workers compensation judge (WCJ) on May 18, 2021, wherein the WCJ ordered the following:

The alleged employer has made a general appearance, and disputes both employment and the carrier's assertion of no coverage. The UEBTF is a necessary party to these proceedings, and IS ORDERED JOINED as a PARTY IN INTEREST hereto. Matter is continued to an additional trial date pending any further Petitions for Reconsideration/Removal with the WCAB, and further participation by the UEBTF in these proceedings.

The above order followed a Findings and Order (F&O) issued by a workers' compensation arbitrator (WCA) on August 28, 2018 wherein the WCA held that Republic Indemnity (Republic) did not insure Avo's during the period between November 30, 2013 through November 30, 2014 and therefore had no obligation to defend Avo's or provide workers' compensation benefits for injuries alleged to have occurred to applicant during the same period. Avo's filed a Petition to Vacate the F&O and the WCA replied by stating that he was unable to act without the consent of

¹ Commissioner Sweeney, who was previously a member of this panel, no longer serves on the Appeals Board. Another panelist has been substituted in her place.

applicant and Republic. The Petition to Vacate was again raised at the May 17, 2021 trial, and alongside the above Order of joinder, the WCJ in a Supplement to Minutes of Hearing concluded that he lacked jurisdiction to rescind, set-aside or alter the F&O and that any aggrieved party must seek redress with the Appeals Board.

Avo's contends that the WCA's F&O should be vacated and the WCJ's Order of joinder rescinded due to bad faith actions on the part of its alleged workers' compensation insurance carrier, Republic. Avo's alleges that Republic failed to inform them of the time, place, and date of the arbitration hearing, or their right to appear, and specifically advised them not to appear on the eve of the arbitration hearing, all the while knowing they were a necessary party, in violation of their due process rights. (Petition for Reconsideration, p. 7.)

We have received an Answer from Republic. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) deferring the issues to the Appeals Board. (Report, p. 8.)

We have considered the contents of the Petition to Vacate, Response from the WCA, Petition for Reconsideration, Answer, and Report, and we have reviewed the record in this matter. For the reasons discussed below, we will vacate the F&O and rescind the Order joining UEBTF but otherwise do not disturb the decision issued by the WCJ on May 18, 2021.² We will return this matter to the trial level for further proceedings consistent with this decision. When the WCA issues a new decision, any aggrieved person may timely seek reconsideration.

FACTS

On April 1, 2015, applicant filed an Application for Adjudication of Claim (Application) alleging that while employed by Avo's as a casting cleaner during the period from September 13, 2013 through November 30, 2014, she sustained an injury arising out of and in the course of employment (AOE/COE) to the head, ear, eye, mouth, and multiple other body parts.

On August 9, 2017, the Application was amended to include Republic as the insurer for Avo's during the alleged cumulative injury period.

On August 14, 2017, applicant filed a Petition for Joinder of Republic as a party defendant (Petition for Joinder), and on the same date the WCJ issued an Order joining Republic.

² We wish to make clear that the entire Minutes of Hearing (MOH) are not rescinded, only the WCJ's Order joining UEBTF.

On October 3, 2017, applicant filed a Declaration of Readiness to Proceed (DOR) to an Expedited Hearing contending that Republic refused to authorize medical treatment with Edward Stokes, M.D.

On October 23, 2017, Republic filed an objection to the DOR on the grounds that there existed coverage and employment issues and the matter therefore did not qualify for expedited hearing. Service of the objection was made on attorneys for applicant and Avo's.

On October 25, 2017, Republic, through their attorneys, Pearlman, Borska, & Wax, filed an Answer to Application for Adjudication of Claim. Multiple issues were listed as in dispute, including employment, injury AOE/COE, and insurance coverage.

On January 16, 2018, applicant filed a DOR to a priority conference on all issues.

On January 19, 2018, attorneys for Republic filed an objection, stating that liability for applicant's claim had been denied "based on the fact that [Republic] did not insure the location/jobsite for Avo's Casting at 635 Hill St., 7th Floor, Los Angeles, CA 90014," and the fact that the "threshold issue of insurance coverage, which is subject to mandatory arbitration, is at issue and must first be resolved and determined." The objection was served on attorneys for applicant and Republic, but not Avo's.

The case was then set for an April 23, 2018 priority conference. On March 8, 2018, the matter was ordered off calendar by a WCJ with service of the MOH delegated to attorneys for Republic. The MOH noted appearances by attorneys for applicant and Republic.

On August 28, 2018, an F&O was issued by the WCA. It stated that: "An Application for Adjudication of Claim of having been filed, the matter having been referred to Arbitration, Arbitration Hearing being held, all parties having appeared, and the matter having been regularly submitted for decision, Arbitrator G. Ronald Feenberg finds..." that Republic "during the period between November 30, 2013 through November 30, 2014, did not insure Avo's Casting for workers' compensation liability indemnity." The WCA held that Republic "need not defend nor compensate for injuries" alleged by applicant to have occurred during the same period while employed by Avo's. Service of the F&O was made on attorneys for applicant and Republic.

On March 5, 2019, Avo's filed a Petition to Vacate the F&O, alleging that their due process rights were violated when Republic failed to provide notice of the arbitration or their right to appear. Avo's alleged that it did not receive the F&O until February 25, 2019. The proof of service

reflects that notice was served on the WCA, Republic, and attorneys for Republic and applicant, but not Avo's.

In a written Response dated March 26, 2019, addressed to attorneys for Avo's and copied to attorneys for applicant and Republic, the WCA acknowledged receipt of the Petition to Vacate and indicated that he was unable to "undertake the requested vacation or any other judicial declaration without the written consent of the parties who appeared before him at the original arbitration hearing."

On August 5, 2020, applicant filed a DOR to a Mandatory Settlement Conference (MSC) seeking joinder of UEBTF. Applicant's attorney served UEBTF and attorneys for UEBTF.

At the MSC of March 8, 2021, the case was set for trial, and the parties were to file a pre-trial conference statement (PTCS) twenty days before trial. Attorneys for applicant, Avo's and Republic appeared.

On March 15, 2021, Republic filed a substitution of attorneys of record, substituting Sinott, Puebla, Campagne & Curet for Pearlman, Brown & Wax.

On April 26, 2021, the Law Offices of Allweiss, McMurtry & Mitchell filed a notice of representation for Republic.

A PTCS was filed on May 4, 2021. The PTCS was completed by attorneys for applicant, Avo's and Republic.

On May 17, 2021, the parties appeared for trial, including attorneys for applicant, Avo's and Republic.

On May 18, 2021, the WCJ issued an Order for joinder of UEBTF as a party defendant and continued the trial to a further date. On the Supplement to Minutes of Hearing, the WCJ concluded that the court was without jurisdiction to rescind, set-aside or alter the F&O issued by the WCA, and that any aggrieved party must seek redress with the Appeals Board.

It is from these May 18, 2021 Findings that Avo's seeks reconsideration.

DISCUSSION

I.

We begin with the underlying issue of Avo's Petition to Vacate the F&O issued by the WCA on August 28, 2018.

Labor Code³ section 5277(a) requires that the WCA's findings and award be served "on all parties" within 30 days of submission of the case for decision and filed at the district office having venue. Subdivision (c) provides that the decision has the "same force and effect" as a decision of a WCJ. Consequently, appeal of a decision by a WCA is accomplished by a petition for reconsideration to the Appeals Board under section 5900 et seq. Pursuant to WCAB Rule 10955 (Cal. Code Regs., tit. 8 § 10955), the petition for reconsideration of a coverage dispute shall be filed in EAMS or with the district office having venue.

There are 25 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; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

Where an order can be shown to have been defectively served, the time limit begins to run as of the date of receipt of the order. (*Hartford Accident & Indemnity Co. v. Workers' Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1 [43 Cal.Comp.Cases 1193].)

Here, the F&O was issued by the WCA on August 18, 2018. It is undisputed that Avo's was not served with and did not receive the F&O until February 25, 2019. Less than twenty days after receipt, on March 5, 2019, Avo's filed their Petition to Vacate. It was thus timely filed pursuant to section 5900.

We observe that although the Petition to Vacate was timely, service of the F&O in the instant case was not merely "defective"; as discussed below, the F&O was intentionally not served on Avo's, in violation of section 5277(a).

³ All further statutory references will be to the Labor Code unless otherwise indicated.

Upon receipt of a petition for reconsideration, the WCA determines whether to timely rescind or amend their decision or prepare a report on the petition and transmit it to the Appeals Board. (Cal. Code Regs., tit. 8, § 10995(c)(1)-(3).)

Notwithstanding WCAB Rule 10995, only the Appeals Board is statutorily authorized to decide whether a petition is timely and properly filed and whether to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.)

Further, WCAB Rule 10517 states that:

Pleadings shall be deemed amended to conform to the stipulations and statement of issues agreed to by the parties on the record. Pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof.

(Cal. Code Regs., tit. 8, § 10517.)

In our recent en banc opinion in *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830, 838 (“*Chicago Dogs*”), we held that: “In workers’ compensation proceedings, pleadings are liberally construed and may be amended to conform to proof.” We reiterated that:

The workers’ compensation system “was intended to afford a simple and nontechnical path to relief.” [citation] Generally, “the informality of pleadings in workers’ compensation proceedings before the Board has been recognized.” [citation] “[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee’s entitlement to rehabilitation benefits.” [citation] Courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. [citation] “Necessarily, failure to comply with the rules as to details is not jurisdictional.” [citation]

Therefore, in workers’ compensation proceedings, it is settled law that (1) pleadings may be informal. [citation]; (2) claims should be adjudicated based on substance rather than form [citation] (3) pleadings should liberally construed so as not to defeat or undermine an injured employee’s right to make a claim [citation]; and (4) technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction [citation].

(*Ibid.*)

Thus, taking into consideration the case of *Chicago Dogs*, even if the WCA believed that the Petition to Vacate was not properly a petition for reconsideration, he should have treated it as one. Moreover, upon being notified of a fundamental due process violation — namely, that

proceedings were conducted without the participation of Avo's as a necessary party and that Avo's was not served with the F&O — the WCA took no steps to remedy the problem. Instead, he responded that Republic's consent was required to vacate the F&O. This response has no legal basis. A WCA has independent authority to amend or correct a decision for good cause under section 5803 and WCAB Rule 10966 (Cal. Code Regs., tit. 8, § 10966) and may rescind or amend a decision under WCAB Rule 10995 once a petition for reconsideration is filed.

We note also that it is within our discretion to choose to treat a petition that is incorrectly titled as a petition for reconsideration. Although we are not exercising that discretion here, since as discussed below, we have determined that the F&O was void ab initio and must be vacated, we have addressed this issue for two reasons: to respond to Republic's stated opposition to the Petition for Reconsideration on the ground that Avo's failed to seek timely relief, and to correct the WCA's apparent misunderstanding that he was not required to act on the Petition to Vacate upon receipt.

II.

Disputes regarding insurance coverage are subject to mandatory arbitration provisions outlined under section 5275. Here, the record indicates that insurance coverage by Republic, is in fact, at issue. As such, it is appropriate for the issue to be adjudicated by the WCA in the first instance as the WCA is tasked with handling such disputes under the Labor Code.

As noted above, subsequent to the arbitration hearing, the WCA issued an F&O which held that Republic did not insure Avo's for workers' compensation liability between November 30, 2013 and November 30, 2014, and that Republic therefore "need not defend nor compensate" applicant for injuries alleged to have occurred during the same period while working for Avo's.

Avo's, however, avers that Republic failed to inform them of the time, place, and date of the arbitration hearing, or to notify them of their right to appear, and specifically advised them not to appear on the eve of the arbitration hearing, all the while knowing they were a necessary party, in violation of their rights to due process. (Petition for Reconsideration, p. 7.)

It is undisputed that Avo's did not appear at the arbitration hearing. It is also undisputed that the issue before the WCA was Republic's denial of coverage, which is a mandatory arbitration issue requiring at a minimum, as a matter of due process, notice to necessary parties including Avo's as the defendant employer. The record is devoid of any allegation that Avo's chose not to appear and/or was aware of their right to appear or the fact that the hearing involved a decision on

the merits of whether it would be entitled to coverage for applicant's claimed injury. Nonetheless, the hearing proceeded without Avo's, resulting in the issuance of an F&O denying coverage.

We underscore the fact that 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].)

Further, 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].) 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 meaningful consideration of the merits of every case de novo with a well-reasoned decision based on the evidentiary record and the relevant law. Due process also requires that parties to a dispute must be provided with notice and an opportunity to be heard.

Given the above circumstances, we conclude that the arbitration proceedings as conducted violated Avo's right to due process. More significantly, the F&O was intentionally not served on Avo's. This was not disputed by the parties. Given that this is in clear contravention to section 5277(a), which requires service on all parties, the F&O is void ab initio and must be vacated.

As with a WCJ, a WCA'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 Bd. en banc).) Meaningful review of a WCA’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.” (*Ibid.*; 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].) The record of arbitration proceedings that the WCA shall make and maintain is set forth in Rule 10914.

Thus, upon return to the district level, the matter must be returned to WCA to provide all relevant parties with notice and an opportunity to be heard and to conduct further proceedings.

III.

Lastly, in their Petition for Reconsideration, Avo’s contends that the WCJ erred in concluding that he lacked jurisdiction to hear their Petition to Vacate. As stated by the WCJ in his Report:

Petitioner appears to assert this court retains the authority to set aside an arbitration determination. However, the court is without the legal authority to grant the relief requested by petitioner, as the power of review of the arbitration decision rests solely with the Workers' Compensation Appeals Board.

...

This was the basis for this court’s May 17, 2021 determination that it was without jurisdiction to rescind, set-aside or alter the determination of the arbitrator, and any aggrieved party must seek redress with the Worker's Compensation Appeals Board.

The employer raises serious issues of notice and the opportunity to be heard, the jurisdiction of the Workers’ Compensation Appeals Board in 2021 to review an arbitration determination that issued in 2018, procedural and substantive due process of law, conflict of interest and substantial justice. However, as these issues arise out of the arbitration decision, review of which is outside this court's jurisdiction, the undersigned will respectfully defer these issues to the Appeals Board.

(Report, pp. 7-8.)

As explained above, a decision by the WCA can only be appealed by way of reconsideration to the Appeals Board. Thus, we agree with the WCJ that he lacked jurisdiction to vacate the F&O.

As we are vacating the F&O, and since the issue of whether Republic provided insurance coverage to Avo's must be adjudicated in the first instance, we rescind the Order joining UEBTF. We otherwise do not disturb the WCJ's decision. We return the matter to the trial level for further proceedings consistent with this decision. When the WCA issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED as the decision after Reconsideration of the Workers' Compensation Appeals Board that the Order of joinder of UEBTF issued by the WCJ on May 18, 2021, is **RESCINDED**.

IT IS FURTHER ORDERED that the Findings and Order issued by the WCA, dated August 28, 2018, is **VACATED**.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 3, 2026

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

**CLEMENTINA LOPEZ
THE LAW OFFICE OF HOWARD F. SILBER
LAW OFFICES ALWEISS, MCMURTRY & MITCHELL
SPARAGNA & SPARAGNA
SINNOTT PUEBLA
G. RONALD FEENBERG (ARBITRATOR)**

RL/cs

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