

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

EDUVIGES LLAMAS CASTILLO, *Applicant*

vs.

**AMERI-KLEEN; SENTRY INSURANCE; BARRETT BUSINESS SERVICES, INC.;
ACE AMERICAN INSURANCE, administered by CORVEL, *Defendants***

**Adjudication Number: ADJ16005726
Goleta District Office**

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

Defendant, Ace American Insurance Company (Ace) seeks reconsideration of the Order for Reimbursement issued on January 2, 2026 by the workers' compensation administrative law judge (WCJ). By the F&O, as relevant here, the WCJ ordered Ace to reimburse defendant, Sentry Insurance (Sentry), the sum of \$310,290.36.

Ace contends that the WCJ erred in issuing the Order for Reimbursement due to a number of issues, including a threshold dispute regarding insurance coverage.

We received an Answer from Sentry.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration be denied as premature but that the case be remanded to the trial level to address whether the original Order for Reimbursement is valid and enforceable.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report of the WCJ with respect thereto. Based on our review of the record and for the reasons discussed below, we will grant the Petition, rescind the WCJ's January 2, 2026 Order for Reimbursement, and return this matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

We will briefly review the relevant facts.

Applicant claims to have sustained injury to multiple body parts arising out of and occurring in the course of employment by defendant on September 2, 2021. In applicant's Application for Adjudication of Claim, Sentry was named as the insurance carrier.

On January 5, 2023, Gilson Daub, attorneys for the third-party administrator for Ace, on behalf of employer, Barrett Business Services, Inc. filed a notice of representation in this matter. On May 18, 2023, Sentry filed a petition to join Ace as a party defendant. Gilson Daub was not served with the petition. On May 25, 2023, applicant filed an objection to Sentry's petition of joinder. On May 30, 2023, the WCJ issued an order of joinder of Ace, and designated service of said order to counsel for Sentry. The proof of service (POS) dated June 1, 2023 indicates service on Ace but not on Gilson Daub. On June 8, 2023, counsel for defendant Ace and their adjusting company filed an objection to the petition for joinder.

At the hearing of July 17, 2023, both applicant and defendants' counsel appeared, and the case was ordered off calendar by joint request.

On July 28, 2023, applicant and Sentry filed a compromise and release (C&R) to settle all issues, which was approved on July 29, 2025 (OAC&R). Pursuant to the terms of the C&R, applicant's claim was settled for \$150,000.00 less \$24,277.14 for permanent disability advances through July 14, 2025 and less \$22,500.00 for attorney's fees, leaving a balance of \$103,222.86 less further permanent disability advances made after July 14, 2025. (C&R, July 28, 2025, p. 6, Item 7.) The C&R also provided that Sentry reserved its right to reimbursement against Ace. (C&R, July 28, 2025, p. 6, Item 8.) The POS for the proposed C&R and the Order approving the C&R, served by defendant Sentry on July 28, 2025 and July 30, 2025, respectively, both do not indicate service on defendant Ace or their counsel.

On October 23, 2025, Sentry filed and served a Petition for Reimbursement from Ace (Petition for Reimbursement) requesting an order issue against Ace to reimburse benefits to Sentry for benefits paid in applicant's claim in the sum of \$310,290.36. Neither Ace nor their legal counsel were served with the petition.

A status conference was held on November 10, 2025, on the "contribution issue." (Minutes of Hearing (MOH), November 10, 2025.) Appearances were made on behalf of applicant and

Sentry, but there is no indication an appearance was made on behalf of Ace. (MOH, November 10, 2025.) The matter was ordered taken off calendar (OTOC). (MOH, November 10, 2025.)

An updated POS dated November 11, 2025 was filed by defendant Sentry indicating service of the Petition for Reimbursement on defendant Ace but not their legal counsel.

On November 21, 2025, Sentry submitted a Declaration of Readiness to Proceed (DOR) requesting a mandatory settlement conference (MSC) to address the issue of its Petition for Reimbursement. The DOR was served on Ace but not their legal counsel.

An MSC was held on December 8, 2025, with appearance made on behalf of Sentry. No appearance was made on behalf of Ace. (MOH, December 8, 2025.) The MOH stated the “WCJ finds good cause to issue [notice of intention] NOI re: reimbursement in the[sic] amount of \$310,290.36.” (MOH, December 8, 2025.) There is no evidence a separate notice of intention (NIT) was issued.¹ The WCJ designated Sentry “to serve this/these document(s) on all parties as shown on the Official Address Record.” (MOH, December 8, 2025.) The POS for the MOH identifies only the “Minutes of 12/8/2025 Mandatory Settlement Conference” as being served on December 18, 2025.

On January 2, 2026, the WCJ issued an Order for Reimbursement dated December 31, 2025, ordering Ace to reimburse Sentry in the amount of \$310,290.36. The WCJ designated counsel for defendant Sentry to serve the parties. The POS for the Order for Reimbursement reflects it was served on January 14, 2026, and neither Ace nor their attorney were served with the Order.

On January 5, 2026, Ace filed a Substitution of Attorney and Notice of Representation.

In a letter to the WCJ dated January 14, 2026, Ace objected to the Order for Reimbursement.

On February 4, 2026, the Order for Reimbursement was re-served to include Ace and Ace’s new attorney.

On February 12, 2026, the parties appeared for a status conference on the “reimbursement issue.” An MSC was scheduled for March 30, 2026.

On February 23, 2026, Ace filed a Petition to Set Aside the Order for Reimbursement.

Also on February 23, 2026, Ace filed their Petition for Reconsideration of the WCJ’s Order for Reimbursement.

¹ The acronyms “NOI” and “NIT” are used interchangeably in this decision to refer to a Notice of Intention.

DISCUSSION

I.

Former Labor Code section² 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 March 3, 2026 and 60 days from the date of transmission is Saturday, May 2, 2026. The next business day that is 60 days from the date of transmission is Monday, May 4, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on Monday, May 4, 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

² All further references are to the Labor Code unless otherwise noted.

³ 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, according to the POS for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on March 3, 2026, and the case was transmitted to the Appeals Board on March 3, 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 March 3, 2026.

II.

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].) Due process guarantees all parties the right to notice and an opportunity to be heard. (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].) With respect to notice, “[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [Citations.]” (*Armstrong v. Manzo* (1965) 380 U.S. 545, 550.) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker, supra*, at pp. 157-158.)

Pursuant to WCAB Rule 10832, the WCJ may issue a notice of intention for any proper purpose including but not limited to granting, denying, or dismissing a petition. (Cal. Code Regs., tit. 8, § 10832(a)(2).) WCAB Rule 10832 also requires the following:

(c) If an objection is filed *within the time provided*, the Workers' Compensation Appeals Board, in its discretion may:

- (1) Sustain the objection;

(2) Issue an order consistent with the notice of intention together with an opinion on decision; or

(3) Set the matter for hearing.

(Cal. Code Regs., tit. 8, § 10832, emphasis added.)

In this case, the minutes issued during the December 8, 2025 MSC did not comport with subsection (c) of WCAB Rule 10832, as they failed to set forth the period of time for objection. (Cal. Code Regs., tit. 8, § 10832(c).) In fact, the purported NIT lacked any details except that the “WCJ finds good cause to issue [NIT] re: reimbursement in the amount of \$310,290.36.” (MOH, December 8, 2025.) Moreover, the POS for the December 8, 2025 MOH was inadequate to provide notice of an NIT issuing because it identified only the “Minutes of 12/8/2025 Mandatory Settlement Conference” as being served, with no mention of an NIT. As a result, the purported December 8, 2025 NIT and the POS for the December 8, 2025 MOH failed to provide the parties with adequate notice and a meaningful opportunity to respond in violation of the parties’ right to due process.⁴ Finally, it does not appear that Ace’s legal counsel was ever properly served with the Petition for Reimbursement. As a result, the December 8, 2025 NIT was void *ab initio*, and the corresponding Order for Reimbursement issued thereafter void as well.⁵

Further, even if the Petition for Reimbursement, NIT, and the Order for Reimbursement had been properly issued and served, we are unable to provide meaningful review due to the lack of a record. We emphasize that the Petition is not evidence, and there is no summary judgement in workers’ compensation cases. (Cal. Code Regs., tit. 8, § 10515.)

The WCJ acknowledged in the Report, “There are no facts, testimonial evidence, evidence by way of admitted exhibits, nor is there any record to refer to or rely upon to provide any discussion.” (Report, March 3, 2026, p. 2, ¶ 10.) We agree that no record was created to support the Order for Reimbursement, and without an ability to review the evidentiary record, we would not be able to complete a meaningful review of the Petition for Reconsideration or the Petition to

⁴ It appears the WCJ was attempting to provide due process by setting the matter for hearing but was interrupted by the filing of the Petition for Reconsideration. In the future the WCJ may wish to consider rescinding the order pursuant to WCAB Rule 10961. (Cal. Code Regs., tit. 8, § 10961.)

⁵ Additionally, service of the Order for Reimbursement was delegated by the WCJ to defense counsel for Sentry. WCAB Rule 10628 states, “The Workers’ Compensation Appeals Board shall not designate a party, or their attorney or agent of record, to serve any final order, decision or award relating to a submitted issue.” (Cal. Code Regs., tit. 8, § 10628(a).) An Order for Reimbursement is a final order and must be served by the WCAB.

Set Aside, and they would otherwise be deemed premature. (See, Lab. Code, § 5313; see also, *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc); *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].) After the objection issued, the WCJ should have set the matter for a hearing in order to set forth the stipulations, issues, exhibits, and any testimony in order to make a record. However, because the NIT and the Order for Reimbursement are found void *ab initio*, we need not consider the effects of an incomplete record.

In sum, an evidentiary record, proper notice, and an opportunity to be heard are all required.⁶

Accordingly, we grant defendant Ace's Petition for Reconsideration, rescind the January 2, 2026 Order for Reimbursement, and return the matter to the district office for further proceedings consistent with this decision.

⁶ We also note that defendant Ace may or may not be insuring Barrett Business Services, Inc., as an employer in this matter, versus having alleged coverage for the employer Ameri-Clean. Upon return to the trial level, the correct parties to this matter should be clarified. (*DiFusco v. Hands On Spa* (2025) 90 Cal.Comp.Cases 1007, 1017 (Appeals Board en banc).)

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the January 2, 2026 Order for Reimbursement is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the January 2, 2026 Order for Reimbursement is **VACATED** and that the matter is **RETURNED** to the district office for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 4, 2026

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

**EDUVIGES LLAMAS CASTILLO
LAW OFFICE OF RANDMAA & BUIE
MCLAUGHLIN & COFFINBERRY LLP
LAUGHLIN, FALBO, LEVY & MORESI LLP**

DC/cs

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