

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

JOSHUA GARCIA, *Applicant*

vs.

PRO TOWING; INSURANCE COMPANY OF THE WEST, *Defendants*

**Adjudication Number: ADJ20105844
Riverside District Office**

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

Applicant seeks reconsideration or in the alternative removal of the “Findings and Order” (F&O) issued on January 5, 2026, by the workers’ compensation administrative law judge (WCJ). The WCJ found that the Appeals Board did not have jurisdiction to act upon the disbursement of funds from a third-party settlement check.

Applicant contends generally that jurisdiction of the Appeals Board exists.

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 January 5, 2026 F&O and return this matter to the trial level for further proceedings.

FACTS

Applicant was employed on November 1, 2024, as a tow truck driver when he sustained an industrial injury. (Minutes of Hearing and Summary of Evidence, October 20, 2025, p. 2, lines 4-6.) This matter was set for trial on the issue of jurisdiction of the Appeals Board over subrogation, disposition, and distribution of third-party settlement funds.

The parties have submitted a minimal record to review. No testimony was provided. Only two exhibits are in evidence. Exhibit 2 is a check from GEICO insurance for \$15,000.00, which is made jointly payable to applicant, applicant's attorney, and defendant workers' compensation insurance company.

Exhibit 3 is a release between GEICO and applicant, which is signed by applicant. Defendant did not participate in the settlement. That is the entire record of proceedings in this matter.

It appears based upon the pleadings that defendant refuses to endorse the settlement check and has not agreed to disbursement of the settlement funds.

DISCUSSION

I.

Former 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.

(§ 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.

Decisions of the Appeals Board “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).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code¹, §§ 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].) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (§ 5313; Cal. Code Regs., tit. 8, § 10761; see Cal. Code Regs., tit. 8, § 10151 [judgment on the pleadings not permitted].)

Here, the record is devoid of the facts that are alleged in the parties’ various Petitions. If the parties agree upon the facts, they may enter into stipulations of fact to assist in resolving a dispute. Absent stipulations of fact, a record must be created.

Next, and to the extent that the parties question the WCAB’s jurisdiction over their dispute, it appears that the WCJ correctly advised the parties that the WCAB does not have jurisdiction

¹ All future references are to the Labor Code unless noted.

over the third party because relief against the third party tortfeasor may only be brought as a civil action. Only the civil court has jurisdiction to determine how the settlement between applicant and the third party is carried out, and any dispute would be a question for the court of appropriate jurisdiction to decide. Pursuant to section 3850 et seq., applicant's remedy is to file a civil action against the third party.

Applicant argues that a civil lawsuit would be a waste of resources as the insurer is presently offering the policy limit and any additional parties are not sufficiently solvent to satisfy a judgment. Even assuming these facts to be true, applicant must proceed before the appropriate tribunal. To the extent that applicant alleges defendant is acting in bad faith within the civil case, again that would be a question to raise in the civil case.

However, there are areas of overlap between third-party settlements and workers' compensation cases, which primarily involve assertions of credit. The question that would be more appropriately framed before the WCAB is whether defendant may obtain credit for the third-party settlement obtained by applicant. That issue is within our jurisdiction and the WCJ appropriately deferred that issue. (§ 3861(a).)

Notwithstanding the above, we will rescind the Findings of Fact out of an abundance of caution. The Appeals Board has broad jurisdiction to enforce all provisions provided in Division 4 of the Labor Code. (§ 5300.) Division 4 of the Labor Code includes the provisions regarding the roles and the rights of the employee and the employer when a third party causes an industrial injury. Parties may present agreements for WCAB approval in the first instance for the purpose of awarding a credit, which often occurs through stipulations or a third-party Compromise and Release. However, again, the third party is not a party before the WCAB, and the WCAB does not have jurisdiction over the third party.

Where the parties agree to the terms and submit an agreement for approval, the WCAB may acquire jurisdiction over disbursement of funds as incidental to an award of credit. However, no such agreement was presented in this case. The agreement here is between applicant and the third party. The employer has not approved or participated in the settlement. If the parties cannot agree on a settlement, then the issue must be litigated, and a lawsuit must be filed in an appropriate venue. In the event that the parties subsequently agree upon the disbursement of non-suit civil funds and credit and wish to present a joint agreement to that effect, they may do so.

Upon return, we encourage the parties to negotiate this issue in good faith. Absent an agreement, and if defendant is seeking a credit from third-party settlement funds, defendant should promptly file a petition for credit. Defendant is reminded that: “A reasonable investigation must attempt to obtain the information needed to determine and *timely* provide each benefit[.]” (Cal. Code Regs., tit. 8, § 10109 (emphasis added).)

Accordingly, we grant applicant’s Petition for Reconsideration and as our Decision After Reconsideration, we rescind the January 5, 2026 F&O and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that applicant’s Petition for Reconsideration of the Findings and Order issued on January 5, 2026, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on January 5, 2026, by the WCJ is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 13, 2026

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

**JOSHUA GARCIA
ENGLISH LLOYD
COLEMAN CHAVEZ**

EDL/mt

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