WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

NICOLAS GARCIA, ***Applicant***

vs.

DYNAMIC NUTRACEUTICAL, INC.;
STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Number: ADJ9109258
Santa Rosa District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant State Compensation Insurance Fund (State Fund), the workers' compensation insurance carrier for defendant Dynamic Nutraceutical, Inc. (Dynamic) has filed a timely, verified Petition for Reconsideration of the Findings and Order (F&O) issued by a workers' compensation arbitrator (WCA) on February 2, 2026, which found and ordered that the policy of workers' compensation insurance issued by State Fund to Dynamic was not effectively canceled in accordance with the terms of the insurance contract and Insurance Code Section 676.8.

Petitioner contends that under the Insurance Code, State Fund had the right to cancel Dynamic's policy for State Fund's failure to timely pay a required premium payment that was due by March 8, 2012.

We have not received an Answer from Dynamic. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCA, which recommends that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and substitute a new finding that State Fund effectively

cancelled Dynamic's policy due to Dynamic's failure to timely pay a required premium payment that was due by March 8, 2012.

FACTS

The WCA's Report summarizes the salient facts as follows:

> State Compensation Insurance Fund (hereafter referred to as "State Fund") provided workers' compensation coverage to this employer for many years prior to Mr. Nicholas [sic] Garcia's injury. The contract that is the subject of this claim covers the period from January 1, 2012, to January 1, 2013.
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> The Annual Rating Endorsement, signed by Thomas Rowe, President and CEO of State Fund, required a deposit premium for that contract year in the amount of $640. The document reflects that the total estimated annual premium was $640. State Fund also issued a renewal notice dated January 11, 2012, with an effective policy date of January 1, 2012, at 12:01 a.m. This endorsement indicates that there was an agreement to a deposit premium for the policy in the amount of $640.
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> On January 20, 2012, State Fund mailed a notice to the employer indicating that a review of the employer's account had resulted in a revision of the required premium deposit for the 2012–2013 contract year. The document indicates that the estimated annual premium was $640, that the required deposit premium was $640, and that the current deposit premium paid by the employer was $596. The notice reflects a premium bill of $44 and, at the end of the document, indicates that the employer should pay $71.20.
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> State Fund then issued a notice dated February 21, 2012, advising the employer that the workers' compensation insurance policy would be cancelled effective March 8, 2012, at 12:01 a.m. The stated reason for cancellation was "Failure to make premium payment when due." The notice also indicated that the outstanding premium amount was $71.20.
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> The employer testified that he did not recall receiving that document until much later. He further testified that during that time he was involved in caring for his mother, who had cancer and was frequently in and out of the hospital. He eventually located the letter in the month of June and thereafter sent a check to State Fund in the amount of $71.20.
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> State Fund offered a copy of the policy covering the period from January 1, 2012, to January 1, 2013. Attached to the policy were two letters from the Chief Operating Officer informing policyholders of changes in cancellation procedures.
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> The first letter indicated that, effective January 1, 2012, State Fund would eliminate cancellation warning letters. The second letter informed policyholders that late payment collection efforts and unpaid premiums have an impact on the cost of workers' compensation insurance for all employers. To improve the timeliness and accuracy of premium payments, State Fund stated that it would implement new payment and premium deposit procedures.

The letter further explained that State Fund would collect a premium deposit to establish coverage and then bill premiums throughout the policy year at regular intervals. The payroll billing procedure would collect premiums in arrears, after coverage had been extended. Going forward, State Fund would move to a four-payment billing cycle and require the first payment at policy renewal, including a 30% deposit. That deposit would roll over to the next policy term, providing continuous coverage.

The letters do not state an intention by State Fund to treat a premium deposit in the same manner as a premium when past due.

In reviewing the "Payments Due" section of the policy under the premium provisions, there is no express reference stating that a premium deposit would be treated the same as a premium payment when due.

Under Part 6(B), Conditions, the final paragraph provides the following reference to the deposit premium:

> "Until your policy terminates, your deposit premium will be transferred to each consecutive policy period to act as a deposit as if a separate policy had been written."

Finally, under the Conditions section, the policy sets forth the reasons for cancellation as follows:

> "State Fund may cancel the policy for one or more of the following reasons:
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> (A) Nonpayment of premium;
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> (B) Failure to report payroll;
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> (C) Failure to permit State Fund to audit payroll as required by the terms of the policy; and
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> (D) Failure to pay any additional premium resulting from an audit of payroll required by the terms of this policy or any previous policy issued by State Fund."

The question raised by the parties is whether State Fund acted within the terms of the contract and the Insurance Code when it issued the notice of cancellation dated February 21, 2012, for nonpayment of $71.20 and thereafter cancelled the workers' compensation policy.

(Report, pp. 1-4.)

On February 2, 2026, the WCA issued an F&O, finding that (1) State Fund proved that as of February 21, 2012, a portion of Dynamic's deposit premium remained unpaid, (2) State Fund did not prove that any earned premium was unpaid as of that date, and (3) the terms of the policy and the California Insurance Code do not authorize cancellation for nonpayment of deposit premium under the ten-day notice requirement of Insurance Code § 676.8. These three findings

were followed by an order that (1) the policy of workers' compensation insurance issued by State Compensation Insurance Fund to Dynamic Nutraceutical was not effectively canceled in accordance with the terms of the contract and Insurance Code § 676.8, (2) the purported cancellation of said policy, effective March 8, 2012, is declared void and without effect, and (3) the matter is returned to the trial level for further proceedings on all remaining issues of injury, nature and extent of disability, and entitlement to benefits.

It is from this F&O that petitioner seeks reconsideration.

DISCUSSION

I

Up through July 1, 2024, petitions for reconsideration were subject to former Labor Code[1] section 5909, which 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.)

During the period from July 2, 2024 through June 30, 2026, petitions for reconsideration were subject to former Labor Code section 5909, which stated 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.
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> (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.
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> (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), (in effect from July 2, 2024 through June 30, 2026), 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 July 15, 2026 and 60 days from the date of transmission is Sunday, September 13, 2026. The next business day

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

after 60 days from the date of transmission is Monday, September 14, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, September 14, 2026 so that we have timely acted on the petition as required by section 5909(a) (in effect from July 2, 2024 through June 30, 2026).

Section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026) 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) (in effect from July 2, 2024 through June 30, 2026) 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 arbitrator, the Report was served on March 9, 2026, and the case was transmitted to the Appeals Board on July 15, 2026. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026), because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on July 15, 2026.

However, a notice of transmission was provided to the parties by the district office on the Minutes of Hearing of July 15, 2026, which is the same day as the transmission of the case to the Appeals Board on July 15, 2026. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026), and consequently they had actual notice as to the commencement of the 60-day period on July 15, 2026.

II

Insurance Code section 676.8 reads as follows:

(a) This section applies only to policies of workers' compensation insurance.

[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.

(b) After a policy is in effect, a notice of cancellation shall not be effective unless it complies with the notice requirements of this section and is based upon the occurrence, after the effective date of the policy, of one or more of the following:

(1) The policyholder's failure to make any workers' compensation insurance premium payment when due.

(2) The policyholder's failure to report payroll, to permit the insurer to audit payroll as required by the terms of the policy or of a previous policy issued by the insurer, or to pay any additional premium as a result of an audit of payroll as required by the terms of the policy or of a previous policy.

(3) The policyholder's material failure to comply with federal or state safety orders or written recommendations of the insurer's designated loss control representative.

(4) A material change in ownership or any change in the policyholder's business or operations that materially increases the hazard for frequency or severity of loss, requires additional or different classifications for premium calculations, or contemplates an activity excluded by the insurer's reinsurance treaties.

(5) Material misrepresentation by the policyholder or its agent.

(6) Failure to cooperate with the insurer in the insurer's investigation of a claim.

(c) A policy shall not be canceled for the conditions specified in paragraph (1), (2), (5), or (6) of subdivision (b) except upon 10 days' written notice to the policyholder by the insurer. A policy shall not be canceled for the conditions specified in paragraph (3) or (4) of subdivision (b) except upon 30 days' written notice to the policyholder by the insurer, provided that notice is not required if an insured and insurer consent to the cancellation and reissuance of a policy effective upon a material change in ownership or operations of the insured. The time periods and procedures in subdivision (a) of Section 1013 of the Code of Civil Procedure shall be applicable if the notice is mailed. If the policyholder remedies the condition to the insurer's satisfaction within the specified time period, the policy shall not be canceled by the insurer.

(d) Nothing in this section shall preclude, while policies are in force, changes in the premium rate required or authorized by law, regulation, or order of the commissioner, or otherwise agreed to between the policyholder and insurer.

(e) Any policy written for a term longer than one year, or any policy with no fixed expiration date, shall be considered as if written for successive policy periods of one year.

(Ins. Code, § 676.8.)

Insurance Code section 676.8 clearly and unambiguously dictates that after a policy is in effect, a notice of cancellation shall not be effective unless it complies with the notice requirements of that section and is based upon the occurrence of one or more events, including "the

policyholder's failure to make ***any*** workers' compensation insurance premium payment when due." (Ins. Code, § 676.8(b)(1) (emphasis added).)

Here, it is undisputed that Dynamic failed to pay the insurance policy deposit premium in full when it was due on March 8, 2012. Insurance Code section 676.8, subsection (b)(1) does not make any distinction between "earned" and "unearned" premium, nor does it exempt a premium deposit from the term "premium payment." On the contrary, the word "any" is used to dispel any possible ambiguity that a policy may be cancelled for failure to make any kind of payment relating to any kind of premium.

It is equally unambiguous that under the conditions of the policy, State Fund could cancel the policy for nonpayment of premium, without any distinction as to the kind of premium or how the payment was to be processed once made by their insured. There is furthermore no distinction as to the amount of nonpayment under either the terms of the policy or Insurance Code section 676.8. It is therefore immaterial that in this case the failure to pay premium when due was an underpayment of $71.20 and not a larger amount.

The WCA's attempt to read into the statute and the policy a distinction between required premium deposit payments and premiums that were "earned" is well beyond the plain meaning and obvious purpose of requiring payments for a workers' compensation insurance policy at the time when they are due from the insured. As noted recently by the Court of Appeal, "'[c]ourts will not adopt a strained or absurd interpretation in order to create an ambiguity where none exists.'" (*Employers Preferred Ins. Co. v. Workers' Comp. Appeals Bd.* (2026) 122 Cal.App.5th 467, 478, *citing Alameda County Flood Control & Water Conservation Dist. v. Department of Water Resources* (2013) 213 Cal.App.4th 1163, 1180.) Given the lack of ambiguity, we do not believe any consideration of the unpublished opinion cited in the Petition for Reconsideration for the purpose of explaining a "deposit premium" is relevant or necessary under the doctrines of law of the case (Cal. Rules of Court, rule 8.1115(b)), and we admonish counsel for State Fund that under Rule 8.1115(a) of the California Rules of Court, "an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action." (Cal. Rules of Court, rule 8.1115.)

Based on the above, it appears that under both Insurance Code section 676.8 and the language of the policy, State Fund was clearly within its rights to issue a notice of cancellation on February 21, 2012 after Dynamic failed to make required payments toward its premium that were

not only due, but overdue after payment in the amount of $71.20 was requested in a previous notice dated January 20, 2012.

We also note that the notice of cancellation issued by State Fund was in compliance with Insurance Code section 676.8, which requires a minimum of 10 days' written notice to the policyholder or insurer in the event of cancellation for failure to make premium payments when they are due. The February 21, 2012 notice of cancellation indicated that the policy would be cancelled for underpayment on March 8, 2012, which is 15 days' notice.

Accordingly, we will grant reconsideration, rescind the F&O, and substitute a new finding that State Fund effectively cancelled Dynamic's policy due to Dynamic's failure to timely pay a required premium payment that was due by March 8, 2012.

For the foregoing reasons,

IT IS ORDERED that State Fund's Petition for Reconsideration of the Findings and Order issued by the WCA on February 2, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the February 2, 2026 Findings and Order is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. State Fund proved that as of February 21, 2012, a portion of Dynamic's deposit premium remained unpaid.

2. On March 8, 2012, defendant State Compensation Insurance Fund properly cancelled its workers' compensation policy insuring Dynamic Nutraceutical, Inc. in accordance with the terms of the contract and Insurance Code § 676.8, due to Dynamic's failure to timely make a required premium payment when due.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 14, 2026

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

NICOLAS GARCIA
LAW OFFICES OF TIMOTHY J. EGAN
DYNAMIC NUTRACEUTICAL, INC.
UNINSURED EMPLOYERS BENEFITS TRUST FUND
OFFICE OF THE DIRECTOR – LEGAL UNIT (OAKLAND)
STATE COMPENSATION INSURANCE FUND
GEORGE W. MASON, ARBITRATOR

CWF/*cs*

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