

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

TAWNI FLOT WILLIAMS, *Applicant*

vs.

**SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT, *Permissibly Self-Insured;*
*Adjusted by KEENAN & ASSOCIATES, Defendants***

**Adjudication Number: ADJ12567619; ADJ12567620
Pomona District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Order of Dismissal (Order), dated April 16, 2021, and issued on April 22, 2021, wherein the workers' compensation administrative law judge (WCJ), dismissed Case Number ADJ12567619 without prejudice pursuant to applicant's request.

Applicant contends that her case should be reopened.

We received an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration and that applicant file a petition to reopen.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will dismiss the Petition for Reconsideration (Petition). Upon return, the WCJ should hold further proceedings consistent with this decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

We remind applicant's attorney that documents that have not been admitted into evidence may not be attached to a petition for reconsideration because the Appeals Board may only consider documents that are contained in the record of proceedings. (Cal. Code Regs., tit. 8, § 10945(c)(2); see §§ 10670, 10803.) Furthermore, it is important to note that parties should not attach documents that are already part of the record, which is also a violation of WCAB Rule 10945. (Cal. Code

Regs., tit. 8, § 10945(c)(1).) Failure to comply with the WCAB’s rules may result in the imposition of sanctions. (See Lab. Code § 5813; Cal. Code Regs., tit. 8, § 10421.).

BACKGROUND

Applicant claimed that while employed as a school counselor, she sustained a specific injury in the form of psychological injury (stress) on September 11, 2019. (Case Number ADJ12567619.)

Applicant also claimed that while employed as a school counselor, she sustained a cumulative injury in the form of psychological injury (stress) and multiple body parts from August 5, 2019 to September 12, 2019. (Case Number ADJ12567620.)

On December 4, 2020, applicant’s attorney’s office via a letter to the WCJ requested that the dates of applicant’s cumulative injury be changed from August 5, 2019 to September 12, 2019 to August 5, 2019 to March 1, 2020. (Case Number ADJ12567620.)

On December 9, 2020, the parties made a joint request for an Order to Take Off Calendar (OTOC) and the WCJ granted the request. The minutes state: “AA to file a request to dismiss specific injury case. P[arties] to attempt to obtain med evidence on CT case.”

On March 25, 2021, a priority conference was held and the minutes list Case Numbers ADJ125676619 and Case Number ADJ12567620 and state: “ P[arties] request OTOC as A/A office has indicated that the applicant will be signing a dismissal of the case.”

On April 14, 2021, defendant’s attorney filed a Request for Dismissal of Case Number ADJ12567619, and the Request for Dismissal for Case Number ADJ1256719 was signed by applicant and her attorney.

On April 22, 2021, the WCJ issued the Order dismissing ADJ12567619 without prejudice.

Trial was scheduled for May 31, 2023, and that day the parties made a joint request for an order taking off calendar, which the WCJ granted. The minutes state: “Applicant to dismiss with prejudice ADJ12567620, applicant will move to reopen ADJ12567619.”

DISCUSSION

“The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] . . . At any time, upon notice and after the

opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.”¹ (Lab. Code, § 5803.)

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).) An adequate and complete record is necessary to understand the basis for the WCJ’s decision and the WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; *Hamilton, supra*, at p. 476; *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622.) The WCJ’s decision must “set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on,” so that “the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Hamilton, supra*, at p. 476 (citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).) 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.)

“It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, at p. 475.) 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 pp. 475-476; see Lab. Code, § 5313 and *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22.)

Moreover, 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. (*Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant. . .” (Id., at p. 158.) The “essence of due process is simply notice and the opportunity to be heard.” (*San*

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

Bernardino Community Hospital v. Workers' Comp. Appeals Bd. (McKernan) 74 Cal.App.4th 928, 936 (64 Cal. Comp. Cases 986) 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.) 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, supra*, at p. 1295; *Rucker, supra*, at pp. 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].)

The issue before us is that based on the limited record before us, we are unable to consider the basis for the WCJ's decision. Here, no hearing was held, and no record was created, regarding the request for dismissal.

Upon return to the trial level, the WCJ should hold a hearing and create a record including a summary of the issues and evidence considered. At that time, the WCJ may consider whether a petition to reopen by applicant is more appropriate under the circumstances here. This is not a decision on the merits of any issues raised herein.

Accordingly, we dismiss the Petition and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Order Dismissing Case Number ADJ12567619 dated April 16, 2021 and issued on April 22, 2021 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 19, 2023

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

**SOLIMON RODGERS
TAWNI FLOT-WILLIAMS
LAUGHLIN FALBO**

DLM/oo

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