

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

**CRISTIAN AVILA GARCIA (Deceased),
SINTIA YANETH GARCIA (Guardia Ad Litem), *Applicant***

vs.

**BAYVIEW ENVIRONMENTAL SERVICES INCORPORATED;
GREAT DIVIDE INSURANCE COMPANY, Administered by
BERKELEY ENTERTAINMENT, *Defendants***

**Adjudication Number: ADJ12393038
Oakland District Office**

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

We have considered the allegations of the Petition for Reconsideration 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 stated in the WCJ's report, which we adopt and incorporate, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and 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.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of August 10, 2022 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of August 10, 2022 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR



/s/ MARGUERITE SWEENEY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 28, 2022

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

**CRISTIAN AVILA GARCIA (DEC)
SINTIA YANETH GARCIA
THE LAW OFFICE OF MARK A. VICKNESS
PEARLMAN, BROWN & WAX, LLP**

AS/ara

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

By timely, verified petition filed on August 29, 2022, defendant seeks reconsideration of the decision filed herein on August 10, 2022, in this case, which arises out of a denied injury on July 29, 2018. Petitioner, hereinafter defendant, contends that it was error to issue a decision without the minutes of hearing and summary of evidence having been served, to find the injury compensable, honoring the “commercial traveler rule” over the “going and coming rule,” and to award benefits at the statutory maximum rate. Applicant has filed an answer, also decrying the lack of minutes and summary of evidence, and otherwise supporting the decision. I will recommend that reconsideration be granted, the decision annulled, and the matter returned to the trial level so that the decision can be reissued, restoring the parties’ appellate rights in light of the minutes and summary, which have now been served.¹

On the one hand, I believe that it is patently untrue that the decision violated the mandate of Labor Code section 5313 that, together with the decision, the parties be served with “a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” In fact, the evidence relied upon and the reasons for the decision are contained within it.

Nonetheless, I believe the parties to this matter deserve to receive the minutes of hearing and summary of evidence in order that they may be able to perfect their appeals.

I therefore will not address the substance of defendant’s petition; should the appeals board feel differently about this point, I will, upon request, deal with the substantive arguments made in the petition. Rather, I will recommend that reconsideration be summarily granted, so that the process can be restarted, the minutes and summary having been served on the parties on September 30, 2022.

RECOMMENDATION

I recommend that reconsideration be granted, the decision annulled, and the matter returned to the trial level for a new decision.

Date: October 3, 2022

Respectfully submitted,

Christopher Miller
Workers’ Compensation Judge

¹ The Oakland District Office currently has ten judges, excluding the presiding judge, and one court reporter. That lone reporter is obviously unduly burdened. In this instance, the judge’s assistant was prevailed upon to serve the minutes and summary, on September 30, 2022.