

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

ARMANDO JUAREZ, *Applicant*

vs.

**SMITHFIELD FOODS;
ESIS CHATSWORTH, *Defendants***

**Adjudication Number: ADJ14769680
Santa Ana District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the August 8, 2023 Order Dismissing Case (Order) wherein the workers' compensation administrative law judge (WCJ) dismissed applicant's case without prejudice. Applicant contends that "[t]he applicant was out of the country but has now returned and wants to have the opportunity to pursue his claims."

We received no answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that deny and dismiss applicant's Petition.

We have considered the allegations of applicant's Petition for Reconsideration (Petition) the contents of the WCJ's Report with respect thereto. Based on our review of the record, the Petition will be dismissed and returned to the trial level to be treated as a petition to set aside.¹

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].) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572:

¹ Because the Petition is being returned to the trial level to be treated as a petition to set aside, we need not consider the timeliness of the Petition for Reconsideration.

[The] commission, ... must find facts and declare and enforce rights and liabilities,—in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law. (*Id.* at 577.)

Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Rucker, supra*, at 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 v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal. Comp. Cases 584]; *Rucker, supra*, at 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.4 703, 710 [57 Cal.Comp.Cases 230].) Additionally, 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 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Board en banc).) As required by Labor Code section 5313 and explained in *Hamilton*, “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.” (*Id.* at p. 475.) We held that the record of proceeding must contain, at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Ibid.*) Here, the record must be developed regarding applicant’s contentions that the dismissal of his claim was improper. A hearing should be conducted at the trial level so that evidence may be presented by both parties at that proceeding and to determine whether there are any grounds or new evidence to serve as a basis for setting aside the Order.

However, rather than grant reconsideration, we are persuaded that it is more procedurally proper for us to dismiss the Petition as premature and return the matter to the trial level for the WCJ to treat as a petition to set aside. Once the WCJ issues a decision any aggrieved person may timely seek reconsideration.

Accordingly, we dismiss applicant’s Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Order issued by the WCJ on August 8, 2023 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ NATALIE PALUGYAI, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 14, 2023

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

**ARMANDO JUAREZ
LAW OFFICES OF JAMES HARMON
LAW OFFICE OF MAX MALMYGIN**

LN/pm

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