

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

JENNIE LEE, *Applicant*

vs.

**UNITED HEALTHCARE; ADMINISTERED BY
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ7220050; ADJ7503790
Marina Del Rey District Office**

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

Applicant seeks reconsideration of the January 6, 2023 Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) found defendant timely paid the September 28, 2021 Findings of Fact and Award (F&A).

Applicant contends that the WCJ's decision does not meet the requirements of Labor Code section 5313, and that defendant's untimely payment of the F&A triggered the statutory increase of Labor Code section 4650(d).¹ Applicant avers that because defendant did not file a Petition for Reconsideration of the award and did not pay the award within 14 days, it is liable for a section 4650(d) statutory increase.

We have received an Answer from defendant. The WCJ has now retired, and has not submitted a Report and Recommendation on Petition for Reconsideration.

We have considered the allegations of the Petition for Reconsideration, and the Answer. Based on our review of the record, we will grant the Petition for Reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further proceedings.

The present dispute involves the question of whether defendant was late in paying the September 28, 2021 F&A, as well as related penalties and/or statutory increase. The parties have been unable to resolve the dispute, and proceeded to trial on November 2, 2022.

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

On January 6, 2023 the WCJ issued her Findings of Fact, which determined that defendant timely paid the September 28, 2021 F&A, and that “all other issues are moot in light of the above determination.” (Findings of Fact Nos. 1 and 2.) The accompanying Opinion on Decision states, “[b]ased upon the totality of the record, including review of the advocacy petitions, it is found that there was timely payment of the Findings and Award by Defendant.” (Opinion on Decision, at p. 1.)

Section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc) (Hamilton), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [68 Cal. Rptr. 825, 441 P.2d 633, 33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [113 Cal. Rptr. 162, 520 P.2d 978, 39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal. 3d 312 [90 Cal. Rptr. 355, 475 P.2d 451, 35 Cal.Comp.Cases 500]; *LeVesque v. Workers’ Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [83 Cal. Rptr. 208, 463 P.2d 432, 35 Cal.Comp.Cases 16].) As required by 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.” (*Hamilton, supra*, at p. 475.)

Here, the entirety of the WCJ’s analysis is a reference to the “totality of the record” and the “advocacy petitions.” The Findings of Fact and Opinion on Decision is wholly devoid of references to the evidentiary record, and offers no legal analysis of the issues presented. As we have previously discussed in the panel decision of *Moss v. Vivendi* (September 7, 2012, ADJ3770794) [2012 Cal. Wrk. Comp. P.D. LEXIS 481], complying with section 5313 requires more than just a conclusory statement that the decision is supported in the record:

It means actually discussing what the testimony, reports, and deposition transcripts say and explaining, in a reasoned opinion, how this evidence supports the conclusion reached. In much the same way that a medical report is not substantial evidence if it fails to set forth the facts and reasoning behind its conclusions so a WCJ’s opinion does not comply with Section 5313 if it fails to

support its conclusions with specific facts and reasoning. (See *Escobedo, supra*, 70 Cal.Comp.Cases at p. 622 [medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions], citing *Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 [71 Cal. Rptr. 678, 445 P.2d 294, 33 Cal.Comp.Cases 647] [a mere legal conclusion does not furnish a basis for a finding]; *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 794, 799, 800-801 [69 Cal. Rptr. 88, 441 P.2d 928, 33 Cal.Comp.Cases 358] [an opinion that fails to disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence]; see also *People v. Bassett* (1968) 69 Cal.2d. 122, 141, 144 [443 P.2d 777] 70 Cal. Rptr. 193 [the chief value of an expert's testimony rests upon the material from which his or her opinion is fashioned and the reasoning by which he or she progresses from the material to the conclusion, and it does not lie in the mere expression of the conclusion; thus, the opinion of an expert is no better than the reasons upon which it is based].)

Here, the Findings of Fact and Opinion on Decision does not comply with section 5313 because it fails to substantively discuss the issues presented, and offers no reasoned opinion to support the conclusion reached. The decision offers neither citation to relevant legal authority, nor citation to the evidentiary record.

Consequently, we are unable to ascertain the basis for the January 6, 2023 Findings of Fact, and must return the matter to the trial level to properly address the issues framed for decision. Because the WCJ who rendered the decision has retired, the presiding workers' compensation administrative law judge must reassign this case to a new WCJ. The new WCJ must then render a decision based on the evidence admitted in the record and properly explain his or her decision as required by section 5313. When the WCJ issues a new decision, any aggrieved party may thereafter timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration, dated January 25, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, dated January 6, 2023, is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 24, 2023

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

**JENNIE LEE
FORD & WALLACH
ALBERT & MACKENZIE**

SAR/abs

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