

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

**FREDY VIERA, *Applicant***

**vs.**

**SQUARE H BRANDS, AMTRUST NORTH AMERICA STAR INSURANCE CO.  
ADMINISTERED BY MEADOWBROOK INSURANCE GROUP, *Defendants***

**Adjudication Numbers: ADJ8593038. ADJ10207316  
Los Angeles District Office**

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

Defendant AmTrust North America seeks reconsideration of the Findings and Order (F&O) issued by a workers' compensation arbitrator (WCA) on January 26, 2024, wherein the WCA denied its petition for contribution. Defendant contends that the WCA erred when he did not admit the medical evidence of the agreed medical evaluator because the opinion as to apportionment was not based on substantial evidence.

We did not receive an Answer from defendant Star Insurance Company. 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 with respect thereto. Based on our review of the record, and for the reasons discussed below, we will rescind the F&O and return the matter to the trial level. When the WCA issues a new decision, any aggrieved person may timely seek reconsideration.

WCAB Rule 10995 provides that if the arbitrator does not rescind the order, decision or award within 15 days of receiving the petition for reconsideration, the arbitrator is required to forward an electronic copy of their report and the complete arbitration file within 15 days after receiving the petition for reconsideration pursuant to WCAB Rule 10995(c)(3). (Cal. Code Regs., tit. 8, § 10995(c)(1)-(3).) WCAB Rule 10914 requires the arbitrator to make and maintain the record of the arbitration proceeding, which must include the following:

- (1) Order Appointing Arbitrator;
  - (2) Notices of appearance of the parties involved in the arbitration;
  - (3) Minutes of the arbitration proceedings, identifying those present, the date of the proceeding, the disposition and those served with the minutes, or the identification of the party designated to serve the minutes;
  - (4) Pleadings, petitions, objections, briefs and responses filed by the parties with the arbitrator;
  - (5) Exhibits filed by the parties;
  - (6) Stipulations and issues entered into by the parties;
  - (7) Arbitrator's Summary of Evidence containing evidentiary rulings, a description of exhibits admitted into evidence, the identification of witnesses who testified and summary of witness testimony;
  - (8) Verbatim transcripts of witness testimony if witness testimony was taken under oath.
  - (9) Findings, orders, awards, decisions and opinions on decision made by the arbitrator; and
  - (10) Arbitrator's report on petition for reconsideration, removal or disqualification.
- (Cal. Code Regs., tit. 8, § 10914(c).)

Here, the record forwarded to us does not include any identification of the stipulations and issues at trial. According to the transcript of the hearing on October 16, 2023, the parties submitted evidence, but the arbitrator “was unable to list all of [the exhibits] now.” (Transcript, p. 5.) Thus, the arbitration file is not complete as required by WCAB Rule 10995.

The Appeals Board may not ignore due process for the sake of expediency. (*Barri v. Workers' Comp. Appeals Bd.* (2018) 28 Cal.App.5th 428, 469 [83 Cal.Comp.Cases 1643] [claimants in workers' compensation proceedings are not denied due process when proceedings are delayed in order to ensure compliance with the mandate to accomplish substantial justice]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805] [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].) “Even though workers' compensation matters are to be handled expeditiously by the Board and its trial judges,

administrative efficiency at the expense of due process is not permissible.” (*Fremont Indem. Co. v. Workers’ Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965, 971 [49 Cal.Comp.Cases 288]; see *Ogden Entertainment Services v. Workers’ Comp. Appeals Bd. (Von Ritzhoff)* (2014) 233 Cal.App.4th 970, 985 [80 Cal.Comp.Cases 1].)

The Appeals Board’s constitutional requirement to accomplish substantial justice means that the Appeals Board must protect the due process rights of every person seeking reconsideration. (See *San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986] [“essence of due process is . . . notice and the opportunity to be heard”]; *Katzin v. Workers’ Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) In fact, “a denial of due process renders the appeals board’s decision unreasonable...” and therefore vulnerable to a writ of review. (*Von Ritzhoff, supra*, 233 Cal.App.4th at p. 985 citing Lab. Code, § 5952(a), (c).) Thus, due process requires a meaningful consideration of the merits of every case de novo with a well-reasoned decision based on the evidentiary record and the relevant law.

As with a workers’ compensation administrative law judge (WCJ), an arbitrator’s decision must be based on admitted evidence and must be supported by substantial evidence. (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) “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*, 66 Cal.Comp.Cases at p. 475.) Meaningful review of an arbitrator’s decision requires that the “decision be based on an ascertainable and adequate record,” including “an orderly identification in the record of the evidence submitted by a party; and what evidence is admitted or denied admission.” (*Lewis v. Arlie Rogers & Sons* (2003) 69 Cal.Comp.Cases 490, 494, emphasis in original.) “An organized evidentiary record assists an arbitrator in rendering a decision, informs the parties what evidence will be utilized by the arbitrator in making a determination, preserves the rights of parties to object to proffered evidence, and affords meaningful review by the Board, or reviewing tribunal.” (*Id.*; see also *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753 [a full and complete record allows for a meaningful right of reconsideration].)

We are unable to conduct meaningful review of the Petition or render a decision based on an incomplete record. Accordingly, as our decision after reconsideration, we will rescind the

arbitrator's decision and return the matter to the trial level. When the WCA issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the January 26, 2024 Findings and Order issued by a workers' compensation arbitrator is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 26, 2024 Findings and Order issued by a workers' compensation arbitrator is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**April 22, 2024**

**FREDY VIERA  
GRAIWER & KAPLAN  
NGUYEN GRIBBLE SHEFFIELD & RICHARDS LLP  
BRADFORD & BARTHEL  
ROBERT E. DRAKULICH, ARBITRATOR**

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

**AS/mc**

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