

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

NORMAN ROBINSON, *Applicant*

vs.

COUNTY OF RIVERSIDE, permissibly self-insured, *Defendant*

**Adjudication Number: ADJ13240019
Pomona District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted the Petition for Reconsideration (Petition) filed by defendant, County of Riverside, in order to further study the legal and factual issues raised therein.¹ This is our Opinion and Decision After Reconsideration.

Defendant sought reconsideration of a minute Order issued on August 5, 2021, wherein the workers' compensation administrative law judge (WCJ) ordered defendant to pay applicant Labor Code section 4850² benefits in the amount of \$23,211.79. (Minute Order, August 5, 2021, p. 2.)

Defendant contends that the WCJ erred in issuing the Order, arguing that it was issued in violation of its due process rights to frame the issues for trial, engage in fact-finding, and submit evidence.

We received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations made in the Petition, the Answer, as well as the content of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will rescind the Order of August 5, 2021 and return this matter to the trial level for further proceedings consistent with this opinion.

¹ Commissioner Lowe, who was on the panel that issued the order granting reconsideration, no longer serves on the Appeals Board. Another panel member was assigned to take her place.

² Unless otherwise stated, all further statutory references are to the Labor Code.

BACKGROUND

Applicant suffered injury to the neck arising out of and in the course of employment (AOE/COE) on September 16, 2019 while working for defendant as a probation corrections officer. (F&O, March 29, 2021, p. 1.)

On May 4, 2021, applicant filed a Declaration of Readiness to Proceed (DOR) to an expedited trial regarding his entitlement to TTD and retroactive section 4850 benefits, as well as attorney fees. (DOR, May 4, 2021, pp. 6-7.) A hearing on these issues was held on May 25, 2021, during which the WCJ issued a minute Order requiring defendant to pay applicant TTD and section 4850 benefits in the amount of \$55,398.38, minus \$8,309.76 in attorney fees owed to applicant's attorney. (Minute Order, May 25, 2021, p. 1.)

On July 15, 2021, applicant filed another DOR, requesting a new expedited trial, alleging that defendant failed to pay applicant's benefits in accordance with the WCJ's May 25, 2021 Order. (DOR, July 15, 2021.) The WCJ held the requested hearing on August 5, 2021, and issued a new minute Order requiring defendant to pay applicant \$23,211.79 in unpaid benefits. (Minute Order, August 5, 2021, pp. 1-2.)

On August 19, 2021, defendant filed a timely Petition for Reconsideration of the August 5, 2021 minute Order, arguing that it was issued in violation of its due process rights to a trial, including framing the issues, fact-finding, and submission of evidence.

In the Report, the WCJ recommends that the August 5, 2021 Order remain in full force and effect and that we reject defendant's arguments. The Report states that the August 5, 2021 Order "simply memorialized" an "off the record" agreement between the parties regarding the payment of applicant's remaining benefits. (Report, pp. 2, 4-5.) The Report also states that the parties declined the WCJ's offer to obtain a court reporter and to proceed to trial on the benefits issue, and that it is therefore "*implausible*" that defendant's due process rights to a trial and related procedures could have been violated. (Report, p. 4, emphasis in original.)

DISCUSSION

The WCJ's decision 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. (Lab. Code, § 5313.) "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* at p. 475.) 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.” (*Id.* at p. 476 (citation omitted).)

Additionally, 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. (Rucker)* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) As stated by the Supreme Court of California in *Carstens v. Pillsbury* (1916) 172 Cal. 572:

[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 p. 577.)

Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Rucker, supra*, 82 Cal.App.4th 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 v. Workers’ Comp. Appeals Bd. (Gangwish)* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker* at pp. 157-158, citing *Kaiser Co. v. Industrial Acci. Com.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers’ Comp. Appeals Bd. (Katzin)* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Here, we are unable to provide meaningful review due to the state of the record. Even if the parties had agreed to the benefits owed to applicant as set forth in the August 5, 2021 minute Order, there is no evidence of that agreement in the record. The WCJ concedes in the Report that this is the case, stating that the parties’ agreement was “*off the record*,” and that the agreement was “simply memorialized” during the August 5, 2021 hearing via the minute Order.³ (Report, p. 4,

³ In the Report, the WCJ recommends that we sanction defendant for alleged false statements made by counsel who filed the Petition, Rachel M. Hochstetler, as to what was said regarding the agreement during the August 5, 2021 hearing, which Ms. Hochstetler did not attend. (Report, pp. 6-7, citing Lab. Code, § 5813.) However, due to the state of the record, or rather, absence thereof, we decline to issue a determination on this matter. Instead, this issue can be addressed by the WCJ when this matter is returned to the trial level and when the WCJ, in his or her discretion, believes

emphasis added.) Furthermore, the August 5, 2021 Minutes of Hearing, which contains the minute Order, contained no stipulations or identification of what issues were to be decided that day. This raises questions of due process, as neither party has had the opportunity to properly develop the evidentiary record on the actual issue(s) presented. (*Katzin, supra*, 5 Cal.App.4th at pp. 711-712; *Gangwish, supra*, 89 Cal.App.4th 1284.)

Accordingly, for these reasons, we will rescind the Order of August 5, 2021 and return this matter to the trial level for further proceedings, including the creation of an adequate trial record and the issuance of a new decision.

that the record has been sufficiently developed and proper notice of intent to sanction is provided. (Cal. Code Regs., tit. 8, § 10832; *Rucker, supra*, 82 Cal.App.4th at pp. 157-158.)

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order of August 5, 2021 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 25, 2023

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

**NORMAN ROBINSON
LAW OFFICES OF CALLAS & HEISE
HANNA, BROPHY, MACLEAN, MCLEER & JENSON**

AH/cs

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