

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

PASCUAL RODRIGUEZ, *Applicant*

vs.

**OASIS OUTSOURCING, INC./ASC PROCESS SYSTEMS; AMERICAN ZURICH
INSURANCE COMPANY, administered by ESIS, *Defendants***

**Adjudication Numbers: ADJ10820377, ADJ10005589
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

Defendant, American Zurich Insurance Company, petitions for reconsideration of the Amended Joint Findings and Award (after Petition to Reopen) issued by the workers' compensation administrative law judge (WCJ) in this matter on November 19, 2020. In that decision, the WCJ found that applicant, Pascual Rodriguez, while employed during the period January 1, 2007 to July 2, 2015, as a janitor by Oasis Outsourcing, Inc./ASC Process Systems sustained injury arising out of and in the course of employment to his neck, back, right shoulder, wrists, upper extremities, upper digestive system and consisting of hypertension and hernia, resulting in permanent partial disability of 72% in Case ADJ10820377.

Defendant contends in substance in its petition for reconsideration that the WCJ erred in finding permanent disability of 72%.

We granted reconsideration to further study the factual and legal issues presented.¹

Subsequently, the parties participated in a commissioners' settlement conference at our request.

On July 31, 2023, the parties filed a fully executed Compromise and Release in case ADJ10820377 and case ADJ10005589, a prior claim in which a stipulation that applicant sustained

¹ Commissioner Marguerite Sweeney signed the Opinion and Order Granting Petition for Reconsideration dated July 28, 2021. Commissioner Sweeney is no longer a member of the Appeals Board. Accordingly, a new panel member has been substituted in her place.

industrial injury in the form of a hernia while employed by defendant on January 25, 2014 was approved on April 27, 2018.

As a preliminary matter, we note that a petition for reconsideration is generally considered denied by operation of law if the Appeals Board does not grant the petition within 60 days after it is filed. (Lab. Code, § 5909.) However, we believe that “it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice” (*Shiple v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shiple*, the Appeals Board denied the applicant’s petition for reconsideration because it had not acted on the petition within the statutory time limits of Labor Code section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board’s decision holding that the time to act on applicant’s petition was tolled during the period that the file was misplaced. (*Shiple, supra*, 7 Cal.App.4th at p. 1108.) Like the Court in *Shiple*, “we are not convinced that the burden of the system’s inadequacies should fall on [a party].” (*Shiple, supra*, 7 Cal.App.4th at p. 1108.) In this case, the Appeals Board failed to act on the Petition for Reconsideration within 60 days of its filing through no fault of the parties. Therefore, we find that our time to act on the petition was tolled.

In order to expedite review and approval of the Compromise and Release, we will rescind the November 19, 2020 Amended Joint Findings and Award (after Petition to Reopen) and remand this matter to the WCJ to consider the Compromise and Release. The WCJ may conduct such further proceedings as he deems appropriate.

Our decision should not be construed as a ruling on the merits of the petition for reconsideration. If the WCJ does not approve the settlement, he can issue an order reinstating his decision and any aggrieved party may timely seek reconsideration from the reinstated decision.

Finally, we commend the parties for successfully resolving this matter without the need of further litigation.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the November 19, 2020 Amended Joint Findings and Award (after Petition to Reopen) issued on November 19, 2020 be **RESCINDED**.

IT IS FURTHER ORDERED that this matter be **REMANDED** to the workers' compensation administrative law judge for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 15, 2023

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

**PASCUAL RODRIGUEZ
SPARAGNA & SPARAGNA
STOCKWELL HARRIS WOOLVERTON & HELPHREY**

DH/ara

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