WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSE ROMERO, *Applicant*

vs.

INTEGRITY REBAR PLACERS, INC.; ALASKA NATIONAL INSURANCE COMPANY, et. al., *Defendants*

Adjudication Numbers: ADJ11453067; ADJ11211942; ADJ11211941
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the "Findings of Fact and Order" (F&O) issued on June 26, 2025, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that the Appeals Board may exercise jurisdiction over applicant's claim pursuant to a stipulation of the parties approved by an arbitrator that reserved jurisdiction with the Appeals Board.

Defendant contends that jurisdiction over this matter rests with its Alternative Dispute Resolution (ADR) program.

We have received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration

We have considered the allegations of the Petition for Reconsiderations and the Answer and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, and for the reasons stated in the WCJ's Report, we will deny defendant's petition for reconsideration.

FACTS

Per the WCJ's Report:

> The instant case relates to a continuous trauma claim for which, involves Integrity Rebar and their Workers' Compensation insurance carrier, Alaska National Insurance Company, and codefendant, Walsh Shea, insured by ACE, administered by ESIS. The case against Integrity Rebar and Alaska National Insurance Company was governed by the Ironworkers Alternative Dispute Resolution (ADR) Program and the matter was removed to that ADR Program. Walsh Shea was not governed by the ADR Program. The applicant and defendant Alaska National proceeded with the ADR process. The matter against Walsh Shea proceeded in the WCAB forum.
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> ADR Mediation took place on January 29, 2021. The matter against Alaska National, in the ADR program, was resolved via a Stipulation with Request for Award dated March 11, 2021 (Joint Ex. BB). A stipulated Finding and Award issued March 15, 2021 (Joint Ex. AA).
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> On October 9, 2024, Applicant filed a Declaration of Readiness to Proceed (DOR) at the WCAB and the matter was set for MSC on November 27, 2024. There does not appear to be an objection to the DOR filed by Defendant Alaska National. The matter eventually came before the undersigned for trial on March 19, 2025 on the sole issue of "Whether the WCAB has jurisdiction with regard to Alaska National Insurance Company in this case that was previously before Judge Silberman in ADR with a Decision issued March 15, 2021. (MOH, 3/19/25, pg. 3, lines 1-4). Defendant contends the WCAB lacks jurisdiction due to the existence of an ADR agreement under Labor Code § 3201.5. Applicant contends that Defendant and Applicant agreed that jurisdiction would be reserved with respect to the WCAB in that jurisdiction would be reserved with respect to "all tribunals," per Stipulation with Request for Award dated March 11, 2021 (Joint Ex. BB). Defendant's filed the instant, timely, Petition for Reconsideration on May 12, 2025. . .
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> Essentially, Defendant argues that the WCAB lacks jurisdiction due to the existence of an ADR agreement under Labor Code § 3201.5. If that position were to prevail, the Applicant would be left without a forum or remedy to resolve its dispute. Even the ADR Ombudsman advised the Applicant to seek remedies before the WCAB (App. Ex. A. pg. 1).

(WCJ's Report, pp. 2-3.)

The stipulations approved by the ADR arbitrator expressly stated: "The applicant reserves his right to seek any and all benefits not paid in a proceeding before the WCAB." (Joint Exhibit AA, Stipulated Findings and Award, March 15, 2021.)

Applicant wrote to defendant requesting guidance as to how to proceed in collecting additional benefits owed, to which defendant through its ADR ombudsman responded as follows:

"At this point I think you need to go back to the WCAB and update them as to what has happened and as far as the ADR Program is concerned the case is closed. The ADR program is not willing to pay Judge Silberman and Counsel can't come to an agreement to pay the Judge. Ask the WCAB about the penalties etc." (Applicant's Exhibit 1, Email from ADR Ombudsman, October 3, 2024.)

DISCUSSION

I.

Only the Appeals Board is statutorily authorized to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.) The Appeals Board must conduct de novo review as to the merits of the petition and review the entire proceedings in the case. (Lab. Code, §§ 5906, 5908; see Lab. Code, §§ 5301, 5315, 5701, 5911.) Once a final decision by the Appeals Board on the merits of the petition issues, the parties may seek review under Labor Code section 5950[1], but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951.)

Section 5909 provides that a petition was denied by operation of law if the Appeals Board does not "act on" the petition within 60 days from the date the WCJ transmits the case to the appeals board. (Lab. Code, § 5909(a).) Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board." Once the Appeals Board receives the case file, it also receives the petition in the case file, and the Appeals Board can then "act" on the petition. Here, the case was transmitted on August 7, 2025.

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission. Here, the WCJ served the Report in compliance with section 5909(b)(2) on August 7, 2025.

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

We note that on rare occasions, the case file may be transmitted but may not be received and processed by the Appeals Board within the 60-day period, due to an administrative error or other similar occurrence. When the Appeals Board does not review the petition within 60 days due to irregularities outside the petitioner's control, and the 60-day period lapses through no fault of the petitioner, the Appeals Board must then consider whether circumstances exist to allow an equitable remedy, such as equitable tolling.

It is well-settled that the Appeals Board has broad equitable powers. (*Kaiser Foundation Hospitals v. Workers' Compensation Appeals Board* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] citing *Bankers Indem. Ins. Co.* v. *Indus. Acc. Com*. (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719]; see *Truck Ins. Exchange v. Workers' Comp. Appeals Bd.* (*Kwok*) (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers' Comp. Appeals Bd.* (*Lutz*) (2013) 218 Cal.App.4th 258, 268 [78 Cal.Comp.Cases 758]; *Dyer v. Workers' Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96].) It is an issue of fact whether an equitable doctrine such as laches applies. (*Kwok*, *supra*, 2 Cal.App.5th at p. 402.) The doctrine of equitable tolling applies to workers' compensation cases, and the analysis turns on the factual determination of whether an opposing party received notice and will suffer prejudice if equitable tolling is permitted. (*Elkins v. Derby* (1974) 12 Cal.3d 410, 412 [39 Cal.Comp.Cases 624].) As explained above, only the Appeals Board is empowered to make this factual determination.[2]

In *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], the Appeals Board denied applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of 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, especially in light of the fact that the Appeals Board had repeatedly assured the petitioner that it would rule on the merits of the petition. (*Id.* at p. 1108.)

[2] Section 5952 sets forth the scope of appellate review, and states that: "Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence." (Lab. Code, § 5952; see Lab. Code, § 5953.)

Like the Court in *Shipley*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Ibid.*) The touchstone of the workers' compensation system is our constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) "Substantial justice" is not a euphemism for inadequate justice. Instead, it is an exhortation that the workers' compensation system must focus on the *substance* of justice, rather than on the arcana or minutiae of its administration. (See Lab. Code, § 5709 ["No informality in any proceeding . . . shall invalidate any order, decision, award, or rule made and filed as specified in this division."].)

With that goal in mind, 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. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) If a timely filed petition is never considered by the Appeals Board because it is "deemed denied" due to an administrative irregularity not within the control of the parties, the petitioning party is deprived of their right to a decision on the merits of the petition. (Lab. Code, §5908.5; see *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754-755 [33 Cal.Comp.Cases 350]; *LeVesque, supra*, 1 Cal.3d 627, 635.) Just as significantly, the parties' ability to seek meaningful appellate review is compromised, raising issues of due process. (Lab. Code, §§ 5901, 5950, 5952; see *Evans*, *supra*, 68 Cal.2d 753.)

Substantial justice is not compatible with such a result. A litigant should not be deprived of their due process rights based upon the administrative errors of a third party, for which they bear no blame and over whom they have no control. This is doubly true when the WCJ's service of the Report has notified the parties that the 60-day period had commenced, and thus, the parties presume that we will exercise jurisdiction and issue a final decision on the merits of the petition and forgo any attempt to seek judicial review of the "deemed denial." Having induced a petitioner not to seek review, it would be the height of injustice to then leave the petitioner with no remedy.

In this case, the WCJ issued the Findings and Order on June 26, 2025, and defendant timely filed a Petition for Reconsideration on July 8, 2025. According to EAMS, the WCJ generated a Report and transmitted the petition to the Appeals Board on August 7, 2025. Ordinarily, and pursuant to Labor Code section 5909, this would have required the Appeals Board to act on the Petition within 60 days of that date, which would have been October 6, 2025. However, the

Appeals Board lost the Petition in this matter through inadvertent clerical error. The Petition was first discovered by the Appeals Board on October 13, 2025.

Accordingly, we have determined that the facts of this case warrant tolling and that we have jurisdiction to decide defendant's Petition for Reconsideration on the merits.

II.

Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd*. (*Weatherall*) (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1].) As defined in *Weatherall*, "A stipulation is 'An agreement between opposing counsel . . . ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,' (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to narrow range of litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*Weatherall*, *supra*, 77 Cal.App.4th at p. 1119.)

Section 5702 states:

> The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

Judicial estoppel applies when "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 183.)

Here, defendant and applicant stipulated in the ADR proceedings to proceed before the Appeals Board on "**any and all** benefits not paid" in the ADR proceedings. That position was adopted by the ADR program when the arbitrator approved the stipulation. Then, defendant's ombudsman expressly told applicant to proceed before the Appeals Board and that the ADR program would not pay for any further services of an arbitrator. Upon proceeding before the Appeals Board defendant's attorney has taken a position that appears totally inconsistent with their client.

There is no evidence in the record that would otherwise suggest that defendant's agreement in ADR to submit issues regarding unpaid benefits to the Appeals Board was the result of ignorance, fraud, or mistake. On the contrary, it appears that the parties understood that a portion of this claim was litigated against a third party who was not subject to the ADR agreement. Thus, the claim, in part, must ultimately be resolved at the Appeals Board. For these reasons, we agree with the WCJ's determination that jurisdiction of any remaining unpaid benefits rests with the Appeals Board.

Accordingly, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED as that defendant's Petition for Reconsideration of the Findings of Fact and Order issued on June 26, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 12, 2025

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

JOSE ROMERO
GLAUBER BERENSON VEGO
WIDOM SAVEY
HINSHAW & CULBERTSON, LLP

EDL/mt

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