

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

**STEVEN MOORE, *Applicant***

**vs.**

**BARRYS CARPET SERVICES, INC.; NATIONAL CASUALTY COMPANY  
administered by ILLINOIS MIDWEST INSURANCE AGENCY LLC; OAK RIVER  
INSURANCE COMPANY administered BY BERKSHIRE HATHAWAY  
HOMESTATE COMPANIES, *Defendants***

**Adjudication Numbers: ADJ14302346; ADJ12376589; ADJ12373831; ADJ12975852  
Salinas District Office**

**OPINION AND ORDER GRANTING  
PETITION FOR RECONSIDERATION AND  
NOTICE OF INTENTION TO  
RESCIND ARBITRATOR'S DECISION**

Defendant, Oak River Insurance Company (Oak River), seeks reconsideration of the December 1, 2025 Findings and Order (F&O), wherein the workers' compensation arbitrator (WCA) found in pertinent part that applicant sustained a cumulative injury ending on or about July 7, 2018; National Casualty Company (National Casualty) and Oak River were both carriers during the last year of injurious exposure as defined by Labor Code<sup>1</sup> section 5500.5; substantial evidence supports attributing 50% of applicant's benefits to cumulative trauma; Oak River's proportionate liability is 92% of the cumulative share; and Oak River is entitled to credit for its prior payment to applicant.

Oak River contends that their February 18, 2020 Compromise and Release (C&R) with applicant resolved all of their liability; National Casualty presented no "competent" evidence that they paid applicant benefits related to the cumulative injury; National Casualty's Application for Adjudication of Claim filed February 25, 2021, should be time barred by the statute of limitations pursuant to section 5405 and/or section 5412; National Casualty resolved only their exposure with

---

<sup>1</sup> All further references are to the Labor Code unless otherwise stated.

respect to applicant; the WCA did not timely issue his decision pursuant to section 5277(a) and when the decision issued, it was incomplete in violation of section 5277(b).

We received an Answer from National Casualty. The WCA prepared a Report on Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the Answer and the Report of the WCA. Based on our review of the record, and for the reasons discussed below, we will grant the Petition and issue a Notice of Intention (NIT) to rescind the December 1, 2025 decision by the WCA unless all required documents per WCAB Rule 10995(c)(3) (Cal. Code Regs., tit. 8, § 10995(c)(3)) are filed in the Electronic Adjudication Management System (EAMS)<sup>2</sup> within thirty (30) days after service of this decision, plus an additional five (5) days for mailing per WCAB Rule 10605 (Cal. Code Regs., tit. 8, § 10605).

## FACTS

In his Report, the WCA provided the following facts:

Applicant Steven Moore was employed by Barry Carpet Service as a carpet cleaner from May 8, 2014 through on or about July 7, 2018. In deposition, Applicant testified that on his final day of work he performed his usual duties and did not experience a specific injury to his right shoulder or back. Within one to two days thereafter, however, he awoke with a significant loss of function in his right upper extremity.

Applicant filed claims alleging both specific and cumulative trauma injuries. Barry Carpet Service was insured by Oak River Insurance Company from June 16, 2017 through June 16, 2018, and by National Casualty Company from June 16, 2018 through June 16, 2019.

Applicant and Oak River resolved the alleged specific injury of June 15, 2018, and a cumulative trauma from May 8, 2014 through June 15, 2018, by Compromise and Release in early 2022 for \$13,000.00. At the time of the settlement the record did not contain a QME report addressing causation, when Applicant first experienced disability or his level of disability. Even after Oak River was joined by National [Casualty] in their claim, they did not develop the medical record to establish medical evidence of disability on or about June 15, 2018.

---

<sup>2</sup> Pursuant to WCAB Rule 10305(j) (Cal. Code Regs., tit. 8, § 10305(j)):

“Electronic Adjudication Management System” or “EAMS” means the computerized case management system used by the Division of Workers' Compensation to electronically store and maintain adjudication files and to perform other case management functions.

In the specific injury claim, Applicant and National Casualty utilized QME Dr. Hellner, who issued a report dated July 24, 2020. In that report Dr. Hellner identified both a cumulative injury ending shortly before Applicant's last day of work and a quasi-specific injury occurring on his last day of work. On February 25, 2021, National Casualty filed an application alleging a cumulative trauma from July 7, 2017 through July 7, 2018 to Applicant's shoulders. National Casualty resolved its claim with Applicant by Compromise and Release approved July 21, 2021, for \$50,000.00 (less deductions), covering both a July 7, 2018 specific injury and a cumulative trauma from July 16, 2017 through July 16, 2018. Oak River was not named as a party defendant in that settlement document.

Following approval of the Compromise and Release, Oak River was joined as a party. After being joined, Oak River did not submit medical evidence identifying a different date of injury or a different period of injurious exposure.

National Casualty also filed a petition seeking contribution from Oak River for liability attributable to Oak River during the last year of injurious exposure. Oak River disputes contribution, asserting its liability was extinguished by the earlier Compromise and Release with Applicant.

Dr. Hellner opined that Applicant's work activities in the final days constituted the "straw that broke the camel's back," resulting in a tear that became symptomatic shortly after the last day worked. He further identified a cumulative trauma extending to shortly before that date.

(Report, at pp. 2-3.)

National Casualty asserts that the arbitration occurred on April 9, 2025 and both parties agree that the matter was submitted on April 28, 2025. (Answer, at p. 8:8-9; Petition, at p. 10:4-5.)

The F&O issued on December 1, 2025.

It is from this F&O that Oak River seeks reconsideration.

## **DISCUSSION**

### **I.**

Preliminarily, we note that former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in 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.”

Here, according to Events, the case was transmitted to the Appeals Board on March 10, 2026 and 60 days from the date of transmission is Saturday, May 9, 2026, a weekend. The next business day that is 60 days from the date of transmission is Monday, May 11, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>3</sup> This decision was issued by or on May 11, 2026, so that we have timely acted on the petition as required by section 5909(a).

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, according to the proof of service for the Report and Recommendation by the WCA, the Report was served on January 5, 2026, and the case was transmitted to the Appeals Board March 10, 2026. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that the parties were not provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with

---

<sup>3</sup> WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

section 5909(b)(2) did not provide them with actual notice as to the commencement of the 60-day period on March 10, 2026.

While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on March 10, 2026.

## II.

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 section 5950, but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951.)

A petition for reconsideration of an arbitrator's decision or award made pursuant to the mandatory or voluntary arbitration provisions of sections 5270 through 5275 shall be filed in EAMS or with the district office having venue in accordance with section 5501.5. (Cal. Code Regs., tit. 8, § 10995.)

WCAB Rule 10995 further 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).)

WCAB Rule 10803(a)(2) states in relevant part that:

(a) The Workers' Compensation Appeals Board's adjudication file shall consist of:

(2) The record of proceedings, which consists of: the pleadings, minutes of hearing, summaries of evidence, certified transcripts, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.

(Cal. Code Regs., tit. 8, § 10803(a)(2).)

WCAB Rule 10615 states in relevant part that:

All documents required or permitted to be filed under the rules of the Workers' Compensation Appeals Board shall be filed in EAMS or with the district office having venue, except as otherwise provided by these rules or ordered or allowed by the Workers' Compensation Appeals Board.

(Cal. Code Regs., tit. 8, § 10615.)

The record does not contain the minutes of the arbitration proceedings seemingly scheduled on April 9, 2025, but no later than April 28, 2025, 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. (Cal. Code Regs., tit. 8, § 10914(c)(3).) Nor does the record reflect the pleadings, petitions, objections, briefs and responses filed by the parties with the arbitrator, if any. (Cal. Code Regs., tit. 8, § 10914(c)(4).) The record does not clearly reflect exhibits offered by each party or objection thereto, if any. (Cal. Code Regs., tit. 8, § 10914(c)(5).) Additionally, the record does not include stipulations and issues entered into by the parties. (Cal. Code Regs., tit. 8, § 10914(c)(6).) Finally, the record does not contain the arbitrator’s summary of evidence containing evidentiary rulings, a description of exhibits admitted into evidence. (Cal. Code Regs., tit. 8, § 10914(c)(7).)

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* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc.) 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].)

Further, with limited exceptions, arbitrators shall have all of the statutory and regulatory duties and responsibilities of a workers’ compensation judge. (Cal. Lab. Code § 5272.) This may include delegation to the petitioner and/or the parties, the responsibility of ensuring that an electronic copy of a complete arbitration file is forwarded directly to the presiding workers’ compensation judge of the district office having venue over the matter. (Cal. Code. Regs., tit. 8 § 10995(c)(3).)

Here, we are unable to conduct meaningful review of the petition or render a decision until we have received a complete record including stipulations, issues and exhibits appropriately identified including the offering party. Thus, this is not a final decision on the merits of the Petition for Reconsideration, and once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

Accordingly, we grant the Petition for Reconsideration, and issue Notice of our Intention to rescind the arbitrator’s decision and return the matter to the arbitrator if a complete record of the proceedings as stated in WCAB Rule 10995(c)(3) is not filed in EAMS within thirty (30) days after service of this Notice (plus additional time for mailing) in accordance with AD Rule 10205.12(b).

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration filed by Oak River of the decision issued by the WCA on December 1, 2025 is **GRANTED**.

**NOTICE IS FURTHER GIVEN** that within thirty (30) days after service of this decision plus additional time for mailing per WCAB Rule 10605(a) the required documents per WCAB Rule 10995(c)(3) must be filed in the Electronic Adjudication Management System (EAMS). If all documents are not properly filed in EAMS by that date, the December 1, 2025 decision by the workers' compensation arbitrator will be **RESCINDED** and the matter will be **RETURNED** to the arbitrator for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



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

**May 11, 2026**

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

**STEVEN MOORE  
RUCKA, O'BOYLE, LOMBARDO & MCKENNA  
LAW OFFICES OF BRADFORD & BARTHEL  
KAPLAN & BOLDY  
GEORGE MASON, ARBITRATOR**

**SL/abs**

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