

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

LEROY THOMAS, *Applicant*

vs.

**COUNTRYWIDE ROUTER & PLUMBING;
NORGUARD INSURANCE COMPANY. *Defendants***

Adjudication Numbers: ADJ12634852

Van Nuys District Office

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the "Findings and Award" (F&A) issued on September 8, 2020, by the arbitrator. The arbitrator found, in pertinent part, that applicant was insured for workers compensation by defendant for the date of injury and that the policy did not exclude applicant from coverage.

Defendant argues, in pertinent part, that the policy was not endorsed to cover applicant as a sole proprietor, and thus, the policy does not cover applicant's employment.

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

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the arbitrator's Report. Based on our review of the record, as our Decision After Reconsideration and for the reasons stated in the arbitrator's Report and the arbitrator's September 8, 2020 Opinion on Decision, both of which we adopt and incorporate, we will affirm the September 8, 2020, F&A.

I.

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).)

The WCA issued the Findings & Award on September 20, 2020, and the Report on November 9, 2020, however, filing of the arbitration file in EAMS was never completed as required by WCAB Rule 10995 until June 14, 2022.¹

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).) Meaningful review of an arbitrator's decision requires that the “decision be based on an

¹ Pursuant to our holding in *Scheuing v. Lawrence Livermore National Laboratory*, our grant of reconsideration was timely as neither the arbitrator's file, nor the Petition for Reconsideration were timely transmitted to the Office of Commissioners. (2024 Cal. Wrk. Comp. LEXIS 11, [significant panel decision].)

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].)

Therefore, until the record of proceedings was complete, we were unable to complete our review.

II.

The terms of workers' compensation policies issued in California are governed by statute, and each policy is conclusively presumed to contain all the provisions required by law. (Ins. Code, § 11650.) Workers' compensation insurance policies in California are subject to regulation by the Department of Insurance. (Ins. Code, §§ 11651, 11657, 11658.) Beginning in 1967, endorsements that limit or restrict coverage of workers' compensation policies are subject to prior approval by the Insurance Commissioner. (Cal. Code of Regs., tit. 10, §§ 2261, 2262.) In addition, all workers' compensation policies must "contain a clause to the effect that the insurer will be directly and primarily liable to any proper claimant for payment of ...compensation." (Ins. Code, § 11651.) The policies in question do not contain a pre-approved limiting and restricting endorsement excluding applicant from coverage. Accordingly, the policies are not limited.

Furthermore, we have given the arbitrator’s credibility determinations great weight because the arbitrator had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500, 504-505].) We conclude there is no evidence of considerable substantiality that would warrant rejecting the arbitrator’s credibility determinations. (*Id.*)

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the September 8, 2020 Findings and Award is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 25, 2024

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

**LEROY THOMAS
LAW OFFICES OF WILLIAM D. HENDRICKS
HANNA BROPHY MACLEAN MCALEER & JENSEN**

EDL/mc

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

There is one case involved in this coverage arbitration. Case ADJ12634852 involves a specific injury on August 30, 2019.

Defendants, Norguard Insurance Company, seeks reconsideration on the grounds that the decision of the arbitrator does not justify the findings of fact. Additionally, defendants allege the arbitrator erred as his decision was based on the applicant's testimony as well the certificate of liability insurance which clearly states that either an exclusion or endorsement is necessary to cover a sole proprietor within the policy.

STATEMENT OF FACTS

Defendant Norguard Insurance Company has filed a timely and verified Petition for Reconsideration dated September 30, 2020.

Applicant filed a timely and verified Answer to Petition for Reconsideration on October 12, 2020.

This case involves a specific injury alleged to have occurred on August 30, 2019.

The matter proceeded to arbitration solely on the issue of effectiveness of insurance coverage.

DISCUSSION

In Norguard's Petition for Reconsideration they rely on their Exhibit 1 "California Workers Compensation Application" which indicates at the bottom that Leroy Thomas was excluded from coverage.

Applicant's attorney, in his response to the Petition for Reconsideration, relies on their Exhibit A, which is a Certificate of Liability Insurance which does not indicate that the applicant is excluded from coverage. In fact, under number A on the Certificate of liability Insurance there is no indication that any proprietor, partner, or executive officer member is excluded. That checkbox is blank indicating to the arbitrator that this sole proprietor was in fact covered. This coverage would make Norguard Insurance Company responsible on the applicant's alleged date of injury.

Pursuant to the arbitrator's opinion, there has been no finding of AOE/COE or any issues of permanent or temporary disability. This arbitration was solely limited to whether the applicant was covered on the alleged date of injury of August 30, 2019.

The applicant's credibility was found to be persuasive especially as to the fact that he was the sole employee of Leroy Thomas OBA Countrywide Router and Plumbing.

It also makes sense that if there is a conflict between the Certificate of Liability Insurance (applicant Exhibit A) and the California Workers Compensation Application (defendant's Exhibit 1), the conflict would resolve in favor of the actual Certificate of Liability Insurance.

It is also noted that both the Certificate of Liability Insurance and California Workers Compensation Application were both dated June 14, 2019.

Also, it would certainly be unjust enrichment if the applicant were excluded from a policy from which he paid premiums if the policy did not cover anyone as the defendants allege. The applicant was the only employee of Leroy Thomas OBA Countrywide Router and Plumbing.

It would be illogical if the insurance company collected premiums and did not insure anyone.

Regarding applicant's allegations of fraud and sanctions against the defendants, it was found that there was absolutely no fraud and no sanctions due to the applicant in this matter.

RECOMMENDATION

For the reasons stated above, it is recommended that Norguard Insurance Company's September 30th, 2020 Petition for Reconsideration be denied.

Dated: November 9, 2020

Mark S. Polan
Workers Compensation Arbitrator