

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

**MARIA MENDOZA, *Applicant***

**vs.**

**SAN GABRIEL TRANSIT, INCORPORATED, BARRETT BUSINESS SERVICES, INCORPORATED; CALIFORNIA INSURANCE GUARANTEE ASSOCIATION for ULLICO CASUALTY COMPANY, in liquidation; ACE AMERICAN INSURANCE COMPANY, administered by CORVEL, *Defendants***

**Adjudication Numbers: ADJ10267491; ADJ8265437  
Long Beach District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Defendant ACE American Insurance, administered by Corvel (ACE American) seeks reconsideration of the Joint Findings and Order (F&O), issued on June 28, 2023, wherein the workers' compensation administrative law judge (WCJ) ordered that ACE American fully reimburse the California Insurance Guarantee Association (CIGA) for costs incurred in its administration of a claim on behalf of a liquidated carrier.

ACE American contends that the WCJ's decision is internally inconsistent insofar as it orders reimbursement in an amount that includes prejudgment interest, but also specifically denies prejudgment interest.

We have not received an answer from any party. Neither the WCJ nor the Presiding WCJ have prepared a Report and Recommendation on Petition for Reconsideration (Report).

We have considered the allegations in the Petition. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

## FACTS

In Case No. ADJ10267491, applicant sustained injury to her right shoulder and neck on December 16, 2015, while employed as a driver by Barrett Business Services, insured by ACE American Insurance Company, administered by Corvel.

In Case No. ADJ8265437, applicant sustained injury to her back and neck on May 5, 2011, while employed as a driver by San Gabriel Transit, Inc., then insured by Ullico Casualty Company, now in liquidation, administered by CIGA.

The underlying cases were resolved by Joint Order Approving Compromise and Release on February 14, 2023. CIGA thereafter sought reimbursement in the amount of \$35,456.95 pursuant to petition dated February 16, 2023. Among the enumerated expenses claimed by CIGA was “Pre Award Interest” in the amount of \$5,084.23. (Petition for Reimbursement with Prejudgment Interest of Payments by CIGA from the Solvent Carrier, February 16, 2023, at p. 23:21.) On March 1, 2023, ACE American lodged its objection to the amounts claimed in CIGA’s petition.

On May 24, 2023, the parties proceeded to trial, framing issues of CIGA’s petition for reimbursement, CIGA’s motion to be dismissed, and prejudgment interest. (Minutes of Hearing, Order of Consolidation, Order Taking Off Calendar ADJ8265433 (Minutes), May 24, 2023, at p. 3:2.)

On June 28, 2023, the WCJ issued his Joint Findings and Order, finding in relevant part that CIGA incurred costs in the amount of \$35,456.95, and that CIGA was entitled to full reimbursement, “without reduction and without prejudgment interest” from ACE American/Corvel. The WCJ denied ACE’s request to “reduce the amount of reimbursement,” but also denied CIGA’s request for prejudgment interest. (F&O, Orders “b” & “c”.) The WCJ’s Opinion on Decision discussed the applicable case law in which prejudgment interest was deemed inapposite in reimbursement proceedings involving CIGA. (Opinion on Decision, p. 5.) The WCJ further noted that CIGA’s briefing failed to substantively address this case law. (*Ibid.*)

On July 11, 2023, ACE American filed a Petition for Amended Findings and Order, noting that the WCJ awarded reimbursement without prejudgment interest, but that the amount awarded *included* prejudgment interest. (Petition for Amending Finding and Order, July 11, 2023, at p. 1:26.)

On July 16, 2023, ACE American filed the instant Petition for Reconsideration, essentially reiterating the contentions raised in its July 11, 2023 Petition for Amended Findings and Order.

## **DISCUSSION**

Section 10961 of the Workers' Compensation Appeals Board's (WCAB) Rules of Practice and Procedure provides:

Within 15 days of the timely filing of a petition for reconsideration, a workers' compensation judge shall perform one of the following actions:

- (a) Prepare a Report and Recommendation on Petition for Reconsideration in accordance with rule 10962;
- (b) Rescind the entire order, decision or award and initiate further proceedings within 30 days; or
- (c) Rescind the order, decision or award and issue an amended order, decision or award. The time for filing a petition for reconsideration pursuant to Labor Code section 5903 will run from the filing date of the amended order, decision or award.

After 15 days have elapsed from the filing of a petition for reconsideration, a workers' compensation judge shall not issue any order in the case until the Appeals Board has denied or dismissed the petition for reconsideration or issued a decision after reconsideration.

(Cal. Code Regs., tit. 8, § 10961.)

WCAB Rule 10962 states:

Petitions for reconsideration, petitions for removal and petitions for disqualification shall be referred to the workers' compensation judge from whose decisions or actions relief is sought. If the workers' compensation judge prepares a report, it shall contain:

- (a) A statement of the contentions raised by the petition;
- (b) A discussion of the support in the record for the findings of fact and the conclusions of law that serve as a basis for the decision or order as to each contention raised by the petition, or, in the case of a petition for disqualification, a specific response to the allegations and, if appropriate, a discussion of any failure by the petitioner to comply with the procedures set forth in rule 10960; and
- (c) The action recommended on the petition.

The workers' compensation judge shall submit the report to the Appeals Board within 15 days after the petition is filed unless the Appeals Board grants an extension of time. The workers' compensation judge shall serve a copy of the report on the parties and any lien claimant, the validity of whose lien is specifically questioned by the petition, at the time the report is submitted to the Appeals Board.

If the workers' compensation judge assigned to the case is unavailable, the presiding workers' compensation judge shall prepare and serve the report.

(Cal. Code Regs., tit. 8, § 10962.)

Here, ACE American filed its Petition on July 16, 2023. However, the record does not reflect that the WCJ prepared a Report and Recommendation on Petition for Reconsideration, or that the WCJ rescinded the F&O and initiated further proceedings or issued an amended decision. In addition, no report has been filed by the Presiding Judge due to the WCJ's unavailability.

Section 5313 provides:

The appeals board or the workers' compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

As required by section 5313 and explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Bd. en banc) (*Hamilton*), "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at p. 475.)

A decision "must be based on admitted evidence in the record" (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Section 5313 thus requires the WCJ to "file finding upon *all* facts involved in the controversy" and to issue a corresponding award, order or decision that states the "reasons or grounds upon which the [court's] determination was made." (Italics added; see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-622 [2010 Cal. Wrk. Comp. LEXIS 74] (Appeals Board en banc).)

The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision...." (*Hamilton, supra*, at p. 476.) The Court of Appeal has further observed that pursuant to Labor Code section 5908.5, decisions of the WCAB must

state the evidence relied upon and specify in detail the reasons for the decision. (*Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351] (*Evans*)). The purpose of the requirement is “to assist the reviewing court to ascertain the principles relied upon by the lower tribunal, to help that tribunal avoid careless or arbitrary action, and to make the right of appeal or of seeking review more meaningful.” (*Evans, supra*, at p. 755.)

Following our review of this matter occasioned by ACE American’s Petition, we agree that the June 28, 2023 F&O is internally inconsistent. The decision awards an amount that includes prejudgment interest as set forth in CIGA’s February 16, 2023 Petition for Reimbursement, but simultaneously determines that CIGA is not entitled to the same prejudgment interest. (Finding of Fact No. 5.) We further note that the Order denies ACE’s request to reduce the amount of reimbursement, but also denies CIGA’s request for prejudgment interest. (See Order, Nos. “b” and “c”.)

Pursuant to Section 5313 and *Hamilton, supra*, the Opinion on Decision should explain the basis for the WCJ’s decision, in order to assist the reviewing court in ascertaining the principles relied upon by the lower tribunal. To the extent that the F&O is internally inconsistent, or where the F&O is inconsistent with the Opinion on Decision, the WCJ’s Report and Recommendation is necessary to explicate the issues raised on petition for reconsideration, and to make the appropriate recommendations to the Appeals Board, including rescission or amendment of the decision, as may be appropriate. (Lab. Code, § 5313; Cal. Code Regs., tit. 8, § 10962; *Hamilton, supra*, at p. 476.)

In the absence of a Report addressing the contentions raised by ACE American’s Petition, we will rescind the F&O, and return the matter to the trial level for further proceedings as the WCJ deems necessary, and to address the apparent inconsistencies in the record. Once the WCJ has issued a new decision, any person aggrieved thereby may thereafter seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that defendant ACE American’s Petition for Reconsideration of the Joint Findings and Order issued by the WCJ on June 28, 2023, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Joint Findings and Order issued by the WCJ on June 28, 2023 is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



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

**September 15, 2023**

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

**GILSON DAUB  
FLOYD SKEREN MANUKIAN LANGEVIN**

**SAR/abs**

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