

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

DIANE CLAY, *Applicant*

vs.

**COUNTY OF LOS ANGELES, permissibly self-insured,
administered by SEDGWICK. *Defendants***

**Adjudication Numbers: ADJ13069105, ADJ6995603,
ADJ7597612, ADJ9551033, ADJ10240855
Los Angeles District Office**

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

Defendant filed a petition for reconsideration of the “Opinion and Decision After Reconsideration” (Decision) issued on April 15, 2024, by the Appeals Board.¹ Defendant seeks correction of a clerical error and further avers that the Appeals Board improperly served the Decision via email upon an attorney who is no longer employed with defendant.

Defendant notes that the Decision incorrectly identified the Joint Findings and Order (F&O) as issuing on November 1, 2023, when in fact the F&O issued on November 1, 2022.

We have not received an answer from applicant.

We have considered the allegations of the Petition for Reconsideration. Based on our review of the record we will grant reconsideration, rescind our prior April 15, 2024 Decision, and reissue our Decision correcting the clerical error and the error in service.

When a party is represented, service is generally required only upon a party’s representative and not upon the party itself, and the WCAB is required to serve all parties of record with any final order, decision or award issued by it on a disputed issue after submission. (Cal. Code Regs., tit. 8, §§ 10625(a), 10628(a).)

¹ Deputy Commissioner Schmitz was on the panel that issued the order granting reconsideration. Deputy Commissioner Schmitz was unable to participate in deliberations and a new panel member was substituted in her place.

Pursuant to WCAB Rule 10628(d), “[i]f the Workers' Compensation Appeals Board electronically serves a document, the proof of electronic service shall be made by endorsement on the document, setting forth the fact of electronic service on the persons or entities listed on the official address record as required by rules 10400 and 10401 and the date of electronic service.” (Cal. Code Regs., tit. 8, § 10628(d).)

Here, it appears that service was made on an email address for prior defense counsel and not by defendant’s selected method of service in EAMS. Accordingly, it appears that the Appeals Board failed to properly serve defendant the original decision and we must correct that error by reserving the decision.

“The Appeals Board or a Workers’ Compensation Judge may correct a clerical error at any time and without necessity for further hearings, notwithstanding the lapse of the statutory period for filing a petition for reconsideration.” (*Toccalino v. Workers’ Comp. Appeals Bd.* (1982) 128 Cal. App. 3d, 543, 558 (internal citation omitted).)

“It is not open to question that a court has the inherent power to correct clerical errors in its records so as to make these records reflect the true facts. (Citations.) The power exists independently of statute and may be exercised in criminal as well as in civil cases.” (*In re Candelario*, (1970) 3 Cal. 3d 702, 705 [internal citations omitted].)

Defendant correctly notes that the prior Decision improperly identified the Joint Findings and Order as issuing on November 1, 2023, when in fact the F&O issued on November 1, 2022. Accordingly, we will grant reconsideration to correct for clerical error.

The following is our corrected Decision After Reconsideration:

Defendant seeks reconsideration of the “Joint Findings and Order” (F&O) issued on November 1, 2022, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that good cause existed to vacate the stipulations approved in ADJ7597612 and ADJ10240855. The WCJ further found good cause to rescind the Orders Approving Compromise and Release (OACRs) issued in ADJ9551033 and ADJ6995603.

Defendant argues that the WCJ erred because applicant failed to prove good cause to set aside the awards and OACRs issued in her cases. Defendant further argues that the WCJ’s erred in awarding credit and instead applicant should be ordered to reimburse defendant.

We have not received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we grant reconsideration to amend the F&O to defer the issue of credit.

We have considered the allegations of the Petition for Reconsideration, and the contents of the WCJ's Report. Based on our review of the record and for the reasons stated in the WCJ's Report, which we adopt and incorporate, except as to the section titled "Discussion of Credit/Reimbursement Issues re Sums Paid by Petitioner" beginning on page 16 and continuing through the first sentence on page 20, as our Decision After Reconsideration we will rescind the WCJ's November 1, 2022 F&O, and substitute a new F&O, which defers the issue of credit.

"The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] . . . At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision or award, good cause appearing therefor." (Lab. Code, § 5803.)

Based upon the WCJ's discussion in the Report, good cause existed to rescind the awards and OACRs in these cases. We further agree with the WCJ that the issue of credit is more appropriately deferred at this time, and we will amend the F&O accordingly

Prior to proceeding with further discovery, we encourage the parties and the WCJ to have a hearing with an Information and Assistance officer available to assist applicant, to determine whether settlement is possible on the current record.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of our Opinion and Decision After Reconsideration, dated April 15, 2024 is **GRANTED**.

IT IS FURTHERED ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Opinion and Decision After Reconsideration, dated April 15, 2024, is **RESCINDED**.

IT IS FURTHER ORDERED that the Joint Findings and Order issued on November 1, 2022 is **RESCINDED** with the following **SUBSTITUTED** in its place:

JOINT FINDINGS OF FACT

1. There is good cause to vacate and rescind each of the following orders and/or awards in their entirety:
 - a) Stipulated award for 32% permanent disability (PD) in ADJ7597612.
 - b) Stipulated award for 0% PD in ADJ10240855.
 - c) Joint order approving compromise and release for \$5,000.00 in ADJ9551033 and ADJ6995603.
2. The issue of credit is deferred.

JOINT ORDER

IT IS ORDERED AS FOLLOWS:

1. The following awards and/or orders are rescinded in their entirety:
 - a) Stipulated award for 32% permanent disability (PD) in ADJ7597612.
 - b) Stipulated award for 0% PD in ADJ10240855.
 - c) Joint order approving compromise and release for \$5,000.00 in ADJ9551033 and ADJ6995603.
2. The issue of credit is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 17, 2024

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

**DIANE CLAY, IN PRO PER
ROBINSON DI LANDO, APLC**

EDL/oo

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