

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

JULIETA CONCEPCION SANABRIA BRICENO, *Applicant*

vs.

**RIGHT CHOICE STAFFING, INC.; ROYALTY EMPLOYMENT, INC.; COMMAND
PACKAGING; GREAT AMERICAN INSURANCE COMPANY; KEYS HR, LLC.;
SAMUEL HALE, LLC; CLEAR SPRING PROPERTY & CASUALTY CO., STATE
NATIONAL INSURANCE COMPANY, et al.; *Defendants***

**Adjudication Numbers: ADJ15072799; ADJ16627239;
ADJ16627238; ADJ16627235
Los Angeles District Office**

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

Defendant Command Packaging, LLC, insured by Great American Insurance Company and administered by Strategic Comp., seeks reconsideration of the Findings of Fact and Order (F&O) issued by a workers' compensation arbitrator (WCA) on October 8, 2024. In that F&O, the WCA found that the applicant was not a covered employee under the insurance policy of Clear Spring Property and Casualty Company number WCSBK40000700101 and policy number WCSBK40000700102, or under State National insurance policy number AMX-290-0019-001.

The WCA Ordered Clear Spring Property and Casualty Co., State National Insurance, Key HR, LLC, and Samuel Halt dismissed as party defendants in the four cases addressed in the decision.

Defendant asserts that the evidentiary record establishes valid insurance policies for Clear Spring Property and Casualty for Right Choice Staffing, as well as State National Insurance for Royalty Employment, with respect to the workers compensation claims filed by applicant.

We received Answers from Clear Spring Property and Casualty as well as State National Insurance Company.

We have not received a Report and Recommendation on Petition for Reconsideration (Report) from the WCA.

We have considered the allegations of the Petition for Reconsideration and the Answers. 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we will grant the Petition and issue a Notice of Intention (NIT) that the October 8, 2024 decision by the WCA will be rescinded unless all required documents per WCAB Rule 10995(c)(3) are filed in the Electronic Adjudication Management System (EAMS) within thirty (30) days after service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).

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

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. Once the Appeals Board receives the petition and the arbitration file pursuant to WCAB Rule 10995 (Cal. Code Regs., tit. 8, §10995), the Appeals Board can then “act” on the petition. 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.”

Here, according to Events, the case was transmitted to the Appeals Board on October 18, 2024, and 60 days from the date of transmission is December 17, 2024. This decision is issued by or on December 17, 2024, 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, as previously stated, there is no Report and Recommendation filed by the WCA, and the case was transmitted to the Appeals Board on October 18, 2024. No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). 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 October 18, 2024.

II.

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).)

While it appears that several exhibits have been uploaded to one or more of the cases at issue in this matter, the arbitration record still lacks a report from the WCA, as well as *all* of the items required under WCAB Rule 10914(c)(1-10), with the exception of verbatim transcripts of witness testimony and the findings, order, decision and opinion required per Rule 10914((8) and (9), as we note that, per the WCA's Findings and Order, no testimony was taken and there is no hearing transcript. (F&O, October 8, 2024.)

Notably, however, the existing record lacks any minutes of hearing or summary of the evidence, a clear delineation as to all stipulations and issues that may have been placed before the

WCA as to each case, the disposition at the arbitration, as well as proper identification as to the parties, and their representatives who appeared for the arbitration proceeding.

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 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).)

These duties and responsibilities further include ensuring that the exhibits filed by the parties are properly organized and separated so they may be electronically uploaded as part of the complete arbitration file. AD Rule 10205.12 (Cal. Code Regs., tit. 8 §10205.12(b)) may provide further guidance as to the proper filing of such exhibits, which may be accomplished by the arbitrator or the parties. *Documents and exhibits that are submitted in violation of AD Rule 10205.12 will not be accepted or considered.*¹

Here, we are unable to conduct meaningful review of the petition or render a decision until we have received a complete record. 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).

¹ The purpose of the email box (WCABArbitration@dir.ca.gov) is for parties and arbitrators to communicate with the Appeals Board regarding arbitration cases that are pending or will be pending at the Appeals Board. As a courtesy to the parties and the arbitrator, *with the Appeals Board’s permission*, documents may be submitted to the email box in EAMS compliant form as set forth in AD Rule 10205.12 (Cal. Code Regs., tit. 8 §10205.12(b)), and the Appeals Board will file the documents in EAMS. The Appeals Board is not responsible for separating, identifying, or otherwise organizing the documents and for any errors in filing in EAMS.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the decision issued by the WCA on October 8, 2024 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 October 8, 2024 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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 17, 2024

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

**JULIETA CONCEPCION SANABRIA BRICENO
KHAKSHOUR FREEMAN
BRADFORD & BARTHEL
DIETZ GILMOR & CHAZEN
MICHAEL SULLIVAN & ASSOCIATES
ROBERT DRAKULICH, ARBITRATOR**

LAS/abs

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