

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

MICHAEL LEWIS, *Applicant*

vs.

**CITY OF LOS ANGELES;
permissibly self-insured, *Defendant***

**Adjudication Number: ADJ19483147
Los Angeles District Office**

**NOTICE OF INTENTION
TO RESCIND
ARBITRATOR'S DECISION**

We granted reconsideration in order to further study the factual and legal issues in this case. This is our Notice of Intention to Rescind the Arbitrator's Decision based upon the lack of a proper record.

Reconsideration has been sought with regard to the Findings and Award (F&A) issued on March 26, 2024 by a workers' compensation arbitrator (WCA).

Defendant City of Los Angeles seeks reconsideration of the F&A in which the WCA found in pertinent part that applicant sustained a "catastrophic" injury arising out of and in the course of employment on March 5, 2019, resulting in permanent total disability indemnity.

Defendant asserts that the WCA erred in finding applicant permanently totally disabled per Labor Code sections 4662(a)(2) and (a)(3). Additionally, defendant contends that the WCA erred in finding applicant sustained injury to his back.

We received an Answer from applicant. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCA, which recommends that we either dismiss the petition as untimely or deny reconsideration.

On July 2, 2024, we granted reconsideration as it was unclear whether we had a complete record of proceedings per WCAB Rule 10990 (Cal. Code Regs., tit. 8 § 10990).

We explained that WCAB Rule 10990 provides that if the arbitrator does not rescind the order, decision or award within 15 days of receiving the petition for reconsideration per WCAB

Rule 10990(f)(1) or 10990(f)(2), WCAB Rule 10990(f)(3) requires the arbitrator to submit to the Appeals Board the complete record of proceedings including:

- (A) The transcript of proceedings, if any;
 - (B) A summary of testimony if the proceedings were not transcribed;
 - (C) The documentary evidence submitted by each of the parties;
 - (D) An opinion that sets forth the rationale for the decision; and
 - (E) A report on the petition for reconsideration, consistent with the provisions of rule 10962. The original arbitration record shall not be filed.
- (Cal. Code Regs., tit. 8, § 10990(f)(3)(A)-(E); see also Lab. Code, §§ 3201.5(a)(1), 3201.7(a)(3)(A).)

Here, while we are in possession of the Petition for Reconsideration and Answer, Minutes of Hearing, Findings and Award, the Report of the WCA, and the Transcript of proceedings, to date we are still lacking all exhibits referred to and entered into evidence by the WCA and parties at the arbitration hearing.

Having failed to receive the required documents necessary for a proper review of the issues raised in the Petition, and for the reasons discussed below, we issue a Notice of Intention (NIT) that the March 26, 2024 decision of the WCA will be rescinded unless the required documents per WCAB Rule 10990(f)(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).

I.

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.

A petition for reconsideration of an arbitrator's decision or award made pursuant to a collective bargaining agreement per the provisions of sections 3201.5 and 3201.7 shall be subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision or award made and filed by a workers' compensation administrative law judge. (Lab. Code §§ 3201.5(a)(1) and 3201.7(a)(3)(A).)

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 of the responsibility to the parties for filing the exhibits and documents required per WCAB Rule 10990(f)(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, upon agreement. *Documents and exhibits that are submitted in violation of AD Rule 10205.12 will not be accepted or considered.*¹

We are unable to conduct meaningful review of the petition or render a decision based on an incomplete record. We will rescind the arbitrator's decision if the documents required to be filed per WCAB Rule 10990(f)(3) are not filed in the Electronic Adjudication Management System (EAMS) within thirty (30) days after service of this Notice (plus additional time for mailing). (Cal. Code Regs., tit. 8, § 10605(a).)

NOTICE IS HEREBY GIVEN that the arbitrator's decision will be rescinded unless the required documents per WCAB Rule 10990(f)(3) are filed in EAMS within thirty (30) days after service of this decision plus additional time for mailing per WCAB Rule 10605(a). Following rescission of the decision, the matter will be returned to the arbitrator for further proceedings consistent with this opinion.

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 prior 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.

IT IS FURTHER ORDERED that pending the issuance of a Decision After Reconsideration in the above case, all further correspondence, objections, motions, requests and communications relating to the NIT or the petition for reconsideration shall be filed only with the Workers' Compensation Appeals Board at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102), or its arbitration e-mail address (WCABArbitration@dir.ca.gov).

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 13, 2024

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

**MICHAEL G. LEWIS
LEWIS, MARENSTEIN, WICKE & SHERWIN
CITY ATTORNEY OF LOS ANGELES
GILBERT KATEN, ARBITRATOR
CITY OF LOS ANGELES ALTERNATIVE DISPUTE RESOLUTION**

LAS/abs

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