

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

**PAUL ALVARADO, *Applicant***

**vs.**

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

**Adjudication Numbers: ADJ20015360 ADJ20015361  
Los Angeles District Office**

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

It has come to the attention of the Appeals Board that defendant City of Los Angeles has sought reconsideration of the decision issued on June 4, 2024, by a workers' compensation arbitrator (WCA) under Labor Code<sup>1</sup> section 3201.7. The Petition for Reconsideration is attached as an exhibit to the Writ of Review filed with the Second Appellate District on October 28, 2024, and served on the Appeals Board at [WCABWritUnit@dir.ca.gov](mailto:WCABWritUnit@dir.ca.gov).

Although not filed in accordance with our rules, we accept a copy of the Petition attached to the writ for filing. We will grant the Petition and issue a Notice of Intention (NIT) that the June 4, 2024 decision by the WCA will be rescinded unless the required documents per WCAB Rule 10990(f)(3) are filed in the Electronic Adjudication Management System (EAMS) within thirty (30) days after service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).

**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

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<sup>1</sup> All further references are to the Labor Code, unless otherwise stated.

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.)

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).)

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. 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 cases were transmitted to the Appeals Board on November 19, 2024, and 60 days from the date of transmission is Saturday, January 18, 2025. The next business day that is 60 days from the date of transmission is Tuesday, January 21, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).) This decision is issued by or on Tuesday, January 21, 2025, 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 cases 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.

Although we have not received a complete record of the proceedings as required by WCAB Rule 10990, our review of the Report and Recommendation that is attached to the Writ of Review shows that the Report was served by the WCA on July 15, 2024. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on November 19, 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 November 19, 2024.

## II.

A petition for reconsideration from an arbitration decision made pursuant to section 3201.5(a)(1) or section 3201.7(a)(1) (known as “carve-out” cases) shall be filed directly with the office of the Appeals Board within 20 days of the service of the final order, decision or award made and filed by the arbitrator or board of arbitrators. A copy of the petition for reconsideration shall be served on the arbitrator or arbitration board. (Cal. Code Regs., tit. 8 § 10990(a).)

There are 25 days allowed within which to file a petition for reconsideration from a “final” decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com.* (*Hinojoza*) (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

Under WCAB Rule 10305(m): “Filing’ a document means receipt and acceptance by the Workers’ Compensation Appeals Board of the document for the purpose of having it included in the adjudication file.” (Cal. Code Regs., tit. 8, § 10305(m).)

WCAB Rule 10615 (a) and (b) state:

(a) All documents required or permitted to be filed under the rules of the Workers’ Compensation Appeals Board shall be filed in EAMS or with the district office having venue, except as otherwise provided by these rules or ordered or allowed by the Workers' Compensation Appeals Board.

(b) A document is deemed filed on the date it is received, if received prior to 5:00 p.m. on a court day. A document received after 5:00 p.m. of a court day shall be deemed filed as of the next court day.

(Cal. Code Regs., tit. 8, § 10615.)

Under WCAB Rule 10615(d), when a document is electronically filed, it must be filed in compliance with AD Rule 10206.3.<sup>2</sup>

Further, AD Rule 10205.7(c) states:

No document shall be sent by electronic mail or by fax directly to the district office or the appeals board. If a document is sent by electronic mail or fax directly to the district office, it shall not be accepted for filing or deemed filed, shall not be acknowledged, and may be discarded unless otherwise ordered by the workers’ compensation administrative law judge or the appeals board.

(Cal. Code Regs., tit. 8 § 10205.7(c).)

Under WCAB Rule 10990(c), when the petition for reconsideration is filed, the proof of service for the arbitrator’s decision must be attached. Additionally, attached to the petition and separated by document separator sheets, the relevant portion of the collective bargaining

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<sup>2</sup> AD Rule 10206.3 provides that: (a) when a document is electronically transmitted is received “when the electronic transmission of the document into EAMS is complete” and that (b) in the absence of verification that filing is completed, “there is no presumption that EAMS received the document.”

agreement and a completed Application for Adjudication of Claim if an Application was not previously filed at the WCAB are required.

Here, the WCA issued his decision on June 4, 2024. According to the documents submitted with the Petition for Writ of Review, defendant emailed a copy of the Petition for Reconsideration to the Appeals Board at [WCABArbitration@dir.ca.gov](mailto:WCABArbitration@dir.ca.gov) on June 26, 2024, within the 25 day period. However, *sending the document via email is not “filing” the document within the meaning of WCAB Rules 10305(m) and 10615, and is expressly prohibited by AD Rule 10205.7.*

WCAB Rule 10617(c) states:

Nothing in this rule shall preclude the discretionary or conditional acceptance for the filing of a document that is subject to a statute of limitations or a jurisdictional time limitation, even if it does not contain a combination of information sufficient to establish the case or cases to which the document relates or, if it is a case opening document, sufficient information to open an adjudication file.

(Cal. Code Regs., tit. 8 § 10617.)

Here, we believe that defendant’s transmission to us of the Petition for Reconsideration by email was an error, and we accept the Petition for Reconsideration as timely filed.

### III.

Within 15 days after receiving the petition for reconsideration, the arbitrator or board of arbitrators shall perform one of the following actions:

- (1) Rescind the entire order, decision or award, and initialed further proceedings within 30 days; or
- (2) 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; or
- (3) Submit to the Appeals Board an electronic copy of 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).)

To date an electronic copy of the complete record of proceedings has not been filed.

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. (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.*<sup>3</sup>

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 accept the Petition for Reconsideration for filing, 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

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<sup>3</sup> The purpose of the email box ([WCABArbitration@dir.ca.gov](mailto: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.

10990(f)(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).

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the decision issued by the WCA on June 4, 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 10990(f)(3) must be filed in the Electronic Adjudication Management System (EAMS). If all documents are not properly filed in EAMS by that date, the June 4, 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/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**December 6, 2024**

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

**PAUL ALVARADO  
C&B LAW GROUP  
LOS ANGELES CITY ATTORNEY  
MARK KAHN, 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*