

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

ROBERT W. POLLOCK, *Applicant*

vs.

**INTEGRITY REBAR PLACERS, INC.;
ALASKA NATIONAL INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ19257864 ADJ19257865
Los Angeles District Office
(IWADR 00858, IWADR 00587)**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Reconsideration has been sought with regard to the Findings and Award (F&A) issued on April 4, 2024 by a workers' compensation arbitrator (WCA).

Defendant Alaska National contends that their due process rights were violated by the arbitrator's refusal to continue the arbitration in order for defendant to review over 800 pages of records that had been provided to Dr. Bakshian, who issued a supplemental medical report reviewing these records, as they were not timely served with either the records or supplemental reporting. Defendant also asserts that the medical reporting of Dr. Segil and Dr. Tirmizi, upon which the arbitrator relied, is not substantial medical evidence. Additionally, petitioner alleges that the WCJ erred in failing to apply the post-termination defense as a bar in this case, as well as in awarding applicant temporary disability indemnity.

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

While we have received the WCA's F&A, as well as the Petition, Answer, and Report along with several medical documents, we are still lacking a full copy of the complete record of proceedings per WCAB Rule 10990. As such, and taking into account the statutory time constraints for acting on the petition(s), and based upon our initial review of the record, we believe

reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

WCAB Rule 10990 provides that if the arbitrator does not rescind the entire 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 an electric 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).)

Here, the WCA issued the Report on May 7, 2024, however, to date, an electronic copy of the complete record of proceedings has not been submitted.

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].)

Without the complete record of the arbitration proceedings, we are unable to conduct a meaningful review of the petition or render a decision on the merits. (*Uribe v. Xcel Mech. Sys., Inc.*, 2022 Cal. Wrk. Comp. P.D. LEXIS 390.)¹

While we are granting reconsideration at this time in order for the required documents to be filed, we reserve the right to rescind the arbitrator’s decision and return this matter to the

¹ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers’ Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to this panel decision because it considered a similar issue.

arbitrator for further proceedings if said documents are not filed within a reasonable time. We further remind the parties that the each of the documents consisting of the record of proceedings must be properly identified as designated and set forth at the arbitration hearing, and in accordance with WCAB Rule 10914.

For the foregoing reasons,

IT IS ORDERED that Reconsideration is **GRANTED**.

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 petition(s)* shall be filed only with the Office of the Commissioners of 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).

IT IS FURTHER ORDERED that all trial level documents not related to the petition(s) are not subject to this order **EXCEPT** that given WCAB Rule 10961 (Cal. Code Regs., tit. 8, § 10961), when the parties file a stipulations with request for award or a compromise and release agreement in this case, *all* parties shall simultaneously notify the Workers' Compensation Appeals Board of the filing 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).

IT IS FURTHER ORDERED that all documents required to be submitted with a petition for reconsideration in a carve-out arbitration case pursuant to WCAB Rule 10990, subdivision (c) (Cal. Code Regs., tit. 8, § 10990(c)), shall be timely filed 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).

IT IS FURTHER ORDERED that in all arbitration matters (Cal. Code Regs., tit. 8, §§ 10990, 10995), the parties shall ensure that a complete, electronic copy of the record of the arbitration proceedings is timely submitted (Cal. Code Regs., tit. 8, §§ 10990(f)(3), 10995(c)(3)) to the Workers' Compensation Appeals Board at its arbitration e-mail address (WCABArbitration@dir.ca.gov).

IT IS FURTHER ORDERED that if the party filing the petition(s) decides to withdraw the petition(s) for any reason, the party shall immediately notify the Workers' Compensation Appeals Board of the withdrawal of the petition(s) 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).

IT IS FURTHER ORDERED that it is within the discretion of the Workers' Compensation Appeals Board to accept for filing any document submitted for filing by any person (Cal. Code Regs., tit. 8, § 10615(c) [eff. January 1, 2022]).

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 24, 2024

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

**ROBERT W. POLLOCK
LAW OFFICES OF MALLERY & STERN
LAW OFFICES OF EDITTE ALSEN
MICHAEL SULLIVAN & ASSOCIATES
MARK KAHN, ARBITRATOR
IWADR PROGRAM, ATTN: ERIC NOBRIGA**

LAS/abs

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