

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ANA FIGUEROA GARCIA, *Applicant*

vs.

**ALUM ROCK UNION ELEMENTARY SCHOOL DISTRICT and WESTPORT
INSURANCE CORP., *Defendants***

**Adjudication Number: ADJ3516476 (SJO 0229773)
San Jose District Office**

**NOTICE OF INTENT
TO ISSUE
OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration of the "Opinion and Orders Denying Defendant's Petition for Reconsideration; Granting Applicant's Petition for Reconsideration and Decision After Reconsideration" (Decision) issued on April 23, 2021, by the Workers' Compensation Appeals Board, in order to further study the factual and legal issues.¹ We now issue this notice of intent to issue our Opinion and Decision After Reconsideration.

The Decision found, in pertinent part, that applicant sustained 72% permanent disability, however, the Decision appears to have adopted, in error, an incorrect maximum permanent disability rate of \$170.00, which was the correct maximum rate assigned in the original Findings and Award when applicant's disability was found to be less than 70%. However, when the Appeals Board increased applicant's disability rating to 72%, the rate of disability should have been assigned as \$230.00 pursuant to Labor Code² section 4453(b)(7), as the parties had stipulated that applicant's earnings were sufficient to produce permanent disability at the maximum rate for a 2001 date of injury.

¹ Commissioner Lowe was on the panel that issued the order granting reconsideration. Commissioner Lowe no longer serves on the Appeals Board. A new panel member has been substituted in her place.

² All future references are to the Labor Code unless noted.

DISCUSSION

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. (§§ 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).) Pursuant to section 5911, an aggrieved party may seek reconsideration of an Appeals Board decision within the same time limits or file a petition for writ of review under section 5950, et seq.

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].)

However, the issue before us concerns our ability to correct our own error.

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (§§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) “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.)

We emphasize that when the Appeals Board grants reconsideration, it has the power to address all issues, including those not previously raised. In *Pasquotto v. Hayward Lumber* (2006)

71 Cal.Comp.Cases 223, 229, fn. 7 (Appeals Board en banc), we noted that once reconsideration has been granted, the Appeals Board has the power under sections 5906 and 5908 to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (Citing *Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 (10 I.A.C. 322); *State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases. 98]; *Tate v. Industrial Acc. Com. (1953)* 120 Cal.App.2d 657, 663 [18 Cal.Comp.Cases 246]; *Pacific Employers Ins. Co. v. Industrial Acc. Com. (Sowell)* (1943) 58 Cal.App.2d 262, 266–267 [8 Cal.Comp.Cases 79].)

Additionally, the Appeals Board maintains jurisdiction over all of its awards and may issue appropriate orders modifying said awards upon a showing of good cause. (§ 5803.) Good cause to reopen exists when the prior order was based on an error of law. (*Bartlett Hayward Co. v. Industrial Acc. Com., (Slate)* (1928) 203 Cal. 522, 532; see also *Knowles v. Workmens' Comp. Appeals Bd.* (1970) 10 Cal.App.3d 1027, 1029 [35 Cal.Comp.Cases 411].)

Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1] (*Weatherall*)). As defined in *Weatherall*, “A stipulation is ‘An agreement between opposing counsel . . . ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,’ (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves ‘to obviate need for proof or to narrow range of litigable issues’ (Black’s Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding.” (*Weatherall*, *supra*, 77 Cal.App.4th at p. 1119.)

Section 5702 states:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

It would appear that the award requires correction for admitted error by the court to conform the award to the stipulations of the parties, which have not been set aside.

Defendant raises jurisdictional issues in its answer arguing that applicant did not timely seek reconsideration of the 2021 Decision. However, the issue in this case is not enforcement of

the 2021 Decision; it is enforcement of the parties' stipulation to pay permanent partial disability at max rate. Defendant has not sought to set that stipulation aside. Even where the Appeals Board finds a certain fact to exist, the parties generally remain free to stipulate otherwise, so long as the Appeals Board finds the stipulation adequate. For example, if the parties subsequently stipulate to find applicant permanently totally disabled, notwithstanding the Appeals Board's determination of 72% disability, defendant is liable pursuant to the stipulation. The issue here is not the finality of our 2021 Decision; it is enforcement of a proper and adequate stipulation of the parties to pay permanent partial disability at max rate. Our ignorance of a valid, binding, and adequate stipulation was legal error, which constitutes good cause to amend the prior award. Accordingly, we notice our intent to amend the 2021 Decision to properly reflect the parties' stipulation.

Good cause appearing,

NOTICE IS HEREBY GIVEN that absent written objection in which good cause to the contrary is demonstrated, within twenty (20) days plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Notice, pursuant to Labor Code sections 5803 and 4453(b)(7), as our Decision After Reconsideration we will amend the April 23, 2021 Opinion and Orders Denying Defendant's Petition for Reconsideration; Granting Applicant's Petition for Reconsideration and Decision After Reconsideration, Finding of Fact #2 to read as follows:

FINDINGS OF FACT

2. The Applicant had sufficient earnings on the date of injury to produce a maximum PD rate of \$230.00 per week.

IT IS FURTHER ORDERED that all responses to this Notice must be electronically filed in the Electronic Adjudication System (EAMS) within twenty (20) days plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Notice. **Untimely or misfiled responses may not be accepted or considered.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 24, 2025

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

**ANA FIGUEROA GARCIA
JOHNSON LAW FIRM
HANNA, BROPHY, MACLEAN, MCALLEER & JENSEN**

EDL/mt

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