

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

BRENDA DE LEON, *Applicant*

vs.

**ROBINSON'S PHARMA, INC.;
GREAT AMERICAN INSURANCE COMPANY,
administered by STRATEGIC COMP;
CYPRESS INSURANCE COMPANY,
BERKSHIRE HATHAWAY, *Defendants***

**Adjudication Number: ADJ14930871
Santa Ana District Office**

**OPINION AND ORDER GRANTING
PETITION FOR RECONSIDERATION AND
DECISION AFTER RECONSIDERATION**

Defendant Robinson Pharma Inc., by Great American Insurance Company c/o Strategic Comp Cincinnati (Strategic Comp), seeks reconsideration of the October 7, 2024 Findings and Order (F&O), wherein the workers' compensation arbitrator (WCA) found that the date of injury in this case was November 7, 2021, creating an injurious period of November 7, 2020 to November 7, 2021 and that Cypress Insurance Company (Cypress) has no coverage during the injurious period. The WCA ordered the Petition for Contribution filed by Strategic Comp is denied and Strategic Comp will take nothing. The F&O states in relevant part that: "a transcript was not made of the hearing."

Strategic Comp contends that the F&O fails to address the date of injury pursuant to Labor Code section 5412,¹ and that the date of injury should be June 22, 2021, creating an injurious period of June 22, 2020 to June 22, 2021. Strategic Comp further contends that the WCA failed to consider material evidence including its Exhibits E-O.

We have received an Answer from Cypress. The WCA prepared a Report on Reconsideration (Report), recommending that the Petition denied.

¹ All further reference are to the Labor Code unless otherwise noted.

Strategic Comp filed “Strategic Comp’s Reply to Answer to Petition for Reconsideration” in which it requested that we address the merits of the Petition for Reconsideration and/or allow further reporting from AME Woods without approval of the Appeals Board. Pursuant to WCAB Rule 10964(a), the supplemental pleading shall not be considered. (Cal. Code Regs., tit. 8, § 10964(a).)

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the WCA with respect thereto. Based on our review of the record, and for the reasons discussed below, we will rescind the F&O and return the matter to the WCA due to lack of a proper record. When the WCA issues a new decision, any aggrieved person may timely seek reconsideration.

I.

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 case was transmitted to the Appeals Board on April 16, 2025 and 60 days from the date of transmission is Sunday, June 15, 2025. The next business day that is 60 days from the date of transmission is Monday, June 16, 2025. (See Cal. Code Regs., tit. 8

§ 10600(b).)² This decision was issued by or on June 16, 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 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, according to the proof of service for the Report and Recommendation by the WCA, the Report was served on April 16, 2025, and the case was transmitted to the Appeals Board on April 16, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 16, 2025.

II.

WCAB Rule 10990 provides that after receipt of a petition for reconsideration, an arbitrator must rescind or amend the entire order, decision or award within 15 days (subdivisions (f)(1), (f)(2), or under subdivision (f)(3), the WCA must submit an electronic copy of the complete record of proceedings to the Appeals Board 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

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

(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); 5313.)

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).)

WCAB Rule 10803(a)(2) states in relevant part that:

- (a) The Workers' Compensation Appeals Board's adjudication file shall consist of:
 - (2) The record of proceedings, which consists of: the pleadings, minutes of hearing, summaries of evidence, certified transcripts, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on

decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.

(Cal. Code Regs., tit. 8, § 10803(a)(2).)

WCAB Rule 10615 states in relevant part that:

Except as otherwise provided by these rules or ordered by the Workers' Compensation Appeals Board, after the filing and processing of an initial Application for Adjudication of Claim or other case opening document, all documents required or permitted to be filed under the rules of the Workers' Compensation Appeals Board shall be filed only in EAMS³ or with the district office having venue.

(Cal. Code Regs., tit. 8, § 10615.)

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).) An adequate and complete record is necessary to understand the basis for the WCA or the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10566.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350] [a full and complete record allows for a meaningful right of reconsideration]; *Lewis v. Arlie Rogers & Sons* (2003) 69 Cal.Comp.Cases

³ Pursuant to WCAB Rule 10305(i) (Cal. Code Regs., tit. 8, § 10305(i):

"Electronic Adjudication Management System" or "EAMS" means the computerized case management system used by the Division of Workers' Compensation to electronically store and maintain adjudication files and to perform other case management functions.

490, 494, emphasis in original [“decision [must] 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.”].) “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.*)

With certain limited exceptions, arbitrators shall have all of the statutory and regulatory duties and responsibilities of a workers’ compensation judge. (Lab. Code, § 5272.) These duties and responsibilities include creating a full record, identifying the stipulations and issues on the record, and ensuring that the exhibits filed⁴ by the parties are properly organized and separated so they may be electronically uploaded as part of the complete arbitration file. (See Cal. Code Regs., tit. 8 §10205.12(b) [proper filing of exhibits].)

Here, while the WCA issued the Report on November 16, 2024, filing of the arbitration file in EAMS was not completed as required by WCAB Rule 10995. The record does not comprise a Summary of Evidence that properly identifies the stipulations and issues, and contains evidentiary rulings. In fact, the WCA states in the F&O that “no transcript was made of the hearing.” Even though it is not required that a transcript be transcribed (Cal. Code Regs., tit. 8, § 10800), when the parties and the WCA “go on the record,” it is axiomatic that a transcript be prepared, and transcription may be still required in the event that a party seeks appellate review. Moreover, the record must include a description of exhibits admitted into evidence, including, but not limited to, Cypress’s Exhibits 1-6 and Strategic Comp’s Exhibits A-D, all of which were listed in the WCA’s F&O even though Exhibits A-D were attached to a brief. Then, Strategic Comp improperly “filed” Exhibits “G-O,” by e-mail, consisting of 144 pages, but failed to properly identify the records. While the WCA appeared to believe that Exhibits E-M were properly identified and admitted to the record, they are not.

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])

⁴ Rule 10205(t) (Cal. Code Regs., tit. 8 § 10205(t)) states:

(t) To “file” a document means to either deliver a document or cause it to be delivered to the district office with venue or to the appeals board for the purpose of having it included in the adjudication file or to electronically file a document via EAMS in accordance with these regulations.

[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.

We are unable to conduct meaningful review of the Petition or render a decision based on an incomplete record. Thus, we cannot consider the merits of the decision. Accordingly, we grant the Petition for Reconsideration, and as our decision after reconsideration, we will rescind the arbitrator's decision and return the matter to the trial level. When the WCA issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that Strategic Comp's Petition for Reconsideration of the Findings & Order issued by a workers' compensation arbitrator on October 7, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings & Order issued by a workers' compensation arbitrator on October 7, 2024 is **RESCINDED** and the matter is **RETURNED** to the workers' compensation arbitrator for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 29, 2025

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

**VARON, ST. CLAIR & JELENSKY
SCHLOSSBERG & UMHOLTZ
ROBERT DRAKULICH, ARBITRATOR**

SL/abs

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