WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DANY aka DANIEL MENDEZ CASTILLO aka ARIZA, ***Applicant***

vs.

EMPLOYERS PERSONNEL, LLC, professional employer organization for SIMPLIFY HR, INC.; STATE NATIONAL INSURANCE COMPANY, INC., administered by Cannon Cochran Management Services, Inc.

BETTER NUTRITIONALS, LLC; TECHNOLOGY INSURANCE COMPANY, INC., administered by AmTrust North America, Inc.,
Defendants

Adjudication Number: ADJ17257403
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant State National Insurance Company filed a Petition for Reconsideration/Removal (Petition) seeking review of the Order of Joinder issued by a Workers' Compensation Administrative Law Judge (WCJ) on May 21, 2025. Therein, the WCJ ordered State National Insurance Company joined as a party defendant in this matter.

Defendant contends that it will suffer irreparable harm because collateral estoppel bars rejoinder as they were previously dismissed as a party defendant in this matter.

We have not received an answer from any party.

We have received the WCJ's Report and Recommendation on Petition for Reconsideration/Removal (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review

of the record, and for the reasons discussed below, we will grant the Petition for Reconsideration, rescind the May 21, 2025 Order of Joinder, rescind the March 13, 2024 Order Dismissing Party Defendants, and return this matter to the trial level for further proceedings.

BACKGROUND

The WCJ's report provides the following factual background:

> The Applicant, while employed as a sanitation work[sic] for Better Nutritionals, LLC, claimed to have sustained an industrial on September 23, 2022, to his right eye when, while he was rolling a water hose, it suddenly ripped, and the metal end of the hose struck his eye.
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> On May 9, 2023, pursuant to a petition for joinder filed by the Defendant, Technology Insurance Company, Inc., administered by AmTrust North America, Inc., through its former attorney of record, Cipolla, Bhatti, Hoyal & Roach, ALC, the undersigned WCJ issued his order joining alleged general employer party defendant Employers Personnel, LLC, professional employer organization for Simplify HR, Inc., and its workers' compensation carrier, State National Insurance Company, Inc., administered by Cannon Cochran Management Services, Inc.
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> On March 8, 2024, the parties entered into the following written stipulations:
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> "2. Based upon investigation and discovery, there is insufficient evidence demonstrating that applicant worked through Employers HR. Employers HR is a PEO, and its liability, would be based upon applicant being hired and paid by Employers HR. Based upon this, there is insufficient evidence demonstrating to support employment with Employers HR.
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> 3. As such, the insurer of Employers HR, State National Insurance Company, should not be a party defendant despite being previously joined.
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> 4. Therefore, the parties hereby stipulate that defendant State National Insurance Company administered by CCMSI be dismissed in this case without prejudice due to lack of employment."
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> On March 13, 2024, the undersigned WCJ issued his order dismissing party defendant based on the above stipulations.
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> On May 9, 2025, the Defendant, Technology Insurance Company, Inc., administered by AmTrust North America, Inc., by its current attorney of record, Llarena, Murdock, Lopez & Azizad, APC, filed its petition to rejoin the

Defendant, State National Insurance Company, administered by Cannon Cochran Management Services, Inc., based on its newly discovery evidence including a certificate of liability insurance dated July 6, 2022, demonstrating that State National Insurance Company, provided workers' compensation coverage through Simply HR, Inc., for employees assigned to Better Nutritionals, LLC, in reference of Stratum HR. The Defendant, Technology Insurance Company, Inc., administered by AmTrust North America, Inc., also sought dismissal of itself and its insurer.

On May 12, 2025, the undersigned WCJ issued his notice of intention to join party defendant, Employers Personnel, LLC, professional employer organization for Simplify HR, Inc., and its workers' compensation carrier, State National Insurance Company, Inc., administered by Cannon Cochran Management Services, Inc., and denied the requested relief by the Defendant, Technology Insurance Company, Inc., administered by AmTrust North America, Inc.,

On May 19, 2025, the Defendant, State National Insurance Company, administered by Cannon Cochran Management Services, Inc., objected to the notice of intention of joinder.

On May 21, 2025, having considered the objection, the undersigned WCJ issued his order joining party defendants.

Aggrieved by the undersigned WCJ's decision, the Defendant, Defendant, State National Insurance Company, administered by Cannon Cochran Management Services, Inc., filed a petition for reconsideration/removal.

(Report, pp.1-2.)

DISCUSSION

I.

Former Labor Code section 5909[1] 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, Labor Code 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] All section references are to the Labor Code, unless otherwise indicated.

> (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 June 13, 2025 and 60 days from the date of transmission is August 12, 2025. This decision is issued by or on August 12, 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.

According to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on June 13, 2025, and the case was transmitted to the Appeals Board on June 13, 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 June 13, 2025.

II.

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. (*Rucker v. Workers'*

Comp. Appeals Bd. (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "one of 'the rudiments of fair play' assured to every litigant...." (Id. at p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission...must find facts and declare and enforce rights and liabilities - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at p. 577.) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*See Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

Section 5313 also requires the WCJ to "make and file findings upon all facts involved in the controversy and [make and file] an award, order, or decision stating the determination as to the rights of the parties … [and include] a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313.) The WCJ's decision "must be based on admitted evidence in the record" *(Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Bd. en banc)), and the decision must be supported by substantial evidence. (Lab. Code, §§ 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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) In *Hamilton*, we held that the record of proceedings must contain, at a minimum, "the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton*, supra, at p. 475.)

Accordingly, any decision to join a party defendant should be based upon an adequate record after providing the parties an opportunity to be heard, in the same manner as any other order touching on the parties' due process rights. (Lab. Code § 5313; Cal. Code Regs., tit. 8, § 10382; *Hamilton, supra*, at p. 476; *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Here, petitioner seeks removal/reconsideration of the May 21, 2025 Order rejoining them as party defendant in case ADJ17257403 on the basis that the Order violates the principles of res judicata and/or collateral estoppel as they had been previously dismissed by an Order by the WCJ on March 13, 2024 pursuant to stipulation of the parties.

First, we note that an Order of Joinder is not a "final" Order, and thus Removal is an appropriate remedy for non-final orders.

A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" *(Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a "threshold" issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment (AOE/COE), jurisdiction, the existence of an employment relationship, and statute of limitations. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd*. (*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].)

Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, at p. 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer*, *supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer*, *supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, joinder, or similar issues.

Here, the WCJ's May 21, 2024 Order of Joinder did not include any "final" findings. As such, it is subject to the removal standard.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v.Workers' Comp. Appeals Bd*. (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra; Kleemann, supra*.) A petitioner must also

demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

Here, petitioner alleges that the Order of Joinder violates the legal doctrines of res judicata and/or collateral estoppel as they were previously dismissed as party defendant by the WCJ on March 13, 2024 pursuant to a stipulation of the parties.

Our review of the record indicates that although an NIT was issued by the WCJ on May 12, 2025 to join Employers HR. LLC and State National Insurance Company, we find several defects in the notice provided and subsequent Order.

Counsel for Technology Insurance Company, Inc., served a Petition for Joinder captioned "Petition for Joinder of Stratum HR, Simplify HR and State National Insurance, administered by CSMSI, and Dismissal of Better Nutritionals LLC and Technology Insurance Company administered by Amtrust," on May 9, 2015. Based on a review of the record, it does not appear that State National Ins. Co., was ever served with the Petition for Joinder.

On May 12, 2025, the WCJ issued a corresponding Notice of Intent (NIT) to Join party defendants captioned "NOTICE OF INTENTION TO JOIN PARTY DEFENDANTS Simply HR, Inc. and State National Insurance Company, Inc.," but lists the parties to be joined as "Employers HR, LLC peo for Simplify Hr" and State National Insurance Company". Furthermore, based on the proof of service, only the prior attorneys for defendant State National Ins. Co. were served with the NIT, and neither defendant Employers HR, LLC, nor State National Insurance Co. were served with the NIT.

Finally, the WCJ's May 21, 2025 Order of Joinder is captioned "Order Joining Party Defendants Better Nutritionals, LLC and Technology Insurance Company, Inc." but actually joins Employers HR, LLC and State National Insurance Company. We further note that neither party defendant was served with the Order of Joinder.

WCAB Rule 10628 states, in pertinent part:

> (a) The Workers' Compensation Appeals Board shall serve the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented, and all parties of record with any final order, decision or award issued by it on a disputed issue after submission. The Workers' Compensation Appeals Board shall not designate a party, or their attorney or

> agent of record, to serve any final order, decision or award relating to a submitted issue.

(Cal. Code Regs., tit., 8 § 10628(a).)

Here, the issue of whether State National Insurance Company is a proper party defendant is clearly in dispute, and the failure to serve them with both of the aforementioned documents renders the joinder in question void *ab initio*.

III

Petitioner raises the WCJ's March 13, 2024 order titled "Order Dismissing Party Defendants Simply HR, Inc. and State National Insurance Company, Inc.," in support of its contention that any subsequent rejoinder as a party defendant would violate the doctrines of res judicata and/or collateral estoppel. Petition asserts that the March 13, 2024 Order was based upon the parties' stipulation filed on May 12, 2024 requesting the dismissal of "State National Insurance Company administered by CCMSI for Employers HR".

We note, however, that the stipulation explicitly requests, and the WCJ notes in his Report, that the dismissal of State National Insurance Company be "without prejudice". (Stipulation Regarding Dismissal and Proposed Order Thereon, p. 2 para. 4, Report, p. 2.). The Order of Dismissal did not include this portion of the stipulation, and the Order is silent on whether the dismissal is with or without prejudice. While there is no record on the matter, petitioner contends in their Petition that the Order of dismissal as a party defendant is with prejudice. As such, we note that the lack of a record supporting the order must be addressed. *(Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Bd. en banc)), and the decision must be supported by substantial evidence. (Lab. Code, §§ 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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial*

Acc. Com. (Savercool) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].)

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].) Substantial justice is "[j]ustice fairly administered according to the rules of substantive law, regardless of any procedural errors not affecting the litigant's substantive rights; a fair trial on the merits." (Black's Law Dictionary (7th ed. 1999).)

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. (*Rucker v. Workers' Comp. Appeals Bd*. (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805]; 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].) A fair hearing is ". . . one of 'the rudiments of fair play' assured to every litigant . . ." (*Id*. at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, [The] commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law. (*Id*. at 577.)

Pursuant to Labor Code section 5803:

> The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division. . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.
>
> (§ 5803.)

Further, the appeals board may, "with or without further proceedings and with or without notice affirm, rescind, alter, or amend the order, decision, or award made and filed by the appeals board or the workers' compensation judge on the basis of the evidence previously submitted in the case…." (Lab. Code, § 5906.)

Petitioner alleges that their rejoinder is in violation of the Dismissal Order issued on March 13, 2024, however, we find that as the Order was not issued without prejudice, which was the actual stipulation of the parties, we will utilize our continuing jurisdiction to rescind both the March 13, 2024 Order of dismissal of Employers HR, LLC and State National, as well as the Order of Joinder of May 21, 2025, and return this matter to the district office for further proceedings and in order to create a record as to the proper joinder of parties.

Therefore, we will grant defendant's Petition for Reconsideration, rescind the May 21, 2025 Order of Joinder, and the March 13, 2024 Order of Dismissal of party defendants. We return this matter to the trial level for the WCJ to prepare a record of the proceedings in accordance with section 5313 and *Hamilton, supra*. When the WCJ issues his decision, any person aggrieved thereby may seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the May 21, 2025 Order of Joinder is **GRANTED.**

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the May 21, 2025 Order of Joinder is **RESCINDED.**

IT IS FURTHER ORDERED that the Order dismissing party defendants issued by the WCJ on March 13. 2024 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 12, 2025

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

DANY aka DANIEL MENDEZ CASTILLO aka ARIZA
ALEX NARAYAN
LLARENA MURDOCK
THE TOLWIN GROUP

LN/md

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