

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

JOSE ALVARENGA, *Applicant*

vs.

**EXPRESS EMPLOYMENT PROFESSIONALS;
AMERICAN HOME ASSURANCE COMPANY,
administered by SEDGWICK CMS, INC., *Defendants***

**Adjudication Number: ADJ11375329
Van Nuys District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant, in pro per, has filed a Petition for Reconsideration. We have considered the allegations of the Petition for Reconsideration 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 below, we will dismiss the Petition for Reconsideration as premature. We will then return this matter to the trial level for the WCJ to adjudicate applicant's petition as one seeking to enforce the May 30, 2024, Third Amended Findings and Award (Award).

I.

Former Labor Code section 5909¹ 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.

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

(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 17, 2025 and 60 days from the date of transmission June 16, 2025. 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 WCJ, the Report was served on April 17, 2025, and the case was transmitted to the Appeals Board on April 17, 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 17, 2025.

II.

The WCAB has jurisdiction to enforce the Award. Subject to the limitations of section 5804, “[t]he appeals board has continuing jurisdiction over all its orders, decisions, and awards

made and entered under the provisions of [Division 4]” (Lab. Code, § 5803.) Section 5804 provides in pertinent part: “No award of compensation shall be rescinded, altered, or amended after five years from the date of the injury except upon a petition by a party in interest filed within such five years....” (Lab. Code, § 5804.) However, the power of the WCAB to enforce an award is not constrained by the limitations set forth in section 5804 with respect to rescinding, altering, or amending an award. (*Barnes v. Workers’ Comp. Appeals Bd.* (2000) 23 Cal.4th 679, 687 [65 Cal.Comp.Cases 780]; *Kauffman v. Workers’ Comp. Appeals Bd.* (1969) 273 Cal.App.2d 829, 838-839 [34 Cal.Comp.Cases 373], emphasis added.)

Where, as here, more than five years have elapsed since the date of injury (DOI), the WCAB is vested with the authority and jurisdiction to conduct proceedings regarding the recovery of compensation. (Lab. Code, §§ 5300, et seq., emphasis added.) Section 5300 provides, in relevant part:

All the following proceedings shall be instituted before the appeals board and not elsewhere, except as otherwise provided in Division 4:

- (a) For the recovery of compensation, or concerning any right or liability arising out of or incidental thereto.
- (b) For the enforcement against the employer or an insurer of any liability for compensation imposed upon the employer by this division in favor of the injured employee, his or her dependents, or any third person.

(Lab. Code, § 5300(a)-(b).)

Here, the Award resolved indemnity benefits due to applicant. Neither applicant nor defendant challenged the Award; it is a final award.

The February 21, 2025 Amended Findings and Order Re: Penalties found that no penalties or interest were owed to applicant for temporary disability or permanent disability benefits paid. While he asserts that he did not receive the February 21, 2025 Amended Findings and Order Re: Penalties until March 26, 2025, applicant requests proof of all species of payments related to his case including receipts, cancelled checks, attorney fees, and disability. Applicant wants to reconcile all payments made by defendant in compliance with the Award.

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. (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. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, former § 10566, now § 10787 (eff. Jan. 1, 2020).) "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].)

Currently, there is no evidence in the record regarding any lack of compliance by defendant with the Award. Consequently, it is premature to address any lack of compliance, and we will return this matter to the trial level. Upon return to the WCJ, the matter should proceed to a hearing on applicant's petition to enforce so that defendant can provide proof of all payments and applicant can provide evidence in support of his concerns about compliance with the Award, if any, and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, either party may then timely seek reconsideration of that decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 30, 2025

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

**JOSE ALVARENGA
LLARENA, MURDOCK, LOPEZ & AZIZAD**

SL/abs

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