

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

JOSE MORALES, *Applicant*

vs.

**KENNETH C. RAY; COMPASS DEVELOPMENT AND CONSTRUCTION, INC.;
BARRETT BUSINESS SERVICES, INC.; ACE AMERICAN INSURANCE COMPANY
administered by CORVEL CORPORATION, *Defendants***

**Adjudication Numbers: ADJ13262420
(Oakland District Office)**

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

Defendant seeks reconsideration of the Amended Findings and Award (F&A) issued on July 15, 2025 by the workers' compensation administrative law judge (WCJ). The WCJ found in part that applicant while employed by Kenneth C. Ray, on February 10, 2020, sustained injury arising out of and in the course of employment (AOE/COE); applicant was not an employee of Barrett Business Services, Inc., (BBSI), and not covered under their workers' compensation policy; and applicant's Exhibits 2, 15, 16 and 17 are admitted to the record. The WCJ awarded applicant benefits against Kenneth C. Ray and Compass Development and Construction Inc., (Compass).

Defendant contends that applicant's testimony about the industrial event is not substantial evidence to establish causation, the deposition testimony of Rodrigo Costilla should not be admissible and relied upon to establish causation since deponent was not present on day of trial, and the GPS e-mail was erroneously admitted.

We have received an Answer from applicant. The WCJ filed a Report and Recommendation on the Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the report of the WCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant defendant's Petition for Reconsideration, rescind the F&A and substitute a new F&A that finds that Jose Morales was employed by Kenneth C. Ray on February 10, 2020 and applicant was not an employee of BBSI, and defer all other issues. We return the matter to the WCJ for further proceedings consistent with this decision.

BACKGROUND

On May 26, 2020 applicant filed an application for adjudication of claim against employer Kenneth C. Ray insured by CHUBB Group Los Angeles for a February 10, 2020 industrial slip and fall injury to hand, fingers, arm, elbow, upper extremity, back, hips and knee.

On October 22, 2020 applicant amended to the application to reflect that CorVel Sacramento was the correct carrier instead of CHUBB Group Los Angeles. CorVel Corporation is the third-party administrator for employer BBSI insured by ACE American Insurance Company.

On February 2, 2021 ACE American Insurance Company petitioned for dismissal. On February 3, 2021 an Order deferring action on the petition issued.

On November 14, 2022 a pre-trial conference statement (PTCS) was filed by applicant, BBSI and Kenneth C. Ray. The matter was set for a January 10, 2023 trial. Issues for trial were employment, injury AOE/COE and ACE American Insurance Company's petition for dismissal.

On November 16, 2022 applicant petitioned for the joinder of Compass and the Uninsured Employers Benefits Trust Fund (UEBTF).

On December 21, 2022 a WCJ issued an Order for Joinder of Compass Development and Construction Inc., and the UEBTF.

On March 15, 2023 applicant petitioned for the dismissal of Compass Development and Construction Inc., as a party defendant. On March 21, 2023 an Order Deferring Action on this petition issued.

The matter proceeded to trial on April 4, 2023. At issue for trial were employment and injury AOE/COE with all other issues deferred. Applicant and defendants Kenneth C. Ray and BBSI appeared.

On June 13, 2023 the matter proceeded to trial, but no evidence was offered. Applicant, Kenneth C. Ray and BBSI appeared. Further proceedings took place on June 4, 2024, August 13,

2024, and January 13, 2025. Applicant and defendants Kenneth C. Ray and BBSI appeared at the proceedings.

On July 15, 2025, the F&A issued.

On July 31, 2025, defendant Kenneth C. Ray sought reconsideration and challenged the finding of industrial injury.

DISCUSSION

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.
- (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 August 21, 2025 and 60 days from the date of transmission is October 20, 2025. This decision was issued by or on October 20, 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

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

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 PW CJ, the Report was served on August 21, 2025, and the case was transmitted to the Appeals Board on August 21, 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 August 21, 2025.

II.

We begin with the issue of employment. The WCJ found that on February 10, 2020, applicant was employed by Kenneth C. Ray and that applicant was not employed by BBSI. No party has challenged those findings. Accordingly, those findings will not be disturbed.

If the liable party is uninsured, UEBTF may potentially provide workers' compensation benefits to applicant. When this matter was already set for trial, applicant petitioned for the joinder of UEBTF in connection to alleged employer Compass and for the joinder of Compass. Orders joining Compass and UEBTF issued on December 21, 2022. Applicant requested the dismissal of Compass on March 15, 2023. There is no evidence that Compass or UEBTF have participated in the litigation. However, the WCJ awarded benefits to applicant against both Compass and Kenneth C. Ray, even though Compass and UEBTF did not participate or attend the proceedings.

Additionally, the WCJ found that applicant, while employed by Kenneth C. Ray on February 10, 2020 sustained injury arising out of and in the course of employment. However, the WCJ did not indicate to which body part(s) applicant sustained injury. A finding of industrial causation cannot be made separately or distinctly without identifying the industrially injured body part(s). Thus, the issues of whether Compass employed applicant and injury AOE/COE are not decided. Therefore, we do not award benefits, and we will defer all remaining issues.

Article XIV, section 4 of the California Constitution mandates that the workers' compensation law shall be carried out "...to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance

of any character...” Based on the constitutional mandate to accomplish substantial justice, the Board has a duty to develop an adequate record. (*Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1120 [63 Cal.Comp.Cases 261].)

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].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant . . .” (*Id.*, at 158.) 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]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers’ Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

The “essence of due process is simply notice and the opportunity to be heard.” (*San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936.) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties’ rights to due process. (*Gangwish, supra*, at 1295, citing *Rucker, supra*, at 157-158.) Due process requires “a ‘hearing appropriate to the nature of the case.’” (*In re James Q.* (2000) 81 Cal.App.4th 255, 265, quoting *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 313.) Although due process is “a flexible concept which depends upon the circumstances and a balancing of various factors,” it generally requires the right to present relevant evidence. (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817.

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].)

The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers’ Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5.) The Supreme Court of California has long held that an employee need only show that the “proof of industrial causation is reasonably probable, although not certain or ‘convincing.’” (*McAllister v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) “That burden manifestly does not require the applicant to prove causation by scientific certainty.” (*Rosas v. Workers’ Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].) Here, Compass and UEBTF have not participated, and there are no findings as to any body parts. Based on our review of the record, the evidence is not clear with respect to those issues.

Accordingly, we grant the Petition for Reconsideration, rescind the F&A and substitute a new F&A that finds that applicant was employed by Kenneth C. Ray and not by BBSI on February 10, 2020. Upon return to the trial level, this matter will be assigned to a new WCJ. At that juncture, the WCJ should first determine the issues of employment with respect to Compass, whether UEBTF should participate and whether applicant sustained injury AOE/COE.

For the foregoing reasons,

IT IS ORDERED that defendant Kenny C. Ray’s Petition for Reconsideration of the F&A of July 15, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Finding and Order of July 15, 2025, is **RESCINDED** and the following is **SUBSTITUTED** therefor and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

FINDINGS OF FACT

1. Applicant Jose Morales, while employed on February 10, 2020, by Kenneth C. Ray, claims to have sustained injury arising out of and in the course of employment to his bilateral wrists, fingers, arm, elbow, low back, hip, and right knee.
2. Applicant Jose Morales was not employed on February 10, 2020, by Barrett Business Services, Inc.
3. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 20, 2025

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

SL/abs

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

SERVICE LIST

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PACIFIC WORKERS' COMPENSATION LAW CENTER

HAWORTH, BRADSHAW, SATLLKNECHT AND BARBER

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UNINSURED EMPLOYERS BENEFITS TRUST FUND

COMPASS DEVELOPMENT AND CONSTRUCTION, INC.