

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

KIMBERLY WRIGHT, *Applicant*

vs.

**WALMART INC;
ACE AMERICAN INSURANCE COMPANY;
SEDGWICK EL DORADO HILLS,
*Defendants***

**Adjudication Number: ADJ20506369
Riverside District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Order Approving Compromise and Release (OACR) issued by the workers' compensation administrative law judge (WCJ) on June 24, 2025.

Defendant contends that applicant's simultaneous receipt of temporary disability and EDD benefits constitutes a prohibited double recovery for the same period of disability, citing to *Sea-Land Service, Inc. v. Workers' Comp. Appeals Bd.* (1996) 14 Cal.4th 76 [61 Cal.Comp.Cases 1360].

We did not receive an answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration (Petition) be denied, or in the alternative remanded back to the trial level to try the issue of adequacy, mutual mistake, and/or any other issue deemed necessary.

We have considered the allegations of defendant's Petition and the contents of the WCJ's Report with respect thereto. Based on our review of the record, as well as the reasons set forth by the WCJ as quoted below, the Petition will be dismissed and returned to the trial level to be treated as a petition to set aside.

I.

Former Labor Code 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, 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) 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 Labor Code 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 July 3, 2025 and 60 days from the date of transmission is Monday, September 1, 2025. The next business day that is 60 days from the date of transmission is Tuesday, September 2, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Tuesday September 2, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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

¹ 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.

Board to act on a petition. Labor Code 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 workers' compensation administrative law judge, the Report was served on July 3, 2025, and the case was transmitted to the Appeals Board on July 3, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 3, 2025.

II.

All parties in workers' compensation proceedings retain their 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].) 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.)

Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Rucker, supra*, at pp. 157-158.) 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 pp. 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.4 703, 710 [57 Cal.Comp.Cases 230].) Additionally, 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 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Board en banc).) As required by Labor Code section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Id.* at p. 475.) We held that the record of proceeding must contain, at a minimum, “the issues submitted for decision, the

admissions and stipulations of the parties, and the admitted evidence.” (*Ibid.*) Here, the record must be developed regarding defendant’s contentions that the OACR is inequitable. The WCJ provides in the Report:

The court believes that Defendant has made a unilateral mistake regarding the existence of the EDD lien, or that the parties made a mutual mistake. The settlement makes no mention of the EDD lien, or any alleged double recovery, and neither does the accompanying cover letter. Instead, the settlement states on p. 6 that Defendant will pay, adjust, or litigate all liens of record, and that the parties were “unaware of any liens against compensation.” The settlement also states that “Defendant not liable for any liens against compensation including but not limited to liens arising out of child or spousal support.”[] The court was never asked to make any findings regarding a double recovery and was never asked to give Defendant a credit for any of the payments made by EDD to the Applicant, and there was no agreed credit on p. 6 of the C&R. The court cannot make such findings or award such credits in an OAC&R without the agreement of both parties.

Furthermore, there is no longer a requirement for parties to file a lien affidavit. The regulation that required this, CCR Section 10888, was repealed effective 1/1/20, with a new code section regarding dismissal of liens taking its place. Failure to file a lien affidavit is therefore not automatic grounds for the court to issue an order suspending action. However, where EDD is concerned, it is still a good practice for the parties to verify whether there is an EDD lien and to make sure *before* settling a case that there are no duplicative EDD benefits. On p. 2, line 13 of the petition for reconsideration, it is revealed that Defendant made a telephonic inquiry to EDD. This was either done after the C&R was approved, or if it was done beforehand, then defense counsel was not aware of it. The court is not sure why Defendant would wait until after the C&R was approved to make a phone call to EDD, or why they would not be aware of a prior telephonic contact. At any rate, repealing the regulation that required lien affidavits did not result in a shifting of responsibility from the parties to the court to look at all of the liens of record for them and to try to figure out whether they have been settled or not, or whether any of them might be the Applicant’s liability.

...
However, if the Commissioners find it necessary to do so, then the case should be remanded to address whether there was a mutual mistake regarding the existence of the EDD lien.

(Report, pp. 4-5)

Based on our review of the record, we agree that a hearing should be conducted at the trial level so that evidence may be presented by both parties at that proceeding and to determine whether there are any grounds to serve as a basis for setting aside the OACR.

However, rather than grant reconsideration, we are persuaded that it is more procedurally proper for us to dismiss the Petition as premature and return the matter to the trial level for the WCJ to treat as a petition to set aside. Once the WCJ issues a decision any aggrieved person may timely seek reconsideration. Accordingly, we dismiss applicant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Order Approving Compromise and Release of June 24, 2025 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 2, 2025

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

**KIMBERLY WRIGHT
DELITALA LAW
MULLEN FILIPPI
EDD SDI**

LN/md

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