

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

**MATT NOKES, *Applicant***

**vs.**

**JOILET JACKHAMMERS; LIBERTY MUTUAL INSURANCE COMPANY;  
SCHAUMBERG FLYERS; UNITED STATES FIDELITY AND GUARANTY  
INSURANCE COMPANY; CLEVELAND INDIANS, Permissibly Self-Insured, *Defendants***

**Adjudication Number: ADJ9145976  
Santa Ana District Office**

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

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the Arbitrator with respect thereto.<sup>1</sup> Based on our review of the record, and for the reasons stated in the Arbitrator's report, which we adopt and incorporate except as noted below, we will grant reconsideration, rescind the Arbitrator's decision, and return this matter to the Arbitrator for further proceedings and decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the Arbitrator's new decision.

We do not adopt and incorporate the Report to the extent that it recommends that we amend and modify Arbitrator's decision. Instead, we will rescind the January 16, 2025 Supplemental Findings and Order and return this matter to the Arbitrator for further proceedings as he determines appropriate and for the issuance of a new decision that complies with Labor Code<sup>2</sup> section 5313's requirement that "[t]ogether with the findings, decision, order or award there shall be served upon

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<sup>1</sup> Commissioner Sweeney, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist was appointed in her place.

<sup>2</sup> All further statutory references are to the Labor Code, unless otherwise noted.

all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, § 5313.) The trier of fact “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.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Board en banc).) In this case it would be appropriate for the Arbitrator to explain the basis for his decision, including his change of opinion, with specific references to the evidence in the record.

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 February 27, 2025, and 60 days from the date of transmission is April 28, 2025. This decision is issued by or on April 28, 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 Arbitrator, the Report was served on February 25, 2025, and the case was transmitted to the Appeals Board on February 27, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on February 27, 2025.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on February 27, 2025.

For the foregoing reasons,

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

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the January 16, 2025 Supplemental Findings and Order is **RESCINDED** and that the matter is **RETURNED** to the Arbitrator for further proceedings and decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**APRIL 28, 2025**

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

**COLANTONI COLLINS  
HANNA BROPHY  
DIMACULANGAN ASSOCIATES  
G. RONALD FEENBERG, ARBITRATOR**

**PAG/bp**

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

## **REPORT AND RECOMMENDATION ON RECONSIDERATION**

To The Honorable Commissioners of the Workers' Compensation Appeals Board:

I am the Arbitrator in the above-entitled matter. An original "Findings and Order" issued on August 5, 2019, which was the subject of a Petition for Reconsideration filed by the then Cleveland Indians, now known as the Cleveland Guardians. An "Opinion and Decision After Reconsideration" issued on October 25, 2022, from the San Francisco Reconsideration Unit of the Appeals Board, returning the matter to arbitration to address three specific questions they posed.

A Supplemental Findings and Order issued on January 16, 2025, and it was, too, subject to a Petition for Reconsideration filed on the part of Defendant, the Cleveland Guardians. I was out of the state when this Reconsideration Petition was filed and I will be out of the country for the next few weeks and there may not be sufficient time for me to comply with the now necessary supplemental decisions which I recognize would be my responsibility to do so. As such, I am preparing and filing this "Report and Recommendation on Reconsideration" in the hopes that a timely and proper review of the Cleveland Guardians' Reconsideration Petition can be undertaken.

When the Reconsideration Unit returned the case to arbitration, they were directing me to address whether the State of California was listed in Part 3C of the United States Fidelity and Guaranty Insurance Company insurance contract with the Schaumburg Flyers when Applicant Nokes was working for that organization during the 2001 baseball season. I was also directed to address if California was included state, I was to analyze whether or not there were conditions for coverage that were not met and, if so, whether the failure to meet those conditions resulted in the policy not providing coverage. In effect, the sole issue after July 11, 2024 supplemental arbitration proceeding was whether the Schaumburg Flyers were insured in the State of California for purposes of workers' compensation while Nokes was employed by them.

I now rely upon Board Rules and Regulations most commonly entitled "Orders After Filing a Petition for Reconsideration." I am persuaded by the Petition for Reconsideration argument by the Guardians that my "Supplemental Findings and Order" is erroneous. I recommend that the Supplemental Order be amended and modified. I confess that in recognizing the word "You" in the United States Fidelity and Guaranty Insurance Company policy, I misapplied a condition in the policy as applicable to the Applicant rather than the Schaumburg Flyers. The language found in Part 3, A2 of the policy can be interpreted only in a fashion to reflect the mutual intention of the parties and those parties would be the Schaumburg Flyers and the insurance company. The "You" in the policy can be read, by the plain meaning of the contract, to apply to the Schaumburg Flyers beginning employment in the State of California and they were signatory and a party to the policy and insurance contract.

The Schaumburg Flyers, by providing an employment contract to Applicant, who was in California, living in California, and signing the contract in the State of California, created the California employment contract, thus, beginning employment in the state and the United States Fidelity and Guarantee Insurance policy activates. The plain meaning of the contract reflects that the "You" applies to the employer and the carrier but certainly not to Nokes. Nowhere in the

United States Fidelity and Guarantee Insurance policy does it indicate that Nokes employment must begin in the State of California. (See Labor Code § 3600.5(a)).

Defendant, Cleveland Guardians, cite the Pettibone case. Ironically, I was, also, the arbitrator in that case. I, heretofore, was unaware of any reconsideration decision issuing in that case. However, I note, as expressed by the Guardians, that in Pettibone, the Workers' Compensation Appeals Board found California contract created temporary employment for the applicant in the State of California and given that the team did not have separate coverage in California, the outof-state carrier was "bound by the contractual agreement in the policy that issued to cover injuries if the applicant suffered those injuries while working in the State of Connecticut and those states outside of Connecticut under the terms of their policy."

The United States Fidelity and Guarantee Insurance policy does not contain any limitations or exclusions related to extraterritorial coverage; the only exclusion are for excluded states which California is not identified as one. Personal and subject matter jurisdiction was established over Nokes's claim by way of his California contract for hire. The parties have stipulated at the arbitration to the California contract of hire. United States Fidelity and Guarantee Insurance has an obligation under the terms of this policy to provide benefits and must not be allowed to refuse to provide benefits solely based on location where the claim is brought. The policy in and of its own terms states that "jurisdiction over you is jurisdiction over us." There is jurisdiction in California over Nokes claims as a result of the contract of hire and therefore, United States Fidelity and Guarantee Insurance must provide benefits in California.

I recommend that my "Supplemental Findings and Order" be rescinded. That there be a finding that United States Fidelity and Guarantee policy for the Schaumburg Flyers covered the Applicant in California for this case. I recommend that there be a recognition that there is no specific requirement under the United States Fidelity and Guarantee policy that Nokes begins employment in California and that United States Fidelity and Guarantee Insurance by the terms of the policy, should be required to provide an appropriate defense in this matter for their insured and should provide appropriate workers' compensation benefits, if any, to Nokes in California.

Respectfully submitted,

ROSE, KLEIN & MARIAS LLP

G. Ronald Feenberg  
Arbitrator