

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

MICHAEL LEWIS, *Applicant*

vs.

**CITY OF LOS ANGELES;
permissibly self-insured, *Defendant***

**Adjudication Number: ADJ19483147
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration on July 2, 2024, and indicated that we did not appear to have a complete record of proceedings per WCAB Rule 10990 (Cal. Code Regs., tit. 8, § 10990). Thereafter, on December 13, 2024 we issued a Notice of Intention to rescind the decision of the arbitrator in the matter (NIT) due to the lack of a complete record.

Defendant City of Los Angeles seeks reconsideration of the Amended Findings and Award (F&A) issued by a workers' compensation arbitrator (WCA) on April 8, 2024 in which the WCA found in pertinent part that applicant sustained a "catastrophic" injury arising out of and in the course of employment on March 5, 2019, resulting in permanent total disability indemnity.

Defendant asserts that the WCA erred in finding applicant permanently totally disabled per Labor Code¹ sections 4662(a)(2) and (a)(3). Additionally, defendant contends that the WCA erred in finding applicant sustained injury to his back.

We received an Answer from applicant. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCA, recommending that we either dismiss the petition as untimely or deny reconsideration.

At that time of our initial grant for reconsideration on July 2, 2024, we explained that WCAB Rule 10990 provides that if the arbitrator does not rescind the order, decision or award within 15 days of receiving the petition for reconsideration per WCAB Rule 10990(f)(1) or

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

10990(f)(2), WCAB Rule 10990(f)(3) requires the arbitrator to submit to the Appeals Board the complete record of proceedings including:

- (A) The transcript of proceedings, if any;
- (B) A summary of testimony if the proceedings were not transcribed;
- (C) The documentary evidence submitted by each of the parties;
- (D) An opinion that sets forth the rationale for the decision; and
- (E) A report on the petition for reconsideration, consistent with the provisions of rule 10962. The original arbitration record shall not be filed.

(Cal. Code Regs., tit. 8, § 10990(f)(3)(A)-(E); see also Lab. Code, §§ 3201.5(a)(1), 33201.7(a)(3)(A).)

We further advised that while we are in possession of the Petition for Reconsideration and Answer, Minutes of Hearing, Findings and Award, the Report of the WCA, and the Transcript of proceedings, to date we still lack all exhibits referred to and entered into evidence by the WCA and parties at the arbitration hearing.

Having failed to receive the required documents necessary for a proper review of the issues raised in the Petition, we thereafter issued a Notice of Intention (NIT) on December 13, 2024 that the decision of the WCA will be rescinded unless the required documents per WCAB Rule 10990(f)(3) are filed in the Electronic Adjudication Management System (EAMS) within thirty (30) days after service of this decision, plus an additional five (5) days for mailing per WCAB Rule 10605 (Cal. Code Regs., tit. 8, § 10605).

Subsequent thereto, the parties and/or arbitrator filed a number of exhibits in EAMS, in order to supplement and provide a complete record. Unfortunately, however, the record is still missing a number of documents relevant to consideration for our review, and upon which part of the WCA's decision appears based. Specifically, the record lacks the Arbitrator's Exhibit XX, which is the formal rating that was prepared in this matter, and discussed by the WCA, as well as in the Petition.

Additionally, with respect to the evidence received to date, it appears that the finding of a catastrophic injury by the WCA pursuant to section 4660.1(2)(B) was not raised by the parties at the hearing, although the WCA briefly provided an analysis upon which such finding was made in

the Opinion and Report. Further, while the Agreed Medical Evaluator (AME) Lawrence Feiwell, M.D., found apportionment of applicant's industrial injuries to the back and wrist, such findings are not discussed or addressed by the WCA. We also note that AME Feiwell fails to discuss which industrial injury caused applicant's permanent disability.

A review of the Minutes of Hearing (MOH) and Transcript in this case, dated February 6, 2024, indicate that applicant filed two claims; a specific industrial injury claim, and a cumulative injury claim. Per the Minutes of Hearing and Transcript, applicant alleged an industrial injury to his back in his specific injury claim and not in his cumulative injury case, but per defendant's Petition, applicant claimed at trial that he sustained a specific industrial to his back, yet the existing medical reporting indicates the AME believed that applicant's low back was injured by way of continuous trauma. (Petition, pp. 4-5.)

Without a review of the findings and opinion of the WCA in the companion cumulative injury case, we are unable to discern the basis for the permanent disability findings of the WCA on the existing record, and to what extent it may impact applicant's current claim for potential overlapping parts of body, which appear to include the back and upper extremities. Similarly, Dr. Feiwell fails to address the impact of the permanent disability found as a result of a cumulative trauma to applicant's upper extremities, as was found by applicant's primary treating physician, George Balfour, M.D., per his permanent and stationary medical report of October 13, 2021.

Finally, to the extent that vocational evidence was procured by the parties and was discussed and relied upon by the WCA, it does not appear that it has been provided to the AMEs in this case for review.

I.

The Appeals Board may not ignore due process for the sake of expediency. (*Barri v. Workers' Comp. Appeals Bd.* (2018) 28 Cal.App.5th 428, 469 [83 Cal.Comp.Cases 1643] [claimants in workers' compensation proceedings are not denied due process when proceedings are delayed in order to ensure compliance with the mandate to accomplish substantial justice]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805] [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].) "Even though workers' compensation matters are to be handled expeditiously by the Board and its trial judges, administrative efficiency at the expense of due process is not permissible." (*Fremont Indem. Co.*

v. Workers' Comp. Appeals Bd. (1984) 153 Cal.App.3d 965, 971 [49 Cal.Comp.Cases 288]; see *Ogden Entertainment Services v. Workers' Comp. Appeals Bd. (Von Ritzhoff)* (2014) 233 Cal.App.4th 970, 985 [80 Cal.Comp.Cases 1].)

The Appeals Board's constitutional requirement to accomplish substantial justice means that the Appeals Board must protect the due process rights of every person seeking reconsideration. (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].) In fact, "a denial of due process renders the appeals board's decision unreasonable..." and therefore vulnerable to a writ of review. (*Von Ritzhoff, supra*, 233 Cal.App.4th at p. 985 citing Lab. Code, § 5952(a), (c).) Thus, due process requires a meaningful consideration of the merits of every case de novo with a well-reasoned decision based on the evidentiary record and the relevant law.

A petition for reconsideration of an arbitrator's decision or award made pursuant to a collective bargaining agreement per the provisions of sections 3201.5 and 3201.7 shall be subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision or award made and filed by a workers' compensation administrative law judge. (Lab. Code, §§ 3201.5(a)(1) and 3201.7(a)(3)(A).)

As with a workers' compensation administrative law judge (WCJ), an arbitrator's decision must be based on admitted evidence and must be supported by substantial evidence. (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Meaningful review of an arbitrator's decision requires that the "decision be based on an ascertainable and adequate record," including "an *orderly identification* in the record of the evidence submitted by a party; and *what evidence is admitted or denied admission*." (*Lewis v. Arlie Rogers & Sons* (2003) 69 Cal.Comp.Cases 490, 494, emphasis in original.) "An organized evidentiary record assists an arbitrator in rendering a decision, informs the parties what evidence will be utilized by the arbitrator in making a determination, preserves the rights of parties to object to proffered evidence, and affords meaningful review by the Board, or reviewing tribunal." (*Id.*; see also *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753 [a full and complete record allows for a meaningful right of reconsideration].)

Further, any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11

Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500].) To be substantial evidence a medical opinion must be based on pertinent facts, on an adequate examination, and it must set forth the basis and the reasoning in support of the conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) Here, the medical evidence does not appear to be fully developed.

In addition to considering relevant medical and medical-legal evidence, evaluating physicians may further consider relevant vocational evidence. As we have noted in *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 894 [2023 Cal. Wrk. Comp. P.D. LEXIS 46] (Appeals Board en banc) (*Nunes II*), the Labor Code and our Rules repeatedly provide that evaluating physicians must address all relevant issues as comprehensively as possible. (See Lab. Code, §§ 139.2, 4061, 4062.3(j), 4064(a), 4628(c), 4663(b); see also Cal. Code Regs., tit. 8, § 10683.) For example, WCAB Rule 10682 requires that physicians include in their reporting a history of the alleged industrial injury, the patient's complaints, and an opinion "as to the nature, extent and duration of disability and work limitations, if any," (Cal. Code Regs., tit. 8, § 10682(b)(8)). Moreover, Labor Code section 4061.5 states in relevant part that "[t]he treating physician ... shall ... render opinions on all medical issues necessary to determine eligibility for compensation...." Accordingly, we observed:

In addition to the required consideration of vocational evidence in the preparation of a report, an evaluating physician may also utilize vocational evidence in the assessment of both impairment and permanent disability. The AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA Guides) observes that, "[p]hysicians with the appropriate skills, training and knowledge may address some of the implications of the medical impairment toward work disability and future employment." (AMA Guides, 5th Ed., § 1.9, at pp. 13-14.) With respect to the broader question of whether a seriously injured worker is able to reenter the labor market, the AMA Guides observe, "[a] decision of this scope usually requires input from medical and nonmedical experts, such as vocational specialists, and the evaluation of both stable and changing factors, such as the person's education, skills, and motivation, the state of the job market, and local economic consideration." (*Id.* at p. 14.) Additionally, where an evaluating physician is tasked with describing impairment pursuant to the AMA Guides, vocational evidence may assist the physician in determining which of the chapters, tables, or methods from within the four corners of the AMA Guides will provide the most accurate assessment of the injured worker's impairment. (*Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc), as affirmed by *Milpitas Unified School District v. Workers' Comp. Appeals Bd. (Guzman)* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837].)

(Nunes II, supra, at p. 902.)

Upon return of this matter to the trial level, it is recommended that the parties supplement the existing record with the documentation or lack thereof noted above.

Accordingly, as our decision after reconsideration, we will rescind the arbitrator's decision and return the matter to the trial level. When the WCA issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Amended Findings and Award issued by the WCA on April 8, 2024 is **RESCINDED** and the matter is **RETURNED** to the arbitrator for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 19, 2025

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

**MICHAEL G. LEWIS
LEWIS, MARENSTEIN, WICKE, SHERWIN & LEE
CITY ATTORNEY OF LOS ANGELES
GILBERT KATEN, ARBITRATOR
CITY OF LOS ANGELES ALTERNATIVE DISPUTE RESOLUTION**

LAS/kl

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