

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

ALVIN PAZ VARELA, *Applicant*

vs.

**RICHARD SMITH DBA BAY AREA TREE SPECIALISTS;
STATE NATIONAL INSURANCE COMPANY,
administered by PACKARD CLAIMS ADMINISTRATION, INC., *Defendants***

**Adjudication Number: ADJ20340241
San Francisco District Office**

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

Petitioner, applicant's attorney, seeks reconsideration of the Order Approving Compromise and Release (OACR) issued on March 5, 2026, by the workers' compensation administrative law judge (WCJ). By the OACR, as relevant here, the WCJ approved the Compromise and Release (C&R) entered into by the parties but found that petitioner was entitled to a 9% attorney fee rather than the 15% attorney fee requested by petitioner per the terms of the C&R.

Petitioner contends that the WCJ erred by issuing the March 5, 2026 OACR without inquiring or providing petitioner the opportunity to present evidence that would warrant the requested 15% attorney fees.

No answer was filed by any party in response to the Petition. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration 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 the Petition for Reconsideration, rescind the WCJ's March 5, 2026 OACR, and return this matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

As summarized by the WCJ in the Report, the facts are as follows:

Applicant filed an application for adjudication on January 7, 2025 alleging a specific injury on September 4, 2024. The employer accepted the injury and provided medical treatment. On February 23, 2026, the parties filed a compromise and release settling the case for \$25,000, based on a November 2024 treatment report.

On February 26, 2026, I issued an Order Suspending Action because, “applicant attorney has not demonstrated that they are entitled to a fee in excess of 9% pursuant to 8 CCR Section 10844 and Policy and Procedure Manual Section 1.140”. My order included a Notice of Intent to approve the compromise and release with a 9% attorney fee, absent valid written objection in 15 days.

On March 2, 2026 applicant filed a Petition for Removal alleging that my order suspending action and notice of intention would result in significant prejudice and irreparable harm. On March 5, 2026, I issued an Opinion and Order rescinding the Order Suspending Action and Notice of Intention, pursuant to Board Rule 10955. That Opinion and Order stated, “I considered applicant counsel’s objection¹. I will issue a separate Order Approving Compromise and Release.” The same day, I issued an Order Approving Compromise and Release, with a 9% attorney fee.

(Report, March 30, 2026, p. 1, ¶ 2-p. 3, ¶ 1.)

DISCUSSION

I.

Former Labor Code section² 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.

¹ I considered the Petition for Removal an objection to my Notice of Intention.

² All further statutory references are to the Labor Code, unless otherwise noted.

(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 March 30, 2026, and 60 days from the date of transmission is May 29, 2026. This decision is issued by or on May 29, 2026, 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 workers’ compensation administrative law judge, the Report was served on March 30, 2026, and the case was transmitted to the Appeals Board on March 30, 2026. 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 March 30, 2026.

II.

The Appeals Board has exclusive jurisdiction over fees to be allowed or paid to applicants’ attorneys. (*Vierra v. Workers’ Comp. Appeals Bd.* (2007) 154 Cal.App.4th 1142, 1149 [72 Cal.Comp.Cases 1128]; Cal. Code Regs., tit. 8, § 10840.) In calculating attorney’s fees, statutory law requires that the fees awarded must be “reasonable.” (Lab. Code, §§ 4903(a), 4906(a) & (d); Cal. Code Regs., tit. 8, § 10844; *Vierra, supra*, at p. 1149.) Pursuant to section 4906, in establishing what constitutes a “reasonable” attorney’s fee, the WCJ must consider four factors: (1) the

responsibility assumed by the attorney; (2) the care exercised in representing the applicant; (3) the time involved; and (4) the results obtained. (Lab. Code, § 4906(d); see Cal. Code Regs., tit. 8, § 10844.)

An attorney is not permitted to request, demand or accept any money from a worker for the purpose of representing the worker before the Workers' Compensation Appeals Board or in any related appellate procedure related until the fee has been approved or set by the Workers' Compensation Appeals Board or an appellate court. (Cal. Code Regs., tit. 8, § 10840; see also *Bentley v. Industrial Acci. Com.* (1946) 75 Cal.App.2d 547, 549 [11 Cal.Comp.Cases 204] [Attorneys appearing in workers' compensation matters may not contract for fees in excess of those awarded by the Appeals Board].) The Court in *Bentley* held, further, that attorneys are entitled to a careful appraisal of the value of services rendered, and “[i]t is the privilege of attorneys to supplement the facts developed in the course of the proceedings by other evidence as to the extent and value of the legal services.” (*Bentley, supra*, at pp. 549-550.)

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 p. 158.) 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 p. 577.)

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).) Further, decisions of the Appeals Board must also 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, § 10787.) “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*, 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].)

Here, on February 26, 2026, the WCJ issued an Order Suspending Action (OSA) and Notice of Intention (NIT) proposing to reduce the attorney’s fee to 9% from the 15% requested by petitioner in the C&R, absent valid written objection within 15 days. If the WCJ did not intend to award the requested fee, the appropriate procedure was to set the matter for hearing.³ Instead, upon receiving an objection from petitioner in the form of the March 2, 2026 Petition for Removal, the WCJ rescinded the OSA and NIT and issued the March 5, 2026 OACR reducing the requested attorney’s fees of 15% to 9% without holding a hearing. No record was created to support the OACR’s deviation from the C&R, and without an ability to review the evidentiary record and the stipulations and issues, we cannot complete a meaningful review of the Petition.

We note that a WCJ has broad discretion in determining a reasonable fee, and that in exercising that discretion, the WCJ may reduce an agreed upon fee. (Lab. Code, §§ 4903(a), 4906(a) & (d); Cal. Code Regs., tit. 8, § 10844; *Vierra, supra*, at p. 1149.) However, an attorney is entitled to due process to establish the reasonableness of a fee.

To afford petitioner due process, we must give the parties notice and an opportunity to be heard, and the WCJ must create a record on the issue of attorney’s fees. Accordingly, we grant petitioner’s Petition for Reconsideration, rescind the March 5, 2026 OACR, and return this matter to the trial level for further proceedings consistent with this decision.

³ If the C&R is found adequate, but the adequacy of the attorney’s fee remains in question, the WCJ may approve the C&R with the requested attorney’s fee held in trust pending a hearing on the issue.

For the foregoing reasons,

IT IS ORDERED that petitioner's Petition for Reconsideration of the March 5, 2026 Order Approving Compromise and Release is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the March 5, 2026 Order Approving Compromise and Release is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 29, 2026

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

**ALVIN PAZ VARELA
ALVANDI LAW GROUP, P.C.
CBE LAW GROUP**

DC/cs

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