

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

DANIEL MOORE, *Applicant*

vs.

**UNITED PARCEL SERVICE;
LIBERTY MUTUAL INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ20384548
San Francisco District Office**

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

Defendant seeks reconsideration of the Findings of Fact (Findings) issued on June 3, 2026 by the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant, while employed on January 15, 2024 as a seasonal helper by defendant, claims to have sustained injury arising out of and in the course of employment (AOE/COE) to his left shoulder, and that the record was devoid of substantial medical evidence as to injury AOE/COE, and that the medical evidentiary record needs to be developed. The WCJ further found that applicant's claim is not barred by the statute of limitations.

Defendant contends that applicant's failure to appear at either depositions, court hearings, or otherwise participate in his claim does not warrant development of the record, and that the findings of fact should be amended to reflect that applicant has failed to carry his burden of establishing injury AOE/COE. Defendant also asserts that the WCJ should have deferred a finding as to the statute of limitations defense without a finding as to either date of injury or injury.

Applicant did not file an answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) on July 9, 2026 recommending that defendant's petition be granted and that the finding regarding statute of limitations be amended.

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 stated below, we will grant reconsideration, rescind both the July 21, 2025 Order of the WCJ relieving Kurlander, Burton & Mack as applicant's attorney of record as well as the Findings of Fact issued June 3, 2026, order applicant's counsel reinstated as attorney of record, and return this matter back to the district office for further proceedings as may be warranted below.

FACTS

An Application for Adjudication of Claim (Application) was filed on January 15, 2025 alleging applicant sustained a specific injury to the left shoulder while employed by defendant. At the time of filing, applicant was represented. The Application includes an address for applicant, which became the address of record.

A Notice of Application was served on January 16, 2025, but was returned to the district office stating, "No such street, unable to forward." Applicant's name is highlighted but there is no address listed to identify which address was faulty.

On March 17, 2025, applicant's counsel filed a "Notice of Change of Address of Applicant," but the address remained the same as was originally filed in the Application. On March 21, 2025, applicant's counsel filed an Amended Application reflecting only a change to the date of injury from January 22, 2024 to January 15, 2024.

On May 28, 2025, applicant's counsel filed a Petition to Withdraw as attorney of record. The verified petition indicated that the relationship between applicant and counsel has "irrevocably broken down" and that he had advised applicant of his desire to withdraw representation. The proof of service showed service on applicant at the same address of record.

On May 29, 2025, a Notice of Intention to Relieve Kurlander, Burton, and Mack as Applicant's Attorney of Record (NIT) issued allowing 20 days for written objection. The district office served the NIT on applicant at his address of record on June 20, 2025. On July 25, 2025, the NIT was returned to the District Office by the US postal service, noting that Applicant's address, as listed in the official address record, was not deliverable and was returned to sender.

Thereafter, on July 21, 2025, the WCJ served an Order dated June 30, 2025 Relieving Kurlander, Burton, and Mack as Applicant's Attorney of Record. The Order itself is dated June 30, 2025, but was not served until July 21, 2025. The Order was again served on the same address of record for applicant.

On September 22, 2025, defendant filed a Petition to Dismiss Application with Prejudice or Set Trial for the Matter with Current Record. The petition seeks dismissal pursuant to WCAB Rule 10805 (b) for good cause because applicant failed to appear on several occasions for depositions both by notice and following an order compelling appearance. Service of the petition was on applicant at the address of record. The petition was denied by the WCJ on October 1, 2025.

We adopt and incorporate the WCJ's description of the procedural events as outlined in his Opinion on Decision (Opinion) as follows:

The following sections on the procedural history are taken, with some corrections and adjustments for clarity, from the March 3, 2026 Minutes of Hearing. (3/3/2026 MOH, p. 2, line 3 – p. 3, line 3.) The applicant failed to appear at the November 18, 2025, Mandatory Settlement Conference in this matter and was ordered to appear at the following hearing. It was additionally noted in the Minutes of Hearing for that hearing that the matter would be set for trial if there was a failure to appear. Those Minutes were served by the Board on all parties of record.

The applicant failed to appear at the December 23, 2025, Mandatory Settlement Conference. The applicant was again ordered in the Minutes of Hearing to appear at the next hearing. There was additionally notice that the matter would be set on the issues listed in a Pre-Trial Conference Statement prepared by the defendant and included with those Minutes. The Minutes and the proposed Pre-Trial Conference Statement were served by defendant on the applicant on December 23, 2025.

The applicant failed to appear at the January 13, 2026 Mandatory Settlement Conference. At that time the matter was set for trial based on the Pre-Trial Conference Statement prepared by defendant. The Pre-Trial Conference Statement was served by the Board on all parties of record on January 14, 2026.

The trial was initially set for February 5, 2026. Defendant requested a continuance due to a calendar conflict. Minutes were served by the Board on all parties of record on January 30, 2026, granting the continuance. Those Minutes again ordered the applicant to appear for the trial on March 3, 2026, providing the date, time, and location of the trial. A phone number for the Information and Assistance Office was also included on those Minutes.

At approximately 9:30 a.m. on the morning of the trial, the Information and Assistance Office tried to telephone the applicant at three potential phone numbers. Messages were left at two of the numbers, and the third number was disconnected. No response had been received as of 10:50 a.m. and the trial commenced.

It was observed in EAMS that hearing notices have repeatedly been returned by the post office¹, and the Information and Assistance Office has left multiple messages for the applicant, which have been unreturned. The defendant confirmed they have the same address for the applicant as that which is reflected in EAMS.

(Opinion, p. 2-3.)

In his Findings issued on June 3, 2026, the WCJ made a finding that the medical record needed to be developed in order to make a determination as to whether there was an injury AOE/COE, and that the claim was not barred by the statute of limitations defense. All other issues were deferred. The Opinion only addressed the post termination defense, noting that there was no evidence offered to support a termination and thus, defendant did not meet their burden for the affirmative defense. Further, the WCJ opined that without any medical evidence the record is insufficient to make a determination and that he has a duty to develop the record pursuant to *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal. App.4th 389, 393-395 [62 Cal.Comp.Cases 924] (*Tyler*) or *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]

On June 25, 2026, defendant filed its Petition. Defendant contends that because applicant has failed to appear or participate in this claim, he should not be allowed to develop the record to prove injury. They argue that the WCAB's duty to develop the record pursuant to *Tyler, supra* or *McClune, supra* is not applicable where the applicant has not participated in adjudicating his claim. They also indicated briefly that the Application should be dismissed for failure to appear at trial. Last, they argue that without a finding of injury or date of injury, the statute of limitations defense cannot be adjudicated.

In the Report, the WCJ recommends amending Finding of Fact number 5 to reflect that the claim is not barred by defendant's post termination defense thereby removing a finding on statute of limitations. Otherwise, the WCJ requests that defendant's Petition be denied.

¹ The following documents were returned to the district office as undeliverable: The Notice of Hearing for MSC January 13, 2026, an unidentified document returned on April 10, 2026, Findings of Fact, Minutes of Hearing dated January 21, 2026, Minutes of Hearing/Summary of Evidence, an unidentified document dated March 25, 2026.

DISCUSSION

I.

Up through July 1, 2024, petitions for reconsideration were subject to former Labor Code section 5909², which 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.)

During the period from July 2, 2024 through June 30, 2026, petitions for reconsideration were subject to former 5909, which stated 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) (in effect from July 2, 2024 through June 30, 2026), 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 9, 2026 and 60 days from the date of transmission is Monday September 7, 2026, a holiday. The next business day that is 60 days from the date of transmission is Tuesday, September 8, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on Tuesday, September 8, 2026, so that we have timely acted on the petition as required by section 5909(a) (in effect from July 2, 2024 through June 30, 2026).

² All further statutory references will be to the Labor Code unless otherwise indicated.

³ 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.

Section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026) 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) (in effect from July 2, 2024 through June 30, 2026) 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 9, 2026, and the case was transmitted to the Appeals Board on July 9, 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) (in effect from July 2, 2024 through June 30, 2026), because service of the Report in compliance with Section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026) provided them with actual notice as to the commencement of the 60-day period on July 9, 2026.

II.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

In order for a substitution or dismissal of an attorney to be entered, it must be made upon the filing of consent of the party and the attorney, or upon the application of either the party or the attorney and a court order granting the application. (Cal. Code Regs., tit. 8, § 10402.)

WCAB Rule 10402 advises that “Substitution or dismissal of attorneys must be made in the manner provided by Code of Civil Procedure sections 284, 285, and 286.” The Code of Civil Procedure section 284 states that:

The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

1. Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes;
2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

(Cal. Code Regs., tit. 8, § 10402(a); *In re White & Bunch* (1981) 46 Cal.Comp.Cases 810 (Appeals Board en banc); Cal. Code of Civil Proc. § 284.)

Here, it is obvious from the existing record, that as early as February 2025, the applicant was no longer at the address of record listed on the Application filed by applicant's counsel. The verified petition to be relieved as counsel filed by applicant's attorney dated May 28, 2025 states that "[t]he relationship between Applicant and myself has irrevocably broken down, and I do not believe that I can provide further effective representation of Applicant at this time. I advised Applicant I wish to withdraw from his representation." Unfortunately, however, service of this petition was on an undeliverable address for applicant. Thus, no notice has been afforded applicant at this juncture, as to counsel's request to be relieved as his attorney, and thus the Order Relieving applicant as counsel of record as well as the ensuing notices, hearings, and Findings issued by the WCJ must also be rescinded as they similarly do not provide notice to applicant as to the status of his case.

All parties are entitled to due process in a workers' compensation proceeding. (*Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd. (Pinkney)* (1994) 26 Cal.App.4th 789 [59 Cal.Comp.Cases 461]; *Abron v. Workmen's Comp. Appeals Bd.* (1973) 34 Cal.App.3d 232 [38 Cal.Comp.Cases 591]; *Cedeno v. American National Ins. Co.* (1997) 62 Cal.Comp.Cases 939.) "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (*Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449 [56 Cal.Comp.Cases 537].)

Here, we are concerned that the Petition to Withdraw as Attorney of Record, the Notice of Intent to Relieve Counsel, and the Order Relieving Counsel do not provide the proper notice to applicant such that he was fully apprised of his due process rights. First, service to applicant from the district office has been returned by the postal service, including service of the NIT to permit attorney withdrawal. Although applicant's counsel indicates in its petition that they, "advised

Applicant” that they were seeking to withdraw, there is no record by way of testimony or pleading under the penalty of perjury as to how the applicant was advised and whether he was agreeable to the withdrawal, and the lack of proper service of the NIT and subsequent Order cannot be assumed to have been received in light of the return of such correspondence. Thus, we are not convinced that applicant’s counsel properly notified applicant that they were seeking withdrawal. In other words, applicant’s attorney has failed to demonstrate reasonable efforts or attempts at contacting and/or locating applicant prior to bringing his motion to withdraw, which is inconsistent with the mandates of WCAB Rule §10402 and Code of Civil Procedure section §284.

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).) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Applicant’s counsel does not outline good cause in their petition, nor does the WCJ’s order provide a record for good cause to allow counsel to withdraw. WCAB Rule 10402(b) allows withdrawal where a party consents to termination of representation and completes the appropriate documentation or, where the party does not consent as is the case here, representation shall continue until the Appeals Board or the workers’ compensation judge issues an order allowing withdrawal for good cause. (Cal. Code Regs., tit. 8, §10402(b).) The petition merely states that the relationship has “irrevocably broken down.” While we recognize that there are limitations to what an attorney is able to share, the concern here is that applicant was not appropriately contacted nor is there a record to confirm that he was put on notice. After the first missed deposition in May 27, 2025, pursuant to defendant’s petition to compel, applicant’s counsel sought immediate dismissal on May 28, 2025. Barring evidence to the contrary it appears that counsel lost contact with applicant, which is not good cause for dismissal. The order for dismissal of counsel provides no clear record for good cause for dismissal.

“Good cause” to set aside an order or stipulations depends upon the facts and circumstances of each case. “Good cause” includes mutual mistake of fact, duress, fraud, undue influence, and procedural irregularities. (*Johnson v. Workmen’s Comp. Appeals Bd.* (1970) 2 Cal.3d 964, 975 [35 Cal.Comp.Cases 362]; *Santa Maria Bonita School District v. Workers’ Comp. Appeals Bd.* (2002)

67 Cal.Comp.Cases 848, 850 (writ den.); *City of Beverly Hills v. Workers' Comp. Appeals Bd.* (1997) 62 Cal.Comp.Cases 1691, 1692 (writ den.); *Smith v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 1160, 1170 [50 Cal.Comp.Cases 311] (writ den.).)

Based on the above, we find good cause to set aside the Order Relieving Kurlander, Burton, and Mack as Applicant's Attorney of Record. Kurlander, Burton, and Mack as notice was not properly provided to applicant, and order said firm reinstated as attorney of record for applicant.

Further, due to the lack of proper notice commencing with whether applicant was aware he was no longer represented, we are not convinced that applicant was properly notified of many if not all discovery proceedings and hearings, including the trial of this matter for which petitioners seek reconsideration. As such, we will rescind the Findings of June 3, 2026 in its entirety, return the matter to the district office for development of the record and adjudication of all issues, and for applicant's counsel to make reasonable efforts to locate the current whereabouts of their client.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the decision of June 3, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of June 3, 2026 is **RESCINDED**.

IT IS FURTHER ORDERED that the Order Relieving Kurlander, Burton, and Mack as Applicant's Attorney of Record issued by the WCJ on June 30, 2025 is **VACATED**. Kurlander, Burton, and Mack are hereby ordered reinstated on the Official Address Record as the attorneys of record for applicant.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 4, 2026

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

**DANIEL MOORE
KURLANDER, BURTON, & MACK
TOBIN LUCKS**

TF/md

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