

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

DAVID BELTRAN, *Applicant*

vs.

BURGIO STUCCO, INC.;
STATE COMPENSATION INSURANCE FUND, et al., *Defendants*

**Adjudication Number: ADJ11306542
San Diego District Office**

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

Defendant employer Burgio Stucco, Inc., seeks reconsideration of the Findings and Order (F&O) issued by a workers' compensation arbitrator (WCA) that was served on January 14, 2026, wherein the WCA found that defendant State Compensation Insurance Fund (SCIF)'s policy rescission with defendant Burgio was valid and applicant's claim is best pursued with other eligible entities, and that SCIF can petition to recover costs paid prior to the denial.

Defendant Burgio contends that the insurance policy did not contain a rescission clause and SCIF's attempt to rescind the policy should not be allowed or enforced, and that SCIF acted in bad faith and should be estopped from denying coverage.

We received an Answer from defendant SCIF. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCA, which recommends that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the Answer and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return this matter to the trial level. When the WCA issues a new decision, any aggrieved person may timely seek reconsideration.

FACTS

This matter was originally set for arbitration on the issue of whether SCIF's rescission of the policy of workers' compensation insurance coverage for defendant Burgio was valid.

On January 27, 2021, the WCA issued an F&O, finding that defendant SCIF's policy rescission with defendant Burgio was valid and applicant should pursue other eligible entities; and that SCIF can petition to recover costs paid prior to the denial. We granted defendant Burgio's petition for reconsideration in order to enable us to issue a just and reasoned decision, and on April 5, 2024, we issued an Opinion and Decision after Reconsideration in which we rescinded the F&O, due to the lack of a complete record as required by WCAB Rules 10914 and 10995 (Cal. Code Regs., tit. 8, §§ 10914, 10995).

The matter was returned to the WCA for further proceedings, and on December 26, 2025, the WCA issued a new F&O with the same findings and order. The new F&O was served on January 14, 2026. While numerous exhibits were filed by the parties in connection with this proceeding, and an index of exhibits was included in the F&O, the existing record does not contain a transcript of proceedings, Minutes of Hearing and Summary of Evidence, or any other record of the stipulations and issues entered into by the parties, nor any summary of the testimony presented at the arbitration trial.

DISCUSSION

I

Former Labor Code¹ 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.

¹ Any further section references are to the California Labor Code unless otherwise noted.

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 18, 2026 and 60 days from the date of transmission is Monday, April 20, 2026. This decision is issued by or on Monday, April 20, 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 WCJ’s report and recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the WCA, the Report is dated February 10, 2026, but there is no indication of when and upon whom it was served. The case was transmitted to the Appeals Board on February 18, 2026. We cannot determine the exact date of service for the Report, but the date of the Report and the date of transmission of the case to the Appeals Board are not the same. 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 18, 2026.

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 it appears that the parties did not have actual notice of the commencement of the 60-day period on February 18, 2026.

II

WCAB Rule 10787 states in relevant part that:

(c) Minutes of hearing and summary of evidence shall be prepared at the conclusion of each trial and filed in the record of proceedings. They shall include:

- (1) The names of the commissioners, deputy commissioner or workers' compensation judge, reporter, the parties present, attorneys or other agents appearing therefor and witnesses sworn;
- (2) The place and date of said trial;
- (3) The admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence (with the identity of the party offering the same);
- (4) The disposition, and if the disposition is an order taking off calendar or a continuance, the reasons for the order which shall include the time and action, if any, required for submission;
- (5) A summary of the evidence required by Labor Code section 5313 that shall include a fair and unbiased summary of the testimony given by each witness;
- (6) If motion pictures are shown, a brief summary of their contents or a stipulation that parties waive a summary; and
- (7) A fair statement of any offers of proof.

(Cal. Code Regs., tit. 8, § 19787(c).)

WCAB Rule 10803 states in relevant part that:

(a) The Workers' Compensation Appeals Board's adjudication file shall consist of:

(2) The record of proceedings, which consists of: the pleadings, *minutes of hearing, summaries of evidence, certified transcripts*, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.

(Cal. Code Regs., tit. 8, § 19803(a)(2), emphasis added.)

WCAB Rule 10914 requires the arbitrator to make and maintain the record of the arbitration proceeding, which must include the following:

(1) Order Appointing Arbitrator;

- (2) Notices of appearance of the parties involved in the arbitration;
- (3) Minutes of the arbitration proceedings, identifying those present, the date of the proceeding, the disposition and those served with the minutes or the identification of the party designated to serve the minutes;
- (4) Pleadings, petitions, objections, briefs and responses filed by the parties with the arbitrator;
- (5) Exhibits filed by the parties;
- (6) Stipulations and issues entered into by the parties;
- (7) Arbitrator's Summary of Evidence containing evidentiary rulings, a description of exhibits admitted into evidence, the identification of witnesses who testified and summary of witness testimony;
- (8) Verbatim transcripts of witness testimony if witness testimony was taken under oath.
- (9) Findings, orders, awards, decisions and opinions on decision made by the arbitrator; and
- (10) Arbitrator's report on petition for reconsideration, removal or disqualification.

(Cal. Code Regs., tit. 8, § 10914(c).)

We emphasize that WCAB Rule 10914(c) specifically instructs that the record must include the minutes of the proceedings. Without the minutes, we are simply unable to conduct any meaningful review, and if no minutes were ever prepared, then a new hearing must take place and a record must be created.

WCAB Rule 10995 provides that if the arbitrator does not rescind the order, decision, or award within 15 days of receiving the petition for reconsideration, the arbitrator is required to forward an electronic copy of their report and the complete arbitration file within 15 days after receiving the petition for reconsideration pursuant to WCAB Rule 10995(c)(3). The WCA issued a Report dated February 10, 2026; however, filing of the arbitration file in EAMS was never completed as required by WCAB Rules 10914 and 10995, because the existing record does not contain a transcript of proceedings, Minutes of Hearing and Summary of Evidence, or any other record of the stipulations and issues entered into by the parties, nor any summary of the testimony presented at the arbitration trial.

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.

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 omitted.) "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].)

We are unable to conduct meaningful review of the Petition or render a decision based on an incomplete record. 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 that the Petition for Reconsideration of the decision of the WCA of January 14, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the WCA on January 14, 2026 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 20, 2026

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

**DAVID BELTRAN
LAW OFFICE OF GERALD D. BRODY & ASSOCIATES
PAUL BURGIO
BURGIO STUCCO
LAW OFFICES OF MARK H. BARBER
STATE COMPENSATION INSURANCE FUND
OFFICE OF THE DIRECTOR – LEGAL UNIT, LOS ANGELES
LAW OFFICES OF PARKER & IRWIN
JIM HOPKINS, ARBITRATOR**

CWF/cs

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