

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

JACOB OROZCO, *Applicant*

vs.

**COUNTY OF MONTEREY, permissibly self-insured,
administered by INTERCARE HOLDINGS INSURANCE SERVICES, INC., *Defendants***

**Adjudication Number: ADJ19122773
Salinas District Office**

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

Defendant seeks reconsideration of the December 10, 2025 Second Corrected and Amended Findings and Award (F&A) by the workers' compensation administrative law judge (WCJ), wherein the WCJ found that on October 5, 2022, applicant sustained a specific injury arising out of and in the course of employment to his left ankle, and the WCJ found that the claim was timely filed.

Defendant contends the WCJ erred in finding applicant's claim was timely filed because the statute of limitations barred applicant's claim for workers' compensation benefits.

We did not receive an answer from applicant.

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 December 10, 2025 F&A, and return this matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

We will briefly review the relevant facts.

On April 10, 2024, applicant filed an application for adjudication alleging injury to his left ankle arising out of and during the course of employment on October 5, 2022. Defendant denied liability for the claim, alleging the claim was barred by the statute of limitations set forth in Labor Code section 5405. (Lab. Code, § 5405).

The matter proceeded to trial on November 4, 2025 on the following issues:

- (1) Injury AOE/COE.
- (2) Statute of limitations and the coextensive issue of Laches.
- (3) Applicant raised the issues of penalties and sanctions pursuant to Labor Code Sections 5814 and 5813 as discussed at the Mandatory Settlement Conference. Those issues will not be heard at this time because no petition is on file.
- (4) The parties have also listed the issue of authorization for Dr. Warren Nishimoto. After some discussion with the parties, it is agreed that in the event that injury is found and the statute of limitations defense is not held to be valid, Dr. Nishimoto will be authorized but not otherwise, assuming Dr. Nishimoto is properly within the MPN at the time of the decision.

(Minutes of Hearing, November 4, 2025, p. 2, lines 12-25.)

Applicant's exhibits 1 through 11 and defendant's exhibits A through M were admitted without objection.

No witnesses testified at the trial. Instead, applicant and defendant made an "offer of proof" reflecting how applicant would have testified if he had been called as a witness on his own behalf. (Minutes of Hearing, November 4, 2025, Offer of Proof by Applicant, p. 4, line 21-p. 5, line 17; Offer of Proof by Defendant, p. 5, line 18-p. 6, line 17.) Defendant also made an "offer of proof" as to how Lizzy O'Keefe would have testified if called as a witness on behalf of defendant. (Minutes of Hearing, November 4, 2025, Offer of Proof by Defendant, p. 6, line 18-p. 8, line 3.) There was no objection by the opposing party to the Offers of Proof, and the three Offers of Proof were accepted and to be considered by the WCJ.

A Findings and Award originally issued on November 20, 2025 but was subsequently amended to accurately reflect the type of claim applicant alleged following a Petition for Reconsideration filed by defendant on December 8, 2025. On December 10, 2025, the F&A that

is the subject of the Petition for Reconsideration herein issued finding in part that applicant's specific injury claim was not barred by the statutes of limitations.

Thereafter, defendant sought reconsideration of the F&A via a Petition for Reconsideration filed on December 22, 2025.

DISCUSSION

I.

Former Labor Code 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, Labor Code 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 Labor Code 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 January 2, 2026, and 60 days from the date of transmission is March 3, 2026. This decision is issued by or on March 3, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 January 2, 2026, and the case was transmitted to the Appeals Board on January 2, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on January 2, 2026.

II.

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).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) “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.)

Labor Code section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” 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.” (*Id.* at p. 476., citing *Evans v. Workmen's Comp. Appeals Bd.*

(1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and must 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].) As required by Labor Code section 5313 and explained in *Hamilton*, “the WCJ 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, supra*, at p. 475.) “The term ‘substantial evidence’ means evidence which, if true, has probative force on the issues. It is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. . . It must be reasonable in nature, credible, and of solid value.” (*Braewood Convalescent Hospital v. Workers’ Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566].)

Here, the WCJ issued the F&A without obtaining witness testimony. Instead, Offers of Proof were made by applicant’s and defendant’s attorneys as to how the witnesses would have testified had they been given the opportunity. However, the Offers of Proof made by the parties, especially on an issue as crucial as to whether applicant’s claim was timely filed, does not rise to the level of substantial evidence because it did not afford the WCJ the ability to make a proper credibility determination. Assessing a witness’s credibility relies not only on what a witness says but also the manner in which the testimony is given. In the instant case, the WCJ did not have the opportunity to view the witnesses’ demeanor and presentation, and, thus, could not assess their credibility based on actual observations. (See *Garza, supra*.) As such, the record is incomplete without the actual testimony of the witnesses offered, and we cannot complete a meaningful review of the Petition.

Accordingly, due process requires that we grant defendant’s Petition for Reconsideration, rescind the December 10, 2025 F&A, and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the December 10, 2025 Second Corrected and Amended Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 10, 2025 Second Corrected and Amended Findings and Award 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/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 2, 2026

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

**JACOB OROZCO
DILLES LAW GROUP, A P.C.
HERMANSON, GUZMAN & WANG, A P.C.**

DC/cs

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