WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARK ENRIQUEZ, *Applicant*

vs.

CTI FOODS HOLDING COMPANY, LLC; ARCH INSURANCE COMPANY, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants*

Adjudication Number: ADJ21059402
Los Angeles District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Order (F&O) issued on July 28, 2026, by the workers' compensation administrative law judge (WCJ). By the F&O as relevant here, the WCJ found that defendant carrier, Sedgwick Claims Management Services, Inc. (Sedgwick), issued payment to applicant in the amount of $46,537.50 on October 8, 2025, and defendant employer, CTI Foods Holding Company, LLC (CTI), issued payment to applicant in the amount of $46,537.50 on October 23, 2025, resulting in duplicative payments. The WCJ ordered that defendant shall take nothing on its Petition for Reimbursement.

Defendant contends that the WCJ erred by considering an issue that was not in the pre-trial conference statement, specifically applicant's assertion that there was no evidence that the checks were authenticated and no evidence the checks cleared; and by not ordering that the record be developed if there was a question as to whether the checks were deposited.

We have not received an answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration 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, for the reasons discussed below, we will deny the Petition for Reconsideration.

FACTS

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

> Applicant, Mark Enriquez, while employed for the period 1-1-24 through 1-1-25 as a machine operator, at Azusa, California by CTI FOODS HOLDING COMPANY, LLC, sustained injury arising out of and in the scope of employment to the right shoulder. The parties settled the case by way of a Compromise and Release on September 30, 2025. *(Defendant Exhibit A)*. The carrier issued payment to the applicant in the amount of $46,537.50 via 2 payments. The first, in the amount of $35,445.50 and a second in the amount of $11,092.50 on October 8, 2025 . *(Defendant Exhibit B)*. The employer issued payment to the applicant in the amount of $46,537.50 to the applicant on October 23, 2025 (Defendant Exhibit C), allegedly resulting in duplicative payments to the applicant.
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> A Declaration of Readiness was filed by the defendant on March 5th 2026 requesting the matter be set for an MSC on the issue of Reimbursement. (Judicial notice taken of EAMS Doc ID 62967274) The defendant also filed Pre-Trial Conference Statement (hereinafter PTCS) prior to the MSC. The PTCS was only signed by the Defendant. At the MSC, this matter was set for trial. Only the defendant offered exhibits at trial. Applicant did not offer any exhibits.
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> Prior to the trial, the parties and the WCJ had a conversation. The parties expressed concern that the applicant may not appear. When the applicant did appear, before going on the record, this WCJ asked him if he knew why the trial was set and explained that it was set on the issue of whether he received payment on the Compromise and Release by the carrier and the employer. He stated that he had received two payments and that he had spent all the money. This statement was made "off the record". Clearly, the parties were unable to resolve the matter and wanted to go forward with the trial.

(Report, August 24, 2026, p. 2, ¶¶ 1-3.)

The issues to be determined at the May 21, 2026 trial were as follows:

1. Reimbursement for the duplicative payments to the applicant paid by the employer and carrier. The carrier issued payment in the amount of $46,537.50 on October 8th, and the employer issued payment in the amount of $46,537.50 on October 23rd, 2025. The duplicative payment resulted in the applicant receiving $93,075.00 rather than the amount listed in the Compromise and Release.

2. Evidence Code 1401: Applicant asserts there is no evidence that the checks were authenticated and no evidence the checks have cleared.

(Minutes of Hearing (MOH), May 21, 2026, p, 2, lines 17-23.)

Applicant submitted no evidence at trial. Defendant submitted the following exhibits:

A. Order Approving Compromise and Release, dated September 30, 2025;

B. Benefits Printout, dated January 26, 2026;

C. Benefit Printout, dated December 31, 2025;

D. Correspondence to applicant attorney, dated January 26, 2026;

E. Employer correspondence to applicant, dated February 26, 2026; and

F. Certified mail receipt for correspondence to applicant, dated February 27, 2026.

(MOH, May 21, 2026, p. 3, lines 5-20.)

Defendant called applicant to testify and applicant was sworn in, but defendant chose not to question applicant. (MOH, May 21, 2026, p. 4, lines 1-2.) The matter stood submitted as of the date of trial.

Following the trial, the WCJ issued the F&O that is the subject of the Petition for Reconsideration herein. The F&O found in relevant part that though Sedgwick issued payment to applicant in the amount of $46,537.50 on October 8, 2025 and CTI issued payment to applicant in the amount of $46,537.50 on October 23, 2025, resulting in duplicative payments, defendant was ordered to take nothing on its Petition for Reimbursement.

In the Opinion on Decision, the WCJ explained that though defendant provided evidence that two separate payments were issued, defendant failed to meet its burden of proof per Labor Code section[1] 3202.5 in proving that applicant received duplicative payments and that applicant cashed the checks. (Opinion on Decision, p. 3, ¶ 3-p. 4, ¶ 4.)

Thereafter, defendant sought reconsideration of the F&O.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to section 5909, which states that:

[1] All further statutory references are to the Labor Code, unless otherwise noted.

(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), 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 August 24, 2026, and 60 days from the date of transmission is October 23, 2026. This decision is issued by or on October 23, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 24, 2026, and the case was transmitted to the Appeals Board on August 24, 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 August 24, 2026.

II.

A decision "must be based on admitted evidence in the record" (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Board en banc)), 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 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.)

Section 3202.5 provides that "[a]ll parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law. 'Preponderance of the evidence' means that evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence." (Lab. Code, § 3202.5.)

Thus, defendant, like any party with the affirmative of the issue, must meet its burden of proof by a preponderance of the evidence per section 3202.5. The trier of fact must then weigh all the admitted evidence, including the testimony and the credibility of the witnesses, to determine whether the record supports a finding in its favor. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317-319 [35 Cal.Comp.Cases 500].)

Here, defendant failed to meet its burden of proof to demonstrate that applicant received and cashed the checks issued on October 8, 2025 and October 23, 2025. Although defendant's evidence supported finding duplicate payments were *issued* (Def. Exhs. A; B), defendant failed to produce any evidence that *applicant received and cashed the checks*. Defendant did not call any witnesses to support its claim and even declined to question applicant at trial, despite having the opportunity to do so. As explained by the WCJ in the Report:

> At trial, defendant raised the issue of duplicative payment. The defendant offered exhibits into evidence. Applicant objected to three of the exhibits, which were ultimately admitted into evidence. The defendant initially called the applicant to testify under oath. The applicant was sworn in. Then the defendant chose not to question the applicant. The defendant offered no evidence that the applicant received the checks and that he cashed the checks, not through testimony or by showing the cancelled checks.
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> While the defendant introduced evidence that payment was issued, (Defendants Exhibits B and C) it does not establish that defendant actually sent the

> check to the applicant via US mail. Defendant is entitled to rely on the US Postal Service for mailing correspondence, but in this case, defendant offered no evidence that it put the payment in the mail. Defendant provided no testimonial evidence from claims adjusters or supervisors regarding the purported payment. Furthermore, they did not question the applicant regarding receipt of the checks or of him cashing the checks. Defendant would have had access to the cancelled checks but failed to list them on the PTCS to show that the applicant did in fact receive the checks and deposited them in his bank account. CCR 10670 (b)(c).
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> The defendant had the burden of proof to show the applicant received duplicative payments per Labor Code 3202.5. It is up to the moving party to ensure all evidence is submitted at trial. A judge may not consider evidence that has not been submitted at the time of trial.
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> Evidence or documents that have not been formally offered, admitted and logged into the record cannot be used by the trial judge to make a decision. A discussion held "off the record" is not part of the official transcript or evidence unless the parties expressly restate them on the record. Only testimony given under oath and exhibits formally marked and admitted at trial constitute the official record of proceedings.
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> It is not the judges[*sic*] duty to ensure the parties include all evidence necessary for them to meet their burden of proof. A judges[*sic*] power to expand the record is not absolute (San Bernardino Community Hospital V. WCAB (1999) 74 Cal.App.4thth 926) A judge cannot bypass Labor Code Section 5502 (d) (3) where evidence is barred if it has not been disclosed at the Mandatory Settlement Conference. CCR 10670. The defendant was in possession of additional evidence that could have been used to help with their burden of proof in showing the applicant was not only paid by the carrier and the employer, but that the checks were mailed to the applicant and the applicant cashed the checks. Under McDuffie v. Los Angeles County Metropolitan Transit Authority (2002) 67 Cal.Comp.Cases 138; 2002 Cal.Wrk.Comp LEXIS 1218 (en banc) , developing the record where a decision could be rendered on the existing recording and the party seeking to introduce such evidence "was not available or could not have been discovered by the exercise of due diligence prior to the mandatory settlement conference." The evidence required by the defendant to meet their burden of proof had been available to them. They did not present it at trial.

(Report, p. 2, ¶. 4-p. 4, ¶. 1.)

Moreover, defendant's Petition identifies no evidence establishing that applicant cashed the checks, such as delivery confirmation or copies of the cleared checks. Instead, defendant attempts to rely on facts not in evidence to substantiate its claim, contrary to our established jurisprudence requiring a WCJ's decision to be supported by admitted evidence. Defendant could have advanced a more compelling due process or "new evidence" argument had it offered more

than the assertion that had it known applicant would claim lack of evidence that the checks were authenticated and cleared, it would have presented such evidence at trial. However, that assertion, on its own, does not cure defendant's failure to present supporting evidence when it had the opportunity to do so.

Based upon the existing record, defendant has failed to prove a basis upon which it would be entitled to any credit. Accordingly, the Petition for Reconsideration is denied.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 22, 2026

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

MARK ENRIQUEZ
GUERRA AND CASILLAS, LLP
DAVIDSON, CZULEGER, AND BLALOCK, LLP

DC/*pm*

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