

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

MATT NOKES, *Applicant*

vs.

**SCHAUMBURG FLYERS, insured by UNITED STATES FIDELITY
AND GUARANTY COMPANY, administered by
GALLAGHER BASSETT SERVICES, et al., *Defendants***

**Adjudication Number: ADJ9145976
Santa Ana District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant American Specialty Insurance¹, seeks reconsideration of the Supplemental Findings and Order (F&O) by a workers' compensation arbitrator (WCA) dated April 27, 2026, and issued on May 26, 2026, wherein the WCA found in pertinent part that the extraterritorial coverage provisions of an insurance policy issued by United States Fidelity and Guaranty Company (USF&G) apply to the portion of applicant's claim of cumulative injury during 2001 after he was hired in California by insured employer the Schaumburg Flyers.

Petitioner contends that the insurance policy excludes workers' compensation coverage outside of Illinois unless the insurer is notified of an extraterritorial claim within 30 days, and there is no evidence that USF&G had timely notice of applicant's claim. Petitioner further contends that the WCA did not adequately explain his decision.

¹ Although the Petition for Reconsideration states that it was filed by defendant's attorneys on behalf of "American Specialty Insurance" administered by Gallagher Bassett Services, Inc., we note that the insurance policy that was offered into evidence as providing coverage to Schaumburg Professional Baseball LLC clearly identifies the insurer as United States Fidelity and Guaranty Company and identifies American Specialty Insurance Services as the insurer's agent. To the extent that the notices of representation filed herein by defendant's attorneys identify only an agent and not the ultimate insurer, they do not comply with WCAB Rule 10390 (Cal. Code Regs., tit. 8, § 10390), *Coldiron v. Compuware Corp.* (2002) 67 Cal.Comp.Cases 289 (Appeals Board en banc) [*Coldiron I*], *Coldiron v. Compuware Corp.* (2002) 67 Cal.Comp.Cases 1466 (Appeals Board en banc) [*Coldiron II*] and *DiFusco v. Hands On Spa* (2025) 90 Cal.Comp.Cases 1007 (Appeals Board en banc). Defendant is reminded that the actual named parties must be clearly identified at all times.

We received an Answer from defendant Cleveland Guardians, contending that petitioner has waived any argument based on lack of timely notice by failing to raise it at the initial arbitration and during reconsideration of the arbitrator's previous two decisions, which were modified and rescinded, and that the evidence justifies the F&O.

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, the Answer and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will deny reconsideration.

FACTS

The WCA's Report summarizes the salient facts as follows:

Applicant Matt Nokes filed an Application for Adjudication of Claim in California in 2013, alleging injuries arising out of and occurring in the course of his employment as a professional baseball player from July 1, 1981 through December 31, 2002. Nokes was employed with the Schaumburg Flyers in 2001. United States Fidelity and Guaranty Insurance Company (hereinafter "USF and G") provided workers' compensation insurance coverage for The Schaumburg Flyers while the Applicant worked for the team during the 2001 season.

The initial arbitration hearing regarding coverage of the Schaumburg Flyers occurred almost seven years ago, on June 5, 2019. A "Findings and Order" issued on August 5, 2019, to which the then Cleveland Indians filed a Petition for Reconsideration. The matter was returned by the Reconsideration Unit to the Arbitrator on October 25, 2022, with a specific directive to address Section 3(c) of the USF and G policy and for the arbitrator to analyze whether there were conditions for coverage that had not been met and if so, whether the failure to meet those conditions resulted in the policy not providing coverage.

At a July 11, 2024 Arbitration, the sole issue was whether the Schaumburg Flyers are insured in California for purposes of workers' compensation while Nokes was employed by them. The first of two "Supplemental Findings and Order" issued on January 16, 2025, finding in pertinent part: Finding No. 5 USF and G Insurance issued a workers' compensation insurance liability policy for the year 2001 to the Schaumburg Flyers; Finding No. 6 Declaration page of the US F and G policy, issued to the Flyers indicated in item 3(c) that the policy "covers all states" and that the policy does not cover certain expressed, identified states; Finding No. 7 California is not an expressly-excluded and identified state and is, thus, a covered state; and other findings were then made.

Cleveland filed its second "Petition for Reconsideration" on February 10, 2025. The Workers' Compensation Appeals Board granted reconsideration and

returned the case to arbitration for clarification of certain issues and findings. Portions of the January 16, 2025 Decision were sustained.²

The matter returned before this Arbitrator on January 12, 2026. For the very first time, USF and G raised the issue of Part 3(A)(4) of the policy. That newly-raised issue involved when the insured notified USF and G of the case. I issued a "Supplemental Findings and Order" on April 27, 2026; to which USF and G has now appealed and is raising an issue for the first time after the original trial and the multiple Petitions for Reconsiderations and the matter having been earlier remanded on two occasions.

(Report, pp. 1-2.)

DISCUSSION

I

Former Labor Code³ 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.

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.”

² Although we adopted and incorporated part of the WCA’s prior Report and Recommendation in our April 28, 2025 decision, we did not specifically “sustain” or affirm any part of the WCA’s January 16, 2025 decision. It is important to note that we rescinded the January 16, 2025 Supplemental Findings and Order in its entirety, returning the matter to the WCA for further proceedings and a new decision.

³ Any further section references are to the Labor Code unless otherwise noted.

Here, according to Events, the case was transmitted to the Appeals Board on June 3, 2026 and 60 days from the date of transmission is Sunday, August 2, 2026. The next business day after 60 days from the date of transmission is Monday, August 3, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)⁴ This decision is issued by or on Monday, August 3, 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 by the WCA, the Report was served on June 2, 2026, and the case was transmitted to the Appeals Board on June 3, 2026. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under Labor Code 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 June 3, 2026.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). 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 the parties did not have notice of the commencement of the 60-day period on June 3, 2026.

II

The burden of proof rests upon the party holding the affirmative of an issue. (Lab. Code, § 5705.) The California Supreme Court has acknowledged that “[t]he burden is on an insured to establish that the occurrence forming the basis of its claim is within the basic scope of insurance coverage.” (*Aydin Corp. v. First State Ins. Co.* (1998) 18 Cal.4th 1183, 1188, citing *Weil v. Federal*

⁴ 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.

Kemper Life Assurance Co. (1994) 7 Cal.4th 125, 148; *Searle v. Allstate Life Ins. Co.* (1985) 38 Cal.3d 425, 437-438.)

However, “once an insured has made this showing, the burden is on the insurer to prove the claim is specifically excluded.” (*Aydin, supra*, 18 Cal.4th at p. 1188, citing *Garvey v. State Farm Fire & Casualty Co.* (1989) 48 Cal. 3d 395, 406; *Searle, supra*, 38 Cal.3d at pp. 437-438; *Clemmer v. Hartford Insurance Co.* (1978) 22 Cal. 3d 865, 880.)

Here, the Petition does not appear to contest the WCA’s finding that “[t]he Declaration Page of the United States Fidelity and Guaranty Insurance policy, issued to The Schaumburg Flyers for the year 2001, indicates in item 3(a) that the policy ‘covers All States’ but that the policy does not cover certain expressly identified states. California is not an expressly-excluded and identified state and thus, California is a covered state.” (Findings #7.) Petitioner argues instead that applicant’s claim is specifically excluded under Part 3(A)(4) of the policy based on a lack of evidence of timely notice, and that the WCA failed to adequately explain his decision. However, under the Supreme Court’s holding in *Aydin, supra*, petitioner carries the burden of proof on this issue. Because petitioner adduced no evidence that it did not receive timely notice of applicant’s claim, it failed to carry its burden to show that applicant’s claim is excluded from the basic scope of insurance coverage.

Furthermore, because petitioner is arguing a coverage exclusion based on lack of timely notice, it must also show actual and substantial prejudice under the notice-prejudice rule. The Supreme Court has also held that the “notice- prejudice rule is a fundamental public policy of California. The rule is based on the rationale that the essential part of the contract is insurance coverage, not the procedure for determining liability, and that ‘the notice requirement serves to protect insurers from prejudice, ...not ... to shield them from their contractual obligations’ through ‘a technical escape-hatch.’” (*Pitzer College v. Indian Harbor Ins. Co.* (2019) 8 Cal.5th 93, 105, citing *Carrington Estate Planning Services v. Reliance Standard Life Ins. Co.* (9th Cir. 2002) 289 F.3d 644, 647.) Prejudice is a question of fact on which the insurer has the burden of proof. (*Pitzer College, supra*, 8 Cal.5th at p. 105, citing *Campbell v. Allstate Ins. Co.* (1963) 60 Cal.2d 303, 306.) The insured’s delay alone does not satisfy the burden of proof. (*Pitzer College, supra*, 8 Cal.5th at p. 105, referencing *Shell Oil Co. v. Winterthur Swiss Ins. Co.* (1993) 12 Cal.App.4th 715, 761.) To establish prejudice, the insurer must show “‘a substantial likelihood that, with timely notice, and notwithstanding a denial of coverage or reservation of rights, it would

have settled the claim for less or taken steps that would have reduced or eliminated the insured's liability.'" (*Pitzer College, supra*, 8 Cal.5th at p. 105, citing *Safeco Ins. Co. of America v. Parks* (2009) 170 Cal.App.4th 992, 1004.) Just as petitioner produced no testimony or other evidence to show that it did not receive notice, it likewise did not adduce any evidence that it was prejudiced by a delay in notice beyond the period of time prescribed in the policy. In fact, petitioner adduced no evidence whatsoever apart from the policy itself. Accordingly, petitioner has failed to meet its burden of proof.

To the extent that the WCA's opinion on decision did not sufficiently explain why the separate notice-based limitation in Part3(A)(4) of the policy did not apply to bar coverage, the Report provided an adequate discussion and cured that defect. (See *City of San Diego v. Workers' Comp. Appeals Bd. (Rutherford)* (1989) 54 Cal.Comp.Cases 57 (writ den.); *Smales v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 1026 (writ den.).)

Although section 5904 indicates that "[t]he petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration," we decline to apply that waiver to previous petitions for reconsideration in this case, because the issue of whether the United States Fidelity and Guarantee Company policy issued to the Schaumburg Flyers provided coverage for out of state injuries was deferred by the October 25, 2022 Decision after Reconsideration, and the WCA's prior decision of January 16, 2025 was rescinded by the April 28, 2025 Decision after Reconsideration.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the decision of the WCA of April 27, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 3, 2026

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

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G. RONALD FEENBERG, 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