

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

NOEL ALVAREZ RAMIREZ, *Applicant*

vs.

JAGUAR FARM LABOR CONTRACTING, INC., CA. FARM MANAGEMENT, INC.;
administered by INTERCARE HOLDINGS INSURANCE SERVICES, *Defendants*

**Adjudication Number: ADJ21030204
Fresno District Office**

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

Defendant seeks reconsideration of the November 12, 2025 Findings and Award (F&A) issued by the workers' compensation judge (WCJ) wherein the WCJ found, in relevant part, that defendant failed to meet their burden of proof in establishing that applicant is a seasonal worker, and that applicant is entitled to temporary disability indemnity benefits from June 17, 2025 and ongoing, at the weekly rate of \$383.58, less credit for amounts previously paid, including payments to the Employment Development Department (EDD), if any, and less reasonable attorney's fees of fifteen (15) percent, to be adjusted by the parties, with jurisdiction reserved.

Defendant contends that based upon the current record including applicant's October 8, 2025 testimony regarding seasonal employment and lack of evidence of off season earnings, applicant is not entitled to temporary disability indemnity benefits off season. (Petition for Reconsideration (Petition), pp. 3-5.)

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the contents of the Petition, the Answer, and the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition, rescind the F&A, and return this matter to the trial level for further development of the record.

FACTS

On June 3, 2025, applicant filed an Application for Adjudication of Claim (Application) alleging that while employed by defendant on May 1, 2025, he sustained injury arising out of and occurring in the course of employment (AOE/COE) to the left thigh, knee(s), hip(s), and foot. Applicant later filed an amended Application on July 23, 2025 adding the additional body part of the back, including back muscles, spine, and spinal cord.

On September 23, 2025, applicant filed a Declaration of Readiness to Proceed to an Expedited Hearing on the issue of entitlement to temporary disability.

Thereafter, the matter proceeded to an Expedited Hearing on October 8, 2025. At the Expedited Hearing, applicant testified that “he always worked a seasonal job[,]” “does not receive any off season earnings[,]” and confirmed that he worked for defendant from April 7, 2025, until his injury on May 1, 2025 and that his off season was from December 15, 2024 through April 6, 2025 for the year prior to the subject injury. (Minutes of Hearing and Summary of Evidence (MOH/SOE), p. 4.) Applicant also testified that he did not receive the letter from defendant dated June 18, 2025 regarding the season ending on June 15, 2025. (*Ibid.*) Neither applicant nor defendant provided testimony regarding what position applicant was hired to work, the intended duration of applicant’s employment, and the basis for the alleged season end date.

Applicant submitted as trial exhibits, the July 1, 2025 report of Irene Sanchez Esparza, M.D., a September 22, 2025 work status report, and a temporary disability notice dated May 22, 2025. Defendant submitted as exhibits, a denial notice dated June 18, 2025, a notice regarding indemnity payment changes dated June 18, 2025, a further denial notice dated August 1, 2025, a letter to applicant’s attorney dated June 17, 2025, and wage statements. Thereafter, the matter stood submitted.

On November 12, 2025, the WCJ issued an F&A wherein he found, in relevant part, that defendant failed to meet their burden of proof in establishing that applicant is a seasonal worker, and that applicant is entitled to temporary disability indemnity benefits from June 17, 2025 and ongoing, at the weekly rate of \$383.58, less credit for amounts previously paid, including payments

to EDD, if any, less reasonable attorney’s fees of 15 percent, to be adjusted by the parties, with jurisdiction reserved.

It is from this F&A that defendant seeks reconsideration.

DISCUSSION

I.

Preliminarily, Labor Code¹ section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within sixty (60) days 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.”

However, pursuant to the case of *Shipley v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], “it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice[.]” (See also *Rea v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 635 fn. 22 [70 Cal.Comp.Cases 312] [“irregularity which deprives reconsideration under the statutory scheme denies due process”].)

In *Shipley*, applicant sought a writ of review of a decision wherein the Appeals Board denied applicant’s petition for reconsideration by operation of law under section 5909. The Court of Appeal granted a writ of review, stating that while the “language [in section 5909] appears mandatory and jurisdictional, the time periods must be based on a presumption that a claimant’s

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

file will be available to the board; *any other result deprives a claimant of due process and the right to a review by the board.*” (*Shiplely, supra*, at pp. 1107-1108, italics added.) The Court of Appeal reversed the Appeals Board and held that the time to act on the petition was tolled during the period the file was misplaced and unavailable to the Appeals Board. (*Id.* at p. 1107.) The Court of Appeal emphasized that “Shiplely’s file was lost or misplaced through no fault of his own and due to circumstances entirely beyond his control.” (*Ibid.*) The Court of Appeal further held that “Shiplely’s right to reconsideration by the board is likewise statutorily provided and *cannot be denied him without due process.* Any other result offends not only elementary due process principles but common sensibilities. Shiplely is entitled to the board’s review of his petition and its decision on its merits.” (*Id.* at p. 1108, italics added.) The Court of Appeal stated that its finding was compelled by the fundamental principle that the Appeals Board “accomplish substantial justice in all cases” (Cal. Const., art. XIV, § 4) and the policies enunciated by section 3202 “to construe the act liberally ‘with the purpose of extending their benefits for the protection of person injured in the course of their employment.’” (*Shiplely, supra*, at p. 1107.) The Court of Appeal properly recognized that in workers’ compensation, deprivation of reconsideration without due process – without full de novo review of the record in the case – “offends” the fundamental right of due process, as well as the Appeals Board’s mandate to “accomplish substantial justice in all cases[.]” (*Id.* at pp. 1107-1108.)

On December 11, 2024, the California Supreme Court granted review in *Mayor v. Workers’ Compensation Appeals Bd.* (2024) 104 Cal.App.5th 713 [2024 Cal.App. LEXIS 531]. One issue granted for review is the same issue present in this case, i.e., whether section 5909 is subject to equitable tolling. The Supreme Court noted the conflict present in the published decisions of the Courts of Appeal, and in its order granting review of *Mayor*, stated as follows:

Pending review, the opinion of the Court of Appeal, which is currently published at 104 Cal.App.5th 1297, may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, to choose between sides of any such conflict. (See *Standing Order Exercising Authority Under California Rules of Court, Rule 8.1115 (e)(3)*, *Upon Grant of Review or Transfer of a Matter with an Underlying Published Court of Appeal Opinion*, Administrative Order 2021-04-21; Cal. Rules of Court, rule 8.1115(e)(3) and corresponding Comment, par. 2.)

(Order Granting Petition for Review, S287261, December 11, 2024.)

Like the Court in *Shipley*, “we are not convinced that the burden of the system’s inadequacies should fall on [a party].” (*Shipley, supra*, at p. 1108.) The touchstone of the workers’ compensation system is our constitutional mandate to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.” (Cal. Const., art. XIV, § 4.) “Substantial justice” is not a euphemism for inadequate justice. Instead, it is an exhortation that the workers’ compensation system must focus on the *substance* of justice, rather than on the arcana or minutiae of its administration. (See Lab. Code, § 4709 [“No informality in any proceeding . . . shall invalidate any order, decision, award, or rule made and filed as specified in this division.”].) When a litigant is deprived of their due process rights based upon the administrative errors of a third party, for which they bear no blame and over whom they have no control, substantial justice cannot be compatible with such a draconian result.

In keeping with the WCAB’s constitutional and statutory mandate, all litigants before the WCAB must be able to rely on precedential authority, and all litigants must have the expectation that they will be treated equitably on issues of procedure and be accorded same or similar access to the WCAB. The Appeals Board has relied on the *Shipley* precedent for over thirty years, by continuing to consider all timely filed petitions for reconsideration on the merits, consistent with due process. Treating all petitions for reconsideration in the same or similar way procedurally promotes judicial stability, consistency, and predictability and safeguards due process for all litigants. We also observe that a decision on the merits of the petition protects every litigant’s right to seek meaningful appellate review after receiving a final decision from the Appeals Board.

As noted above, pursuant to section 5909, all timely petitions for reconsideration filed and received by the Appeals Board are to be “acted upon within 60 days from the date of filing” by either denying or granting the petition. The exception to this is petitions not received by the Appeals Board within 60 days due to irregularities outside the petitioner’s control. (See *Rea, supra*, at p. 635, fn. 22.) Pursuant to *Shipley*, allowing tolling of the 60 day time period allows the Appeals Board to grant or deny such petitions for reconsideration within 60 days of receipt of any such petition, and to thereafter issue a decision on the merits. This allows the Appeals Board to preserve the parties’ ability to seek meaningful appellate review. (Lab. Code, §§ 5901, 5950, 5952.) *Rea* and other California appellate court decisions have consistently followed *Shipley’s* lead when weighing the statutory mandate of 60 days against the parties’ constitutional due process right to a true and complete judicial review by the Appeals Board.

Here, the WCJ issued the F&A on November 12, 2025, and defendant filed a timely petition on November 26, 2025. However, the Appeals Board first received notice of the Petition on February 3, 2026. Due to lack of notice, the Appeals Board failed to act on the petition within 60 days, through no fault of the parties. Thus, taking into consideration defendant's timely filing of their petition and the fact that the Appeals Board's failure to act on said petition was in error, we find that the Appeal Board's time to act on defendant's petition was equitably tolled until 60 days *after* February 3, 2026, taking into consideration WCAB Rule 10600(b)².

II.

Turning now to the merits of the Petition, defendant contends that based upon the current record, including applicant's October 8, 2025 testimony regarding seasonal employment with defendant and lack of evidence of off season earnings, applicant is not entitled to temporary disability indemnity benefits for the off season. (Petition, pp. 3-5.)

Based upon our review of the record, we find insufficient evidence to either support or oppose the WCJ's November 12, 2025 F&A. Although applicant testified that he "always worked a seasonal job" and received no off season earnings (Minutes of Hearing and Summary of Evidence (MOH/SOE), p. 4.), neither applicant nor the employer provided testimony regarding why applicant was hired (i.e. applicant's intended position), the duration of time for which applicant was to work for defendant, and whether applicant could have continued work beyond the season's end but for the subject injury. Lastly, although defendant alleges that a letter dated June 18, 2025 was sent to applicant regarding the season ending on June 15, 2025, applicant alleges that said letter was not received and no further evidence was provided confirming the season's end and the basis for said ending. Considering the foregoing, further development of the record is necessary.

It is well known the Appeals Board has the discretionary authority to develop the record when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906). As explained in *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924], "The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with

²WCAB 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.

workers' compensation claims." Full development of the evidentiary record also ensures that the decision is based upon substantial evidence. Sections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141-143 (Appeals Bd. en banc).)

Given that the current record is lacking and further development of the record is necessary, we do not believe the F&A, as it currently stands, is based upon substantial evidence. As explained in *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "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 pp. 473, 475.) 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." (*Id.* at p. 475.) This "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].)

Accordingly, we grant the Petition, rescind the F&A, and return this matter to the trial level for further development of the record.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the November 12, 2025 Findings and Award, is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the November 12, 2025 Findings and Award is **RESCINDED**, and that this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 22, 2026

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

**NOEL ALVAREZ RAMIREZ
GROSSMAN LAW OFFICES
LAW OFFICES OF JANE WOODCOCK**

RL/cs

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