WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

VICTOR BONNEVIE, *Applicant*

vs.

MEDICAL OXYGEN AND SUPPLIES, INC.;
TECHNOLOGY INSURANCE COMPANY, INC. administered by AMTRUST NORTH AMERICA, *Defendants*

Adjudication Number: ADJ20910758
Pomona District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seek reconsideration of the Findings and Order (F&O) issued on March 26, 2026. The workers' compensation administrative law judge (WCJ) found that applicant was not employed by defendant during the period of April 20, 2024 to April 20, 2025. She also ordered that applicant's attorney's oral motion to have the Court change the date of employment to conform with witness testimony is denied.

Applicant contends that the WCJ erred in not finding employment with defendant and that the WCJ should have allowed applicant to amend his pleadings to conform with the testimony provided at trial.

Defendant did not file a response. The WCJ issued a Report and Recommendation (Report) recommending denial of the Petition.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ. Based on our review of the record, and for the reasons stated below, we will grant the Petition for Reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings consistent with this opinion. This is not a final decision on the merits of any issues raised in the Petition, and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

FACTS

Applicant filed an Application for Adjudication of Claim (Application) on May 8, 2025, alleging cumulative injury while working for defendant to his head, neck, back, legs, knees, and other body systems during the period of April 20, 2024 through April 20, 2025.

Defendants filed a Declaration of Readiness to Proceed on November 19, 2025 requesting a priority conference. Defendant contended,

> WCAB assistance is requested for the issue of employment. Good faith efforts include defendant's request the applicant attorney provide proof of employment on June 25, 2025, June 27, 2025, and November 12, 2025. No evidence or information has been provided. The employer maintains the applicant was not employed during the alleged CT period.

On January 14, 2026, the priority conference went forward, and the parties agreed to continue the matter to trial.

Trial went forward on March 11, 2026. In the Minutes of Hearing and Summary of Evidence (MOH/SOE) the issues were framed as follows:

> 1. Employment.
> 2. Per applicant's counsel: 5813 bad faith action and tactics as applicant was employed by Medical Oxygen and Supplies, Inc., and defendants refuse to deny that applicant had worked for Medical Oxygen and Supplies, Inc.
>
> Defendant's own witness John O'Brien will testify applicant did work for Medical Oxygen and Supplies, Inc., which defense counsel refuse to admit nor deny (sic).
> 3. Per Defendant: Defendant is only agreeable for trial to be on employment.
>
> LET THE MINUTES REFLECT that the parties agree that the sole issue is whether applicant worked for Medical Oxygen and Supplies, Inc., from April 20, 2024, to April 20, 2025.

(MOH/SOE, 2:10-19.)

Applicant provided text messages through the "Indeed" platform. (Applicant's Exhibit 1.) The messages show that an application was submitted for a Delivery Medical Equipment Technician position with Medical Oxygen and Supplies on March 17, 2025. (*Id.* at p. 1.) On or around April 15, a person called "Jason O" inquired about applicant's interest and offered an interview later that week. (*Id*. at p. 4.) On April 21, Jason states, "You still want the job?" to which applicant responds, "Yes sir!" (*Id.* at p. 7.)

Applicant was the only witness to testify. Applicant testified that he contacted Jason O'Brien through the Indeed platform and eventually met with him at the Brea office of Medical Oxygen and Supplies. (MOH/SOE, 3:13-20.) He was offered a job making deliveries and working at the warehouse. He did not testify as to the date of the offer. (*Id.* at p. 3:21-22.) He could not recall the first date of work and only estimated it was in "April." (*Id.* at p. 3:23.) He was given a shirt with the name of the company on it, but the shirt was returned. (*Id.* at p. 4:1.) He drove a van provided by defendant to make deliveries. (*Id.* at p. 4:2-4.)

When he started, he filled out a job application with a woman named Tawnie. (*Id.* at p. 6:6.) He stopped working there when he injured his back and could not recall his last date of work. (*Id.* at p. 6:7-8.) He never received a paycheck. (*Id.* at p. 4:10.) At some point he told Jason that he was offered another job, to which Jason became very angry and told him to leave. (*Id.* at p. 4:10.)

On cross examination, applicant confirmed that an application for the job was completed on March 17, 2025 through the Indeed platform. (*Id.* at p. 4:13-16.) Defense counsel confirmed the dates as outlined in Applicant's Exhibit 1. He confirmed that the job offer was likely around April 21, 2025. (*Id.* at p. 5:4-5.) He confirmed that he did not work for defendant prior to April 21, 2025 and only worked for a couple of weeks thereafter. (*Id.* at p. 5:6-7.)

The Court confirmed a few more details from applicant and reiterated that he did not work prior to April 21, 2025. (*Id.* at p. 5:16-17.) He described the office of the defendant, a co-worker, and Tawnie. He confirmed that deliveries were from the Valley to Palm Desert, Apple Valley, and Victorville. (*Id.* at p. 5:16-21.)

Following conclusion of testimony, applicant's counsel made an oral motion to have the Court conform the dates of the cumulative trauma to applicant's testimony regarding periods of employment. The motion was denied. (*Id.* at p. 6:1-3.)

The WCJ issued an F&O on March 26, 2026 finding that applicant was not employed by defendant during the period of April 24, 2024 to April 20, 2025. The WCJ opined that applicant's own admissions confirmed that at the very earliest employment could not have begun until April 21, 2025. She also opined that it would be a violation of defendant's due process right to allow oral amending of the application to conform with testimony after the parties had rested their cases, but prior to submission. She states, "Amending the Application for employment to 'conform' to the testimony at or following trial is not comparable to conforming pleadings in accordance with substantial medical evidence when a matter is *at issue*."

On March 30, 2026, applicant amended the Application to change the date of injury to May 5, 2024 through May 5, 2026.

On April 13, 2026, defendant filed an "Objection to Amended Application" (Objection). In the Objection defendant argues that by filing the amended Application, applicant seeks to "supplant the Final Decision made on the issue of employment" (Objection, 2:9.) and argues that applicant's only recourse is to file a petition for reconsideration.

On April 20, 2026, applicant filed a Petition for Reconsideration.

DISCUSSION

I.

Former Labor Code section 5909[1] 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."

Here, according to Events, the case was transmitted to the Appeals Board on May 1, 2026, and 60 days from the date of transmission is Tuesday, June 30, 2026. This decision is issued by or on June 30, 2026, so that we have timely acted on the petition as required by section 5909(a).

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on May 1, 2026, and the case was

[1] Unless otherwise stated, all further statutory reference is to the Labor Code.

transmitted to the Appeals Board on May 1, 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 May 1, 2026.

II.

We first address the WCJ's apparent misconception that she lacked the authority to correct the error as to the claimed dates of employment without defendant's consent. This is simply incorrect. The WCJ stated that:

> In this case, the stipulation and statement of issues strictly concerned employment and date of employment during the alleged injurious exposure period. There were no other agreements by the parties to alter or amend the period of employment. If the parties had agreed (counsel for Defendant on behalf of his client and counsel for Applicant), after waiving due process rights, and admitting coverage by the same insured, then perhaps Petitioner would have a valid argument. However, in this case, there was no such agreement regarding period of employment with the same employer, coverage by the same carrier, and administration by the same administrator.

(Report, p. 5.)

It is well-settled that under the Labor Code, the WCJ is empowered with full authority to try all issues arising under Division 4. (See Lab. Code, § 5300.) If the WCJ is unable to amend the pleadings under WCAB 10517 (Cal. Code Regs., tit. 8, § 10517) due to a lack of proof, the proper procedure is not to find against a party and issue a meaningless finding. The proper procedure is to develop the record.

"[I]n order to ensure reliance on substantial evidence, and a complete adjudication of the issues consistent with due process," the WCJ and the Appeals Board both have a duty to further develop the record where there is an absence of, or insufficient evidence to determine the issues raised for trial. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal. App.4th 389, 393-395 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see Lab. Code, §§ 5701 and 5906; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 139 (Appeals Board en banc).) Indeed, the Appeals Board has a constitutional mandate to "ensure substantial justice in all cases," and is therefore "clearly permitted" to admit evidence even after the discovery cut-off

under section 5502(d)(3). (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-405 [65 Cal.Comp.Cases 264].) "[A]llowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims" and militates in favor of our presuming the continued vitality of sections 5701 and 5906, absent a clear legislative intention to the contrary. (*Tyler*, *supra*, 56 Cal.App.4th at p. 394.) An adequately developed record affords all parties due process of law and further provides for meaningful review by the Appeals Board of a WCJ's decision. (*Evans v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]; *Hernandez v. Staff Leasing* (2011) [76 Cal.Comp.Cases 343, 346-347] (Appeals Board significant panel decision).)

Here, once the WCJ realized that the alleged dates of employment were not correct, the next step was for the WCJ to inquire as to the likely dates and order further discovery as appropriate.

Section 5708 states that:

> All hearings and investigations before the appeals board or a workers' compensation judge are governed by this division and by the rules of practice and procedures adopted by the appeals board. In the conduct thereof they shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division. All oral testimony, objections, and rulings shall be taken down in shorthand by a competent phonographic reporter.

(Lab. Code, § 5708)

Section 5709 states that:

> No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division. No order, decision, award, or rule shall be invalidated because of the admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure.

(Lab. Code § 5709)

The workers' compensation system "was intended to afford a simple and nontechnical path to relief." (*Elkins v. Derby* (1974) 12 Cal.3d 410, 419 [39 Cal.Comp.Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) Generally, "the informality of pleadings in workers' compensation proceedings before the Board has been recognized." (*Zurich Ins. Co. v. Workmen's Comp. Appeals*

Bd. (1973) 9 Cal.3d 848, 852 [38 Cal.Comp.Cases 500, 512]; *Bland v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 324, 328–334 [35 Cal.Comp.Cases 513].) "[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits." (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal. App.4th 485, 490 [67 Cal.Comp.Cases 1273].) Courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200–01 [50 Cal.Comp.Cases 160]; *Liberty Mutual Ins. Co. v. Workers' Comp. Appeals Bd.* (1980) 109 Cal.App.3d 148, 152–153 [45 Cal.Comp.Cases 866].) "Necessarily, failure to comply with the rules as to details is not jurisdictional." (*Rubio*, *supra*, at pp. 200–201; see Cal. Code Regs., tit. 8, § 10517.)

As we stated in the en banc decision *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830, 836 (Appeals Board en banc) in workers' compensation proceedings: (1) *pleadings may be informal* (Citations omitted); (2) *claims should be adjudicated based on substance rather than form* (Citations omitted); (3) *pleadings should liberally construed so as not to defeat or undermine an injured employee's right to make a claim;* (Citations omitted); and (4) *technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction* (Citations omitted). (*Id*. at p. 839.)

In this matter, applicant attempted to amend the date of injury to conform to the testimony provided by applicant which, as all parties seem to agree, directly refuted a period of employment prior to April 20, 2025 as initially plead. It is not clear from the record whether defendant objected to the motion, but the WCJ denied the request. We agree that the request was made at a late point in litigation after both parties had effectively rested and the exhibits had been agreed to and discussed. However, the motion should have been granted and the matter deferred for further discovery and a hearing on the merits.

There is no evidence that defendant was unaware of Applicant's Exhibit 1 which shows that applicant likely was employed after April 21, 2025.[2] Thus, defendant was at least on notice that there was some likelihood that the originally plead dates were in error. While applicant could also have opted to file a new application for the correct dates of employment, that does not serve

[2] The parties also alleged in the issues that "Defendant's own witness John O'Brien will testify that applicant did work for Medical Oxygen and Supplies, inc. which defense counsel refuse to admit or deny." This remark is a bit confusing and appears to be carried over as an allegation from the PTCS. In applicant's testimony, he referred to a Jason O'Brien, and it may well be that Jason and John are one and the same. Mr. O'Brien did not appear and did not testify.

judicial economy. Indeed, one of the very purposes of WCAB Rule 10517 is to allow the WCJ to amend the pleadings as appropriate to more efficiently conduct proceedings and to obviate the need for duplicative pleadings. When the parties are already present at trial, it appears that the goal of judicial economy would be better served if the WCJ takes the opportunity to ascertain what the issues are, including the correct dates of employment and the correct employer. If the existing evidentiary record is not sufficient and the parties are unable to agree, the WCJ can then direct the parties to engage in additional discovery at that time without the need for the parties to file additional pleadings and without the need for the WCJ to issue an order that is essentially meaningless.

It is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149]; see also *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478 ("when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.") This is particularly true in workers' compensation cases, where there is a constitutional mandate "to accomplish substantial justice in all cases." (Cal. Const., art. XIV, § 4.) 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 Supreme Court of California 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.) A fair hearing includes, but is not limited to, the opportunity to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

We agree that due process requires that the matter be returned for development of the record on the newly alleged dates of employment and injury as this is a substantive change that could affect prior stipulations and defenses. Nonetheless, we remind defendant that although an injured worker must show that they rendered service to the employer on the date of injury, it is the employer's burden to prove that an injured worker was not its employee under the presumption in section 3357. Here, it may better serve judicial economy if defendant is prepared to submit the

relevant evidence within its control to either confirm employment or rebut employment before further proceedings take place rather than continuing to rely on a lack of evidence as a litigation strategy.

Accordingly, we grant the Petition for Reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings & Order of March 26, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings & Order of March 26, 2026 is **RESCINDED** and that the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 30, 2026

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

VICTOR BONNEVIE
LAW OFFICES JAMES YANG
SHEFFIELD & RICHARDS, LLP

TF/md

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