

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

WYMAN OSBORN, *Applicant*

vs.

**OSBORN CONCRETE CONSTRUCTION INC.; STATE COMPENSATION
INSURANCE FUND; SUBSEQUENT INJURIES BENEFITS TRUST FUND *Defendants***

**Adjudication Numbers: ADJ18236958
Lodi District Office**

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

Applicant's attorney filed a Petition for Reconsideration on December 15, 2025, in response to the Award (Award) dated November 25, 2025, and issued on December 1, 2025, pursuant to the Stipulations with Request for Award (Stipulations) between applicant and the Subsequent Injuries Benefits Trust Fund (SIBTF). In the Award, the WCJ awarded a 15% attorney's fee instead of the 25% agreed to in the Stipulations. Applicant's attorney filed a second Petition for Reconsideration on December 30, 2025, in response to the "Amended Order After Filing of Petition for Reconsideration" (Amended Order Rescinding) dated December 15, 2025, and issued on December 19, 2025, wherein the workers' compensation administrative law judge (WCJ) rescinded the Award. Both Petitions assert in relevant part that an attorney's fee of 25% is standard in SIBTF cases, that applicant's agreement to a 25% fee must be considered, and that the original Award of SIBTF should be reinstated.

We did not receive an Answer from any party.

The WCJ's Report and Recommendation (Report) recommends reconsideration be denied and that "the matter be returned to the trial level to address the reasonableness of the requested attorney fee as is correct after the Order Rescinding and Amended Order Rescinding."

After our review of the record and for the reasons discussed below, we will grant the December 15, 2025 and the December 30, 2025 Petitions for Reconsideration, vacate the Order

Rescinding and the Amended Order Rescinding, and affirm the Award, except that we defer the issues of attorney’s fees and SIBTF benefit payment and return the matter to the WCJ for further proceedings consistent with this decision.

I.

Former Labor Code section 5909¹ 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. (Former 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.

(Lab. Code, § 5909.)

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 January 5, 2026, and 60 days from the date of transmission is Friday, March 6, 2026. This decision issued by or on March 6, 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

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

According to the proof of service, the Report was served on January 5, 2026, and the case was transmitted to the Appeals Board on January 5, 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 January 5, 2026.

II.

No exhibits have been identified nor testimony taken on the issues disputed herein. The following summary of filed documents relevant to reconsideration is provided in an effort to assist in understanding our decision.

An Application for Adjudication of claim was filed September 19, 2023, together with a Fee Disclosure Statement (Fee Disclosure) and separate Attorney-Client Engagement – Workers’ Compensation Only (Engagement).

On July 16, 2024, a Compromise and Release (C&R) was filed for applicant’s underlying claim against defendant Osborne Concrete Construction, Inc., insured by State Compensation Insurance Fund (SCIF), for a cumulative injury through July 3, 2024, settling the claim for \$200,000.00 less \$30,000.00 (15%) attorney’s fees. The Order Approving Compromise and Release (OACR) issued that same day.

On July 26, 2024, applicant filed a SIBTF Application.

On November 24, 2025, Stipulations between applicant and the SIBTF were filed for the cumulative injury through July 3, 2024. The addendum to the Stipulations includes: “Applicant’s subsequent industrial injury (SII) in claim ADJ18236958 caused 93 percent permanent disability.” And, further, “[t]he degree of disability caused by the combination of all disabilities (i.e., the disability resulting from Applicant’s SII and the preexisting permanent disability [PD]) equals 100 percent.” Finally, addendum Item 11 states: “Applicant stipulates that Applicant’s attorney requests a fee of 25%, payable in accordance with Labor Code section 5100.5.”

On November 25, 2025, the WCJ signed the Award, which provided for a 15% attorney fee. The accompanying Minutes note “Stipulations resolving SIBTF approved; [attorney fee] of 15% is allowed; no justification for a higher [attorney fee].”

The next day, November 26, 2025, the WCJ signed an “Order After Filing of Petition for Reconsideration,” (Order Rescinding) that states as relevant here that “defendant having sent an unsolicited email that will be treated as a Petition for Reconsideration on 26 November 2025,”² and rescinds the Award. The Order Rescinding notes that further proceedings will be in person. Service was designated to applicant’s attorney, and applicant’s attorney was served as the designated server on December 15, 2025. Applicant’s attorney served the Order Rescinding on December 19, 2025.

On December 3, 2025, the WCJ issued a Notice of Intent (NOI) to Impose Sanctions and Notice of Hearing which provides: “NOTICE IS HEREBY GIVEN, absent a showing of good cause, that sanctions will be imposed against Brant Bruner and Nyman Turkish pursuant to Labor Code, Section 5813 and Title 8, California Code of Regulations, Section 10421 for unsolicited emails to the undersigned and for disrespecting the court.”

On December 15, 2025, applicant attorney filed a December 8, 2025 letter from applicant’s counsel to applicant; “Applicant’s Attorneys Objection to Notice of Intent to Impose Sanctions & Notice of Hearing”;³ and the Petition for Reconsideration dated December 12, 2025 of the Award, specifically challenging the 15% attorney fee and seeking a 25% fee.

Thereafter, on December 15, 2025, the WCJ signed the Amended Order Rescinding which was identical to the Order Rescinding except that it adds: “*and has filed a Petition for Reconsideration on 15 December 2025,*” (Emphasis added.)” Service was designated to applicant’s attorney, and applicant’s attorney was served as the designated server on December 15, 2025. Applicant’s attorney served the Amended Order Rescinding on December 19, 2025.

² We note that although the WCJ uploaded the alleged email correspondence in EAMS, it is not in evidence.

³ The record contains correspondence from applicant’s attorney dated December 8, 2025, to which is attached an email that is not in evidence. A client, here applicant, “has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between client and lawyer.” (Cal. Evid. Code, § 954.) It is unclear from the record if applicant’s counsel obtained applicant’s consent to disclose what appears to be one or more confidential communications. If these documents are deemed relevant in further proceedings, before admitting them into evidence, it may be necessary to ascertain if the communications therein were confidential, and, if so, if disclosure was authorized, is now authorized, or if confidentiality has been waived.

On December 30, 2025, applicant filed another Petition for Reconsideration in response to the Order Rescinding and the Amended Order Rescinding, seeking reconsideration of the Amended Order Rescinding and requesting that the Award be reinstated.

III.

1.

The Award based on the parties' Stipulations issued on December 1, 2025, and determined SIBTF liability, however attorney's fees were set at 15%, not 25% as requested by applicant's attorney.

We will begin with the Order Rescinding and the Amended Order Rescinding.

As a result of communications from applicant's attorney, which were considered by the WCJ to be a request for reconsideration, the WCJ rescinded the Award by order dated November 26, 2025. Applicant's attorney was designated to serve the Order Rescinding, but it was not served on applicant's attorney until December 15, 2025, and applicant's attorney served it on December 19, 2025. Thus, the effective date would have been December 19, 2025. Again, applicant's attorney was designated to serve the Amended Order Rescinding, but it was not served on applicant's attorney until December 15, 2025, and applicant's attorney served it on December 19, 2025. Thus, the effective date would have been December 19, 2025.

It appears the basis for the Order Rescinding and the Amended Order Rescinding is found in applicant's attorney's lengthy and apparently unsolicited email to the WCJ requesting a 25 percent attorney fee. Applicant timely filed a Petition for Reconsideration on December 15, 2025, seeking reconsideration of the Award. Thereafter, the WCJ referenced this Petition in the Amended Order Rescinding issued on December 19, 2025. (See Cal. Code Regs., tit. 8, § 10961.) Nonetheless, when she issued that order, she left all of the language in place from the Order Rescinding and added the phrase "*and has filed a Petition for Reconsideration on 15 December 2025.*" Applicant's attorney then filed the December 30, 2025 Petition for Reconsideration in response. For the reasons explained below, we will vacate the Order Rescinding and the Amended Order Rescinding.

WCAB Rule 10803(a) states that:

(a) The Workers' Compensation Appeals Board's adjudication file shall consist of:

(1) All documents filed by any party, attorney or other agent of record, and as provided in rule 10205.4; and

(2) The record of proceedings, which consists of: the pleadings, minutes of hearing, summaries of evidence, certified transcripts, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. ***Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.***

(Cal. Code Regs., tit. 8, § 10803(a), emphasis added.)

Pursuant to WCAB Rule 10803(a), while the email correspondence is part of the adjudication file under (a)(1), it is not a pleading and it is not in evidence, so that it is not part of the record of proceedings under (a)(2), and there was no basis to reference it in the orders and no basis to treat it as a petition for reconsideration. Therefore, by virtue of that language, the Order Rescinding and the Amended Order Rescinding were void ab initio, and we will vacate them.

2.

Section 5702 states that:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

“A stipulation is ‘An agreement between opposing counsel ... ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,’ (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves ‘to obviate need for proof or to narrow range of litigable issues’ (Black’s Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding.” (*County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1118 [65 Cal.Comp.Cases 1].) Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*Weatherall, supra*, at 1121.)

We first observe that it may have been appropriate before issuing the Award for the WCJ to have issued a notice of intent (Cal. Code Regs., tit. 8, § 10832) or an order suspending action (Cal. Code Regs., tit. 8, § 10700(b)) regarding attorney’s fees. Instead, the Stipulations were

approved, and the Award issued with the altered attorney's fee before applicant's attorney had notice of the change and without the WCJ setting the matter for hearing as required by section 5702. Then, rather than amending the Award to defer the amount of the attorney's fees, the WCJ rescinded the entire Award despite no issue having been raised as to any other provisions of the Stipulations, including by the WCJ.

Before rescission of the Award, the Stipulations settled the critical threshold issue of SIBTF liability. In rescinding the entire award, the WCJ also negated the threshold issue of SIBTF liability despite the parties' intent in the Stipulations. We note that here, SIBTF liability pursuant to the Stipulations was not challenged either expressly nor implicitly by any party or the WCJ, and the Stipulations as to liability were approved by the WCJ through issuance of the Award.

As we are vacating the Order Rescinding and the Amended Order Rescinding, the Award pursuant to the Stipulations remains in place by operation of law. As there is no dispute as to SIBTF liability, we will affirm the Award, except that we will defer the issues of payment by SIBTF and attorney's fees. We take this action because stipulations further the public policies of settling disputes and expediting trials and a stipulation of the parties may not be set aside by the Appeals Board absent a finding of good cause. (Lab. Code, § 5702; *Weatherall, supra*, 77 Cal. App. 4th at p. 1119.)

3.

However, the WCJ raised concerns about the amount of the attorney's fees, and the Petitions for Reconsideration raised the issue of the amount of the attorney's fees.

Although parties' stipulations should be allowed where possible, as provided for in *Weatherall, supra*, that approach is not applicable to attorney's fees in a workers' compensation proceeding. This is because it is not the parties' stipulation but rather sections 4903 and 4906 that give the WCAB jurisdiction to set the legal fees of attorneys appearing before it. (See also Cal. Code Reg., title 8, §§ 10840-10844.) Attorney's fees generally present as a lien against compensation. (Section 4903(a).)

"The Legislature has thus spoken clearly and decisively that attorney fees in workers' compensation cases cannot exceed an amount that is 'reasonable' and that the WCAB shall be the final arbiter of reasonableness in all cases." (*Vierra v. Workers' Comp. Appeals Board* (2007) 154 Cal.App.4th 1142, 1148, [72 Cal.Comp.Cases 1128].) "Once services are rendered, the WCJ may approve, increase or reduce the fees provided for in the agreement, taking into consideration the

factors listed in section 4906, subdivision (d), the WCAB guidelines and the Manual.” (*Id.* at p. 1150.)

An attorney may not contract for fees exceeding those allowed by the WCAB. (*Bentley v. IAC (Martin)* (1946) 75 Cal.App.2d 547, 549, [11 Cal.Comp.Cases 204].) The attorney must, however, be given an opportunity to be heard on the issue of reasonableness. (*Schilling v AIC* (1920) 47 Cal.App. 190, 192, [7 I.A.C. 55].)

All parties in workers’ compensation proceedings retain their 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 includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and offer evidence in rebuttal. (*Ibid.*)

Here, to afford applicant’s attorney due process, we must give the parties an opportunity to be heard and the WCJ must create a record on the issue of attorney’s fees. Accordingly, as stated above, we will amend the Award to defer the issue of attorney’s fees.

In addition, because SIBTF is barred from commuting payment of attorney fees pursuant to section 5100.5, SIBTF payment must, of course, be deferred pending resolution of the attorney fee amount.

Although we agree applicant’s attorney is entitled to an opportunity to present evidence on the issue of reasonable attorney fees, we also encourage the presentation of concise, clear, argument and evidence in any further proceedings. We know of no authority that shifts the burden to establish a reasonable attorney’s fee from an applicant’s attorney to the WCAB or to any of the parties. (Lab. Code, §§ 5705, 3202.5.) We further note that an attorney’s fee inquiry is specific to each individual case, each case may result in a different fee, and there is no broad consensus when setting fees that is binding on the trier of fact that results in a specific outcome.

IV.

Following our independent review of the record, and for the reasons stated above, we grant applicant’s December 30, 2025 Petition for Reconsideration and December 15, 2025 Petition for Reconsideration, we vacate the Order Rescinding and the Amended Order Rescinding, and affirm the Award, except that we amend it to defer the issue of attorney’s fees and payment by the SIBTF

until the amount of the attorney fees is set. We express no opinion on the ultimate resolution of any remaining issues.

For the foregoing reasons,

IT IS ORDERED that applicant's December 30, 2025 Petition for Reconsideration and applicant's December 15, 2025 Petition for Reconsideration are **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 19, 2025 Order After Filing of Petition for Reconsideration (Order Rescinding) and the December 19, 2025 Amended Order After Filing of Petition for Reconsideration (Amended Order Rescinding) are **VACATED**.

IT IS FURTHER ORDERED that the Award dated November 25, 2025, issued on December 1, 2025 is **AFFIRMED** except that it is **AMENDED** as follows:

AWARD

AWARD is made in favor of Wyman Osborn against SUBSEQUENT INJURIES BENEFITS TRUST FUND FOR THE STATE OF CALIFORNIA pursuant to the Stipulations with Request for Award SIBTF Case Only OF:

(A) Permanent disability and life pension indemnity in accordance with paragraph 6 of the Addendum, except that the issue of the amount of payment pursuant to paragraph 6 where it is affected by the amount of the attorney's fees and issue of the percentage of attorney's fees pursuant to paragraph 11 are deferred. Fees are not to be commuted pursuant to Labor Code 5100.5.

(C) Less credits as provided in paragraphs 5 through 10 of Addendum. Any issues as to the amounts of the credits with respect to Award (A) are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 6, 2026

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

**WYMAN OSBORN
NYMAN TURKISH
OD LEGAL
SUBSEQUENT INJURIES BENEFITS TRUST FUND**

PS/oo

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