

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

BRENDA RODRIGUEZ, *Applicant*

vs.

ULTRA PERSONNEL, LLC, *Defendant*

**Adjudication Number: ADJ16431629
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the “Order Imposing Sanctions for Misrepresentation on November 13, 2023” (“Order Imposing Sanctions”) issued by the WCJ on December 5, 2023, wherein the WCJ ordered sanctions of \$2,500.00 payable by attorney Susan Garrett.

The EAMS file only contains the first page of the petition for reconsideration. We have been unable to review the arguments raised in the petition. However, in light of the petition, we have reviewed the entire record as pertains to the order of sanctions.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration as contained on the first page, and the contents of the WCJ’s Report. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration we will rescind the WCJ’s December 5, 2023 Order Imposing Sanctions and return to the matter to the trial level for further proceedings consistent with this decision.

FACTS

On July 8, 2022, Susan Garrett filed an application for adjudication alleging that applicant sustained a cumulative injury to the head, hand, fingers, back, right shoulder, and in the form of stress. (Application for Adjudication, ADJ16431629, July 8, 2022.) On August 2, 2022, applicant filed a claim for benefits pursuant to Labor Code, section 132a.

On September 12, 2023, defendant filed a “Petition to Dismiss Case and 132a Claim; 8 CCR 10550.” Defendant alleged that applicant was not prosecuting her claims, had not activated the matter for hearing, and that both applicant and her attorney failed to attend a scheduled deposition. (Petition to Dismiss Case and 132a Claim; 8 CCR 10550, September 12, 2023, p. 2.)

The matter proceeded to a hearing on September 14, 2023, which was set upon applicant’s Declaration of Readiness to Proceed (“DOR”). The hearing was taken off calendar with the following notation in the minutes:

PARTIES APPEARED AND DEFENDANT (HEATHER ANTONIE) INDICATED AN EMAIL FROM LANCE GARRETT WAS RECEIVED, INDICATING AN EMERGENCY EXISTS AND AA REQUESTS A CONTINUANCE. MATTER IS TAKEN OFF CALENDAR AS DOR WAS FILED BY AA, AND A NEW DOR CAN BE FILED WHEN APPROPRIATE.

(Minutes of Hearing, September 14, 2023.)

On September 19, 2023, the WCJ issued a “Notice of Intention to Impose Sanctions for Failure to Appear on 9/14/2023.” The WCJ noticed an intent to sanction Susan Garrett \$2,500.00.

On October 5, 2023, Susan Garrett filed an objection and response to the notice of intent. Susan Garrett explained that a hearing representative, Lance Garrett, was sick on the day of the hearing. (Response to Notice of Intent to Sanction, October 5, 2023.) Susan Garrett did not explain why she was unable to attend. (See generally, *id.*)

The matter was reset for hearing on November 13, 2023. (Minutes of Hearing, November 13, 2023.) The WCJ set the matter over for trial on the issue of sanctions. (*Ibid.*) The WCJ deferred defendant’s petition to dismiss. (*Ibid.*) The minutes of hearing stated as follows:

TRIAL RELATED TO SANCTIONS (\$250.00 AND \$2,500.00). MATTER IS SET ON LIMITED ISSUE OF SANCTIONS. DEFENDANT (BERNAL ROBBINS) SEEKS DISMISSAL, MR. GARRETT OPPOSES DISMISSAL. ISSUE(S) RELATED TO PETITION FOR DISMISSAL IS/ARE DEFERRED. EXHIBITS ARE TO BE FILED AT LEAST 20 DAYS BEFORE TRIAL. AA,

APPLICANT, AND HEARING REP. LANCE GARRETT WERE ORDERED TO APPEAR IN PERSON. HEARING REP OBJECTED TO HAVING APPLICANT APPEAR IN PERSON. HEARING REP ASSERTS HE AND SUSAN GARRETT HAVE BEEN GRANTED PROVISIONAL ADA ACCOMODATIONS THAT ALLOW BOTH TO APPEAR VIRTUALLY. IN LIGHT OF ADA ACCOMODATION, COURT SET TRIAL FOR VIRTUAL APPEARANCE.

(Ibid.)

Trial was set for January 18, 2024. *(Ibid.)*

On November 15, 2023, the WCJ issued a “Notice of Intention to Impose Sanctions for Misrepresentation on November 13, 2023,” which stated:

IN THE INSTANT CASE, Applicant Attorney SUSAN GARRETT/GARRETT LAW GROUP, PC, permitted Hearing Representative Lance Garrett to appear for a Mandatory Settlement Conference on November 13, 2023. On the date of hearing, Hearing Representative Lance Garrett represented to the court that the pending January 18, 2024 Trial date should be virtual in format, as both he and Susan Garrett have provisional ADA accommodations, permitting them both to appear virtually, as opposed to in person. After Hearing Representative Lance Garrett made this representation, it was discovered by the undersigned Judge that Hearing Representative Lance Garrett and Attorney Susan Garrett do not have the ADA accommodation claimed by Hearing Representative Lance Garrett.

NOTICE IS HEREBY GIVEN that the undersigned Judge shall impose sanctions in an amount totaling \$2,500.00, on SUSAN GARRETT (State Bar #195580)/GARRETT LAW GROUP, PC/LANCE GARRETT, absent an objection to this NOTICE OF INTENT, accompanied by a sworn statement, filed with ten (10) days of service of this Notice of Intent, articulating good cause why sanctions should not be imposed.

(“Notice of Intention to Impose Sanctions for Misrepresentation on November 13, 2023”, November 15, 2023.) No objection was filed in response to this second notice of intent.

On December 5, 2023, the WCJ issued an order imposing sanctions, which stated: “SUSAN GARRETT (State Bar #195580), is ORDERED to pay sanctions in the amount of two thousand five hundred dollars (\$2,500.00) to the General Fund.” (Order Imposing Sanctions for Misrepresentation on November 13, 2023, December 5, 2023.)

On January 2, 2024, Susan Garrett filed a petition for reconsideration of the order of sanctions.

DISCUSSION

Labor Code section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” The WCJ’s opinion on decision “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.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), 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.)

We make no judgment as to the merits of sanctions at this time as the record in EAMS is scant and the petition for reconsideration filed by applicant is not complete. Thus, it is not possible for us to review the matter on the merits.

However, and although it appears that neither Lance Garrett nor Susan Garrett objected to the notice of intent to impose sanctions, given the seriousness of the alleged conduct, it would appear that a more prudent course would be to set the issue of sanctions for a hearing so that both Lance Garrett and Susan Garrett may testify as to their conduct. Lance Garrett should be provided an opportunity to present evidence establishing a provisional ADA accommodation existed when he made such representation to the court. After a record is created, the WCJ may readdress the issue of whether sanctions are appropriate, and if so, what the appropriate amount of sanctions may be.

Accordingly, as our Decision After Reconsideration we will rescind the Order Imposing Sanctions issued on December 5, 2023, and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Imposing Sanctions issued on December 5, 2023, is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 7, 2024

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

**BRENDA RODRIGUEZ
GARRETT LAW GROUP
BERNAL & ROBBINS
MICHAEL SULLIVAN & ASSOCIATES**

EDL/mc

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