

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

**LONNIE KNAPP, *Applicant***

**vs.**

**PALM SPRINGS UNIFIED SCHOOL DISTRICT,  
permissibly self-insured; administered by  
KEENAN & ASSOCIATES, *Defendant***

**Adjudication Number: ADJ10892594  
Anaheim District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION AND  
NOTICE OF INTENTION  
TO IMPOSE SANCTIONS**

Applicant seeks reconsideration of the August 19, 2024 Findings and Order wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a teacher on January 25, 2017, sustained industrial injury to his left ear in the form of hearing loss, that settled by way of Stipulation with Request for Award on March 4, 2021 for 51% permanent disability. The WCJ further found that applicant filed a timely Petition for New and Further Disability; that applicant did not sustain industrially related new and further disability; and that there is no good cause for a qualified medical evaluation (QME) in the field of neurology. Based on these findings, the WCJ ordered that applicant take nothing further by way of the Petition for New and Further Disability and that the request for a QME in the field of Neurology is denied.

Applicant contends that the WCJ erred in finding no new and further disability arguing that the WCJ failed to apply the liberal construction pursuant to Labor Code<sup>1</sup> section 3202.

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

We 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 reviewed the record in this matter, the allegations in the Petition for Reconsideration, the Answer, and the contents of the Report. **Based on our review and for the reasons discussed below, we will grant reconsideration in order to issue a Notice of Intention to Impose Sanctions against Palm Springs Unified School District, Keenan & Associates, defense attorney Kalani E. Lopez, and the law firm of Michael Sullivan & Associates, LLP, jointly and severally, pursuant to section 5813 and WCAB Rule 10421 (Cal. Code Regs., tit. 8, § 10421).** At this time, we do not make any final decision on the merits as to applicant's Petition for Reconsideration.

## I.

Preliminarily, we note that former 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."

Here, according to Events, the case was transmitted to the Appeals Board on September 18, 2024 and 60 days from the date of transmission is Sunday, November 17, 2024.

The next business day that is 60 days from the date of transmission is Monday, November 18, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, November 18, 2024, 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 Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on September 18, 2024, and the case was transmitted to the Appeals Board on September 18, 2024. 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 September 18, 2024.

## II.

In this case, the WCJ admonished defendant against citing to an unpublished decision in the Opinion on Decision.

Lastly, a word of caution to Defense Counsel who repeatedly cites the unpublished decision from the Court of Appeals in State Compensation Insurance Fund v. Worker's Comp. Appeals Bd. (Hancock) (2010) 75Cal.Comp. Cases 1336 in their trial brief. This is in violation of California Rules of Court, rule 8.1115(a).

(Opinion on Decision, 8/19/24, at p. 5, emphasis in original.)

Despite this clear admonishment, defense attorney again cited to the same unpublished decision in the Answer filed on September 23, 2024, as support for a legal argument regarding causation. Defendant's citations states “*(SCIF v. WCAB (Hancock) (2010) 75 CCC 1336, 1347,*

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<sup>2</sup> 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.

*unpublished decision, but cited pursuant to California Rules of Court §8.1115(b)(1)).” (Answer, at p. 4:11-12, emphasis in original.)*

California Rules of Court, section 8.1115, to which defense counsel refers in the citation, states:

(a) **Unpublished opinion** Except as provided in (b), an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action.

(b) **Exceptions** An unpublished opinion may be cited or relied on:

(1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel; or

(2) When the opinion is relevant to a criminal or disciplinary action because it states reasons for a decision affecting the same defendant or respondent in another such action.

(California Rules of Court, rule 8.1115(a)-(b).)

Defendant does not explain, nor are we able to discern, how the exceptions listed in rule 8.1115(b) apply to their citation of the unpublished *Hancock* case. (See *Colombo v. Kinkle, Rodiger & Spriggs*, (2019) 35 Cal.App.5th 407, 417, fn. 9 [“[exception (b)(1) only applies when the unpublished opinion is an appeal or writ from the same case or a related matter involving the same parties or parties in privity, and the question is whether res judicata, collateral estoppel, or law of the case should apply based on the earlier opinion. Simply because an unpublished case mentions one of these doctrines does not make it citable.”].)

Section 5813 permits the Workers’ Compensation Appeals Board to award reasonable expenses, including attorney’s fees and costs to any party, which result from “. . . bad-faith actions or tactics that are **frivolous or solely intended to cause unnecessary delay.**” (Lab. Code, § 5813, emphasis added.)

WCAB Rule 10421(b) states in relevant part that:

Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers’ Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit.

(Cal. Code Regs., tit. 8, § 10421(b)(7)-(8).)

As applicable here, bad faith actions or tactics “shall include but are not limited to . . .”

(7) Presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law -- unless it can be supported by a non-frivolous argument for an extension, modification or reversal of the existing law or for the establishment of new law -- and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct. In determining whether a claim, defense, issue or argument is warranted under existing law, or if there is a reasonable excuse for it, consideration shall be given to:

(A) Whether there are reasonable ambiguities or conflicts in the existing statutory, regulatory or case law, taking into consideration the extent to which a litigant has researched the issues and found some support for its theories; and

(B) Whether the claim, defense, issue or argument is reasonably being asserted to preserve it for reconsideration or appellate review.

This subdivision is specifically intended not to have a "chilling effect" on a party's ability to raise and pursue legal arguments that reasonably can be regarded as not settled.

(8) Asserting a position that misstates or substantially misstates the law, and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(Cal. Code Regs., tit. 8, § 10421(b)(7)-(8).)

Moreover, Business and Professions Code section 6068 provides in part that an attorney must respect the courts of justice and judicial officers (subdivision (b)); maintain only actions that are legal or just (subdivision (c)); be truthful at all times, including never to mislead a judge or judicial officer by false statement of fact or law (subdivision (d)); and, refrain from beginning or continuing a proceeding from “any corrupt motive” (subdivision (g)).

Rule 3.3 of the California Rules of Professional Conduct provides in part that a lawyer shall not: “(1) knowingly make a false statement of fact or law to a tribunal. . .” Rule 5.3 requires that: (a) “a lawyer who . . . possesses managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer’s conduct is compatible with the professional obligations of the lawyer; (b) a lawyer having direct supervisory authority over the nonlawyer, whether or not an employee of the same

law firm, shall make reasonable efforts to ensure that person's conduct is compatible with professional obligations of the lawyer; and (c) a lawyer shall be responsible for conduct of such a person that would be a violation of these rules or the State Bar Act if engaged in by a lawyer if: (1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or (2) the lawyer . . . possesses managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person whether or not an employee of the same law firm, and knows of the conduct at a time when its consequences be avoided or mitigated but fails to take reasonable remedial action.”

We are persuaded that defendant's citation to the unpublished case after being admonished by the WCJ for the same action appears to be a failure to comply with its obligation under our rules and appears to have been done with willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board or done for an improper motive or indisputably without merit.

Accordingly, we grant applicant's Petition for Reconsideration and issue a Notice of Intention to Impose Sanctions against Palm Springs Unified School District, Keenan & Associates, defense attorney Kalani E. Lopez, and the law firm of Michael Sullivan & Associates, LLP, jointly and severally, pursuant to section 5813 and WCAB Rule 10421 (Cal. Code Regs., tit. 8, § 10421). Responses to the Notice shall be filed within twenty (20) days plus five additional days for mailing, and untimely or misfiled responses may not be considered.

At this time, we do not make any final decision on the merits as to applicant's Petition for Reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the August 19, 2024 Findings and Order is **GRANTED**.

**NOTICE IS HEREBY GIVEN** that absent written objection in which good cause to the contrary is demonstrated, within twenty (20) days plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Notice that pursuant to Labor Code section 5813 and Appeals Board Rule 10421 (Cal. Code Regs., tit. 8, § 10421) the Workers' Compensation Appeals Board will order **Palm Springs Unified School District, Keenan & Associates, defense attorney, Kalani E. Lopez, and the law firm of Michael Sullivan &**

**Associates, LLP**, jointly and severally, to pay sanctions up to \$2,500.00 payable to the General Fund and sanctions and reasonable expenses, including attorney's fees and costs.

**IT IS FURTHER ORDERED** that all responses to these notices *by any party* must be filed within twenty (20) days plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of these Notices, and shall be electronically filed in the Electronic Adjudication System (EAMS). To be timely, any written response ***must be*** electronically filed in EAMS within twenty (20) days plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Notice. **Untimely or misfiled responses may not be accepted or considered.**

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**November 18, 2024**

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

**LONNIE KNAPP  
LAW OFFICES OF DAVID M. TOUS & ASSOCIATES  
MCHAEL SULLIVAN & ASSOCIATES**

**PAG/abs**

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