**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**PAMELA NICHOLSON, *Applicant***

**vs.**

**LOS ANGELES UNIFIED SCHOOL DISTRICT, permissibly self-insured, *Defendants***

**Adjudication Numbers: ADJ420871 (VNO0543902), ADJ4388762 (VNO0543904), ADJ2102133 (VNO0543903), ADJ3342508 (VNO0543900), ADJ3812352 (VNO0543901)**

**Van Nuys District Office**

# OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.[1] We now issue our Opinion and Decision After Reconsideration.

On August 3, 2021, applicant in pro per, filed a Petition for Removal regarding a July 7, 2021 Findings and Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found[2] that "applicant is a vexatious litigant per Title 8 California Code of Regulations 10430."

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[1] Commissioner Lowe, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist was appointed in her place.

[2] The WCJ also found that: "1. In ADJ4388762 Pamela Nicholson, while employed on 3/16/2007, as a teacher Occupational Group No. 212, Los Angeles, California, by the Los Angeles Unified School District, claims to have sustained injury arising out of and in the course of employment to her chest, psyche, and other parts of her body. [¶] 2. In ADJ3812352 Pamela Nicholson, while employed on 5/31/2007, as a teacher, Occupational Group Number 212, at Los Angeles, California, by Los Angeles Unified School District, claims to have sustained injury arising out of and in the course of employment to her psyche, chest, shoulders, and other parts of body. [¶] 3. In ADJ2102 133 Pamela Nicholson, while employed on 5/31/2007 as a teacher, Occupational Group No. 2 12, at Los Angeles, California, by the Los Angeles Unified School District, claims to have sustained injury arising out of and in the course of employment to her psyche and other pai1s of body. [¶] 4. In ADJ3342508 Pamela Nicholson, while employed during the period 5/3 1/2006 through 5/31/2007, as a teacher, Occupational Group No. 212, at Los Angeles, California, by the Los Angeles Unified School District, claims to have sustained injury arising out of and in the course of employment to her jaw, knee, foot, and other parts of body. [¶] 5. In ADJ420871 Pamela Nicholson, while employed on 5/25/2007, as a teacher, Occupational Group No. 212, at Los Angeles, California, by the Los Angeles Unified School District, claims to have sustained injury arising out of and in the course of employment to her back, psyche, and other parts of body. Occupational Group No. 212, Los Angeles, California, by the Los Angeles Unified School."

Applicant contends the WCJ erred in declaring her a vexatious litigant.

Defendant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration recommending that we dismiss the petition as untimely or alternatively deny it on the merits.

We have considered the petition, the Answer, the contents of the Report, and have reviewed the record in this matter. Because of the nature of a vexatious litigant finding, we have treated applicant's petition as one seeking reconsideration rather than removal.[3] For the reasons discussed below, we will treat applicant's Petition for Reconsideration as timely and affirm the July 7, 2021 Findings and Order.

Preliminarily, we address the timeliness issue. There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

In this case, the WCJ's decision issued on July 7, 2021 and was served on applicant by email. Based on the authority cited above, applicant had until Monday, August 2, 2021 to file a timely Petition for Reconsideration. The petition was filed in EAMS[4] one day late on August 3, 2021. However, in the Report, the WCJ asserts that the petition was emailed to him on August 2, 2021. While the WCJ asserts that the petition he received by email is untimely because it received it at 5:11 p.m., there is no evidence in the record as to the time the petition was received.

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[3] If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

[4] EAMS is an acronym for Electronic Adjudication Management System, which is the computerized system used by the Division of Workers' Compensation (DWC) to store and maintain Appeals Board electronic case files. (See Cal. Code Regs., tit. 8, §§ 10269(p), 10215 et seq. 10301(p).)

Therefore, out of an abundance of caution and to observe all due process, we will treat the petition emailed to the WCJ as timely filed.

We now turn to the merits. In his Opinion on Decision, the WCJ stated:

> Defendant has filed a Petition to Declare the Applicant a Vexatious Litigant, together with an Amended Petition and Second Amended Petition.
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> Title 8 California Code of Regulations Section 10430 gave the WCAB the ability to declare a party to be a vexatious litigant. The purpose of the rule was summarized by the WCAB as follows: "A growing number of self-represented parties and lien claimants repeatedly file petitions or other papers with the WCAB that not only fail to comply with the requirements set forth in the Labor Code and the Rules, but that have no effective purpose in moving their cases forward. Recognizing the impediment to expeditious justice and the burden to the WCAB and other parties presented by those repetitive, meritless, and ineffectual filings, the Appeals Board proposed a rule for declaring vexatious litigants in workers' compensation proceedings." *Seabrooks v. BF! Medical Waste Systems,* 2009 Cal. Wrk. Comp. P.D. LEXIS 324; *Brown v. Port of Oakland,* 2009 Cal. Wrk. Comp. P.D. LEXIS 491.
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> A vexatious litigant is defined as a party who:
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> 1. while acting in pro per in proceedings before the appeals board, repeatedly re-litigates, or attempts to re-litigate, an issue of law or fact that has been finally determined against that pat1y by the appeals board or by an appellate court;
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> 2. while acting in pro per in proceedings before the appeals board, repeatedly files unmeritorious motions, pleadings, or other papers, repeatedly conducts or attempts to conduct unnecessary discovery or repeatedly engages in other tactics that are in bad faith, are frivolous or are solely intended to cause harassment or unnecessary delay; or
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> 3. has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based on the same or substantially similar facts, transaction(s) or occurrence(s) that are the subject, in whole or in substantial part, of the party's workers' compensation case.
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> In the cases herein, applicant has filed multiple Demands For Production and Inspection of Records (DPIR), Subpoena[s] Duces Tecum, Motions To Compel and other discovery devices and defendant has objected to each in whole or in part. These disputes have resulted in the case being set for hearing approximately 20 times since 2013 as the pat1ies and the assigned Judges attempted to resolve these issues. Throughout, applicant has failed to adequately define and limit the scope and breadth of her discovery requests despite being given every opportunity to do so, and despite being given a wide latitude by the assigned WCJs.

This has resulted in just the situation that the rule was designed to address expeditious justice has been impeded, and the parties and the Board have been overly burdened. WCJ Rasmusson in an Order dated 7/28/2015 in ruling on applicant Demand For Production and Inspection, noted that in denying numerous discovery requests nonetheless allowed applicant to "reassess the demands provided that they are germane, narrowly tailored and responsive to the issues raised herein". This was after at least two prior extended hearings and rulings on applicant's discovery demands. As applicant repeatedly denied receipt of documents previously served upon her by defendants, defendant was ordered to serve applicant with proofs of service of those documents in January 2019. The undersigned ruled on applicant's DPIR #4 on 10/22/2018 yet applicant in DPIR #5 again demanded all documents stated in her DPIR #4, in direct contravention of the rulings. After the matter was assigned for trial to Judge Velzy, 10 hearings were held in an attempt to have the matter in a posture for trial on applicant's allegedly unresolved discovery issues. Applicant was ordered to define exactly what discovery matters had not been addressed but ultimately was unable or unwilling to do so. This resulted in Judge Velzy noting in Minutes of Hearing dated 2/11/2020:

"After 10 hearings applicant has not been able to specifically identify which documents on the discovery orders issued by WCJ Rasmusson and PJ Brotman that she claims she has not received" and was compelled to take the matter off calendar. These are noted as the most glaring examples of applicant's obstruction of the judicial process.

Based thereon, it is found that applicant is a vexatious litigant.

In his Report, the WCJ stated that:

…

THE MERITS

Title 8 California Code of Regulations Section 10430 gave the WCAB the ability to declare a party to be a vexatious litigant. The purpose of the rule was summarized by the WCAB as follows: “A growing number of self-represented parties and lien claimants repeatedly file petitions or other papers with the WCAB that not only fail to comply with the requirements set forth in the Labor Code and the Rules, but that have no effective purpose in moving their cases forward. Recognizing the impediment to expeditious justice and the burden to the WCAB and other parties presented by those repetitive, meritless, and ineffectual filings, the Appeals Board proposed a rule for declaring vexatious litigants in workers’ compensation proceedings.” *Seabrooks v. BFI Medical Waste Systems,* 2009 Cal. Wrk. Comp. P.O. LEXIS 324; *Brown v. Port of Oakland*, 2009 Cal. Wrk. Comp. P.O. LEXIS 491.

A vexatious litigant is defined as a party who:

1. while acting in pro per in proceedings before the appeals board, repeatedly re-litigates, or attempts to re-litigate, an issue of law or fact that has been finally determined against that party by the appeals board or by an appellate court;

2. while acting in pro per in proceedings before the appeals board, repeatedly files unmeritorious motions, pleadings, or other papers, repeatedly conducts or attempts to conduct unnecessary discovery or repeatedly engages in other tactics that are in bad faith, are frivolous or are solely intended to cause harassment or unnecessary delay; or

3. has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based on the same or substantially similar facts, transaction(s) or occurrence(s) that are the subject, in whole or in substantial part, of the party's workers' compensation case.

Applicant's refusal or inability to limit the scope and breadth of her discovery requests over the last 7 years has resulted in just the situation that the rule was designed to address: expeditious justice has been impeded, and the parties and the Board have been overly burdened. Despite the bifurcation of applicant's 132a and Serious & Willful claims, which was done to streamline discovery and a decision on the normal issues, WCJ Rasmusson in an Order dated 7/28/2015 in ruling on applicant Demand For Production and Inspection, noted that in denying numerous discovery requests allowed applicant to "reassess the demands provided that they are germane, narrowly tailored and responsive to the issues raised herein". This was after at least two prior extended hearings and rulings on applicant's discovery demands. As applicant repeatedly denied receipt of documents previously served upon her by defendants, defendant was ordered to serve applicant with proofs of service of those documents. In January 2019, the undersigned ruled on applicant's DPIR #4 on 10/22/2018 yet applicant in DPIR #5 again demanded all documents stated in her DPIR #4, in direct contravention of the rulings. After the matter was assigned for discovery trial to Judge Velzy, 10 hearings were held in an attempt to have the matter in a posture for trial on applicant's allegedly unresolved discovery issues. Applicant was ordered to define exactly what discovery matters had not been addressed but ultimately was unable or unwilling to do so. This resulted in Judge Velzy noting in Minutes of Hearing dated 2/11/2020: "After 10 hearings applicant has not been able to specifically identify which documents on the discovery orders issued by WCJ Rasmusson and PJ Brotman that she claims she has not received" and was compelled to take the matter off calendar.

Based thereon, it was found that applicant is a vexatious litigant. Even here in her petition, applicant again attempts to relitigate issues that have been previously decided.

IV.

RECOMMENDATION

It is recommended that the Petition for Removal be dismissed, or in the alternative, denied.

For the reasons stated by the WCJ in the Report and the Opinion on Decision, which we adopt and incorporate as quoted above, we will affirm the July 7, 2021 Findings and Order.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 7, 2021 Findings and Order is **AFFIRMED**,

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**

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

**May 20, 2024**

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

**PAMELA NICHOLSON, IN PRO PER**
**HARRISON, EICHENBERG & MURPHY**

**PAG/mc**

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