

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

**SAMUEL SANCHEZ, *Applicant***

**vs.**

**ANTHONY INTERNATIONAL; LM INSURANCE CORPORATION  
administered by LIBERTY MUTUAL INSURANCE, *Defendants***

**Adjudication Number: ADJ16040808  
Van Nuys District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Lien claimant Moussa Moshfeqh, M.D., seeks reconsideration of the Order Dismissing Lien with prejudice (Order Dismissing) dated March 24, 2024, and issued on March 25, 2024, wherein the workers' compensation administrative law judge (WCJ) ordered that lien claimant's lien was dismissed after lien claimant failed to appear at trial and failed to object to the Notice of Intention (NIT).

Lien claimant alleges that on January 23, 2024, he filed an objection to the Notice of Intent "entreating that the NOI be set-aside as the undersigned Hearing Representative [Patrick Petronella] became ill." Lien claimant contends his lien should be adjudicated on the merits, and that Code of Civil Procedure section 473 allows the court to relieve lien claimant from a dismissal due to mistake, inadvertence, surprise or excusable neglect.

We have not received an Answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will dismiss the Petition for Reconsideration so that the WCJ can consider in the first instance whether lien claimant should be granted relief and if the Order should be rescinded.

## BACKGROUND

Applicant while employed as a packer sustained a cumulative injury arising out of and in the course of employment to his abdomen, hernia, nervous system, psyche, and sleep disorder from June 4, 2020 to June 4, 2021, which was assigned Case Number ADJ16040808.

The parties settled the case by way of a Compromise and Release, which the WCJ approved on October 31, 2022, and served on November 1, 2022. (Order Approving Compromise and Release, November 1, 2022.)

On November 16, 2022, Dr. Moshfegh filed a lien for medical treatment expenses incurred by or on behalf of applicant.

On June 5, 2023, Dr. Moshfegh filed a Declaration of Readiness (DOR) requesting a lien trial on his unresolved lien.

On June 6, 2023, the WCAB served a Notice of Hearing on the parties, including lien claimant, Dr. Moshfegh.

On July 24, 2023, defendant's attorney electronically served Liberty Mutual an Authorization For Appearance Of Non- Attorney Representative and Notice of Hearing for the November 6, 2023, hearing before WCJ James Finete via teleconference to address all liens. (Proof of Electronic Service, 7/24/2023.) The Proof of Service was filed in the Electronic Adjudication Management System (EAMS) on November 3, 2023.

An unsigned Proof of Service By First-Class Mail states that on July 26, 2023, the following documents were served from Jackson, California 1. Samuel Sanchez Authorization For Appearance of Non-Attorney Representative on 7/24/2023 2. Notice of Hearing on 7/24/2023. The unsigned proof of service lists Moussa Moshfegh Los Angeles, Moussa Moshfegh Md Inc 6221 Wilshire Blvd Ste 404 Los Angeles, CA 90048-5224 and Raphael Hedwat Sherman Oaks, Raphael Hedwat 5170 Sepulveda Blvd Ste 350 Sherman Oaks, CA 91403-6504 under the names and addresses of each person to whom the documents were mailed. (Proof of Service By First Class Mail, undated.) The Proof of Service was filed in the Electronic Adjudication Management System (EAMS) on November 3, 2023.

On November 6, 2023, the parties proceeded to trial. On the minutes of hearing, it states the following under the OTHER/COMMENTS: "RE MOUSSA MOSHFEGH LIEN: NO APPEARANCE BY LIEN CLAIMANT BY 9:30; DEFENDANT REQUESTING NOTICE OF

INTENT TO DISMISS LIEN, DEFENDANT TO FILE POS AND REQUEST FOR LIEN DISMISSAL.”

On November 21, 2023, defendant filed and served a Petition to Dismiss for Failure to Appear at Lien Conference.

On January 17, 2024, the WCJ issued a Notice of Intention to Dismiss Lien, which states:

IT APPEARING that notice of conference/hearing having been properly and timely served on lien claimant, MOUSSA MOSHFEGH, and lien claimant having failed to appear for said conference/hearing on 11/06/2023, and pursuant to motion of defendants;

NOTICE IS HEREBY given that the lien of MOUSSA MOSHFEGH will be \_\_\_\_\_ dismissed ten (10) days from the date of service hereof unless good cause to the contrary is shown in writing within said time

On March 25, 2024, the WCJ issued the Order dismissing the lien claim of Dr. Moshfegh with prejudice on the basis that no good cause had been shown to the contrary.

A review of the record in Electronic Adjudication Management System (EAMS) does not reflect that an objection to the NIT was filed by lien claimant or his representative.

### **DISCUSSION**

The WCJ may issue a Notice of Intention (NIT) for any proper purpose, including allowing, disallowing or dismissing a lien. (Cal. Code Regs., tit. 8, § 10832(a)(1).) Here, it appears that the WCJ may have incorrectly issued the NIT in this instance after lien claimant failed to appear at the lien trial held on November 6, 2023. It appears from the Proof of Service filed by defendant on November 3, 2023, that lien claimant was not properly served by defendant with the Notice of Hearing for the November 6, 2023, lien trial. The proof of service filed by defendant is unsigned and undated so there is no way to know if the referenced parties were actually served with the Notice of Hearing. If the evidence at the hearing shows that lien claimant was never served with notice, it could call into question whether the basis for the NIT was proper.

In the event that the service of the NIT was valid, then the validity of lien claimant’s assertion that good cause exists to set aside the NIT and seek relief for failing to appear at the lien trial under Labor Code section 5506 should be examined. Section 5506 authorizes the Appeals Board to relieve a defendant from default or dismissal due to mistake, inadvertence, surprise or excusable neglect in accordance with Code of Civil Procedure section 473. That relief has been

extended to all parties, including lien claimants. (*Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal. App. 4th 1196 [57 Cal.Comp.Cases 149].)

Code of Civil Procedure section 473 permits the trial court to relieve a party from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect. A motion seeking relief under section 473 is addressed to the sound discretion of the trial court; its decision will not be overturned on appeal absent a clear showing of abuse of discretion. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478 [243 Cal. Rptr. 902]; *Elston v. City of Turlock* (1985) 38 Cal. 3d 227, 233 [211 Cal. Rptr. 416].) “That discretion, however, “is not a capricious or arbitrary discretion, but an impartial discretion, guided and controlled in its exercise by fixed legal principles. It is not a mental discretion, to be exercised *ex gratia*, but a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.” (*Rivercourt Co. Ltd. v. Dyna-Tel, Inc.* (1996) 41 Cal.App.4th 1477, 1480 [49 Cal.Rptr.2d 279].)

Here, as in *Fox, supra*, lien claimant’s failure to appear at the lien trial where his presence was required resulted in the dismissal of his underlying lien claim. Here, as in *Fox*, lien claimant seeks relief under Labor Code section 5506 and 473 of the Code of Civil Procedure for failing to appear because his representative asserts in the Petition he was ill.

In cases where a lien claimant argues that they are entitled to 473 relief, the lien claimant is entitled to a hearing on whether the dismissal should be set aside due to mistake, inadvertence, surprise or excusable neglect. (*Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157–158, [65 Cal.Comp.Cases 805].) This is consistent with the principle expressed in *Fox* that “it is the policy of the law to favor, whenever possible, a hearing on the merits.” (*Fox, supra*, 4 Cal.App.4th at 1205, citing *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.) In determining whether a person’s mistake or inadvertence is excusable, “the court inquires whether ‘a reasonably prudent person under the same or similar circumstances might have made the same error.’” (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal. 4th 249, 258 citing *Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276.) It is also imperative that the party seeking relief pursuant to Code of Civil Procedure section 473(b) act with diligence in seeking relief as soon as the mistake is discovered. (*Benjamin v. Dalmo Mfg. Co.* (1948) 31 Cal. 2d 523.) Finally, we note that, to the extent that lien claimant has engaged in bad faith tactics, they would be subject to a sanction. (Lab. Code, §5813, Cal.Code.Reg., tit. 8, §10421.) A sanction may be

appropriate, for example, where a party intentionally files a pleading that includes “substantially false statements of fact” or “contains statements of fact that are substantially misleading.” (Cal.Code.Reg., tit. 8, §10421(b)(5)(A)(i) and (ii).)

Lien claimant asserts in its Petition that his representative filed an objection to the NIT on January 23, 2024, “. . . entreating that the NOI be set-aside as the undersigned Hearing Representative became ill.” (Petition for Reconsideration, dated 4/9/2024, issued 4/10/2024, 2:3-2:5.) However, as stated above, our review of the record does not indicate that an objection was filed, thus the WCJ could not consider it prior to dismissing the lien claim. Thus, the WCJ should hold a hearing and make a record as to whether lien claimant filed an objection and also as to the reasons for his failure to appear.

Accordingly, we dismiss the Petition for Reconsideration so that the WCJ may consider in the first instance whether lien claimant should be granted relief.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**June 10, 2024**

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

**MOUSSA MOSHFEGH  
LOWER KESNER**

**DLM/oo**

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