

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

CEDRIC LOPEZ JUAREZ, *Applicant*

vs.

**HERIBERTO CORTES; SEDGWICK CMS on behalf of FALLS LAKE FIRE &
CASUALTY CO., *Defendants***

**Adjudication Number: ADJ12264390
Van Nuys District Office**

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

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, except as noted below, we will grant reconsideration, rescind the WCJ's Order to Dismiss dated December 16, 2020, and return this matter to the WCJ for further proceedings and decision. We do not adopt or incorporate the first full paragraph on page three (3) of the report, immediately preceding the heading "RECOMMENDATION," which starts with the phrase "It is noted" and ends with the word "Bar." This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the December 16, 2020 Order to Dismiss is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 16, 2020 Order to Dismiss is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 9, 2021

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

**CEDRIC LOPEZ JUAREZ
LAW OFFICES OF ALI ASHKAN AZARAKHSH
GOLDMAN, MAGDALIN & KRIKES**

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I certify that I affixed the official seal of
the Workers' Compensation Appeals
Board to this original decision on this date.
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REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

The Workers' Compensation Administrative Law Judge ("WCJ") issued an Order for Dismissal 12/23/20. Applicant has filed a timely and verified request for Reconsideration on the following grounds pursuant to Labor Code § 5903:

1. By order, decision, or award, the Board acted without or in excess of its powers;
2. The evidence does not justify the findings of fact;
3. The findings of fact do not support the order, decision or award.

CONTENTIONS

The issues is whether the Order Dismissing should be set aside.

PERTINENT FACTS / DISCUSSION

Pursuant to defendant's request, a Notice of Intent to Dismiss the case was issued on 8/27/20. Three months later, on 11/24/20, defendant filed a follow-up petition requesting the Order issue as there had been no objection. This request was properly served on applicant counsel by defendant. A month after the follow-up petition, 12/23/20, the Order Dismissing finally issued. The Order was served by the WCJ's secretary on apparently the carrier, the lien claimant, and the defense counsel. The Order was not served on applicant nor his counsel. However, the defendant served the Order of Dismissal on applicant and his counsel on 1/20/21. On 1/28/21, a mere objection to the Order Dismissing was filed; and on 2/16/21 the instant formal Petition for Reconsideration from the dismissal was filed. (25 days from the 16th is February 14th, a Sunday. Monday the 15th was a holiday so the filing on 2/16/21 is timely.)

Petitioner acknowledges that he received the defendant's Petition to Dismiss at the end of August 2020 *but did not file an objection until 4 months later in December 2020* despite knowing the petition states it is the intent to seek dismissal within 30 days unless objection is made. (See items #6, #7 of p. 3 of Petition and quote at p. 4, lines 8-10.) However, these statement then becomes confusing/contradictory as petitioner states at p. 4, line 23 that he did not receive copies of the Notice of Intent todismiss.

Petitioner is correct the Order was not served on applicant counsel or applicant. During teleworking conditions, it is difficult for staff to serve all on the address record via email and there is no ability to do so by mail when not in the office. Receipt of the Order is acknowledged having been served by defense counsel on 1/20/21 and the petition being filed on the first business day after the 25th day, is timely.

[It is noted the WCJ is familiar with Studio city where petitioner's post office box is kept and the zip code is 91604 despite the address record and the address given to the California Bar for

its website showing 91614. A google of the post office box shows the correct zip code as 91604 and petitioner may want to look into it and correct it with the Bar.]

RECOMMENDATION

Based on the foregoing, it seems equitable to GRANT the Petition for Reconsideration to set aside the dismissal and return the matter for hearing on whether the case should be dismissed or not, and in addition, issue sanctions for applicant's cavalier behavior in not simply filing objection to the Notice of Intent, which was admittedly received 4 months earlier, thus, causing additional unnecessary work on an already over-burdened system.

Dated: 2-18-2021

DAVID L. SEYMOUR
Workers' Compensation Judge