

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

VERONICA EMMERICH, *Applicant*

vs.

**RALEYS FAMILY OF FINE FOODS, permissibly self-insured,
administered by CORVEL, *Defendants***

**Adjudication Numbers: ADJ16697404, ADJ16698657, ADJ16698658, ADJ18451293
Sacramento District Office**

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

Applicant seeks reconsideration of the Order Dismissing Cases (Order), issued by the workers' compensation administrative law judge (WCJ) on January 10, 2025, wherein the WCJ dismissed, without prejudice, each of applicant's four cases for failure to appear.

Applicant is representing herself in this matter, and although the contentions in her Petition for Reconsideration are somewhat difficult to discern, it appears that she contends that the WCJ erred in dismissing her cases; that what took place at a prior hearing was fraudulent; and that the WCJ should have granted applicant's request for a replacement qualified medical evaluator (QME).

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will grant applicant's Petition, rescind the WCJ's January 10, 2025 Order, and return the matter to the WCJ for further proceedings consistent with this decision

BACKGROUND

Applicant filed three applications for adjudication on September 16, 2022, and a fourth application on November 7, 2023. Her first claim was for a specific injury on July 17, 2020, to her wrist, foot, and arm (ADJ16697404); her second claim was a cumulative injury claim from October 1, 2019 to August 2, 2022, to her head, neck, back, arm, and hand (ADJ16698657); her third claim was a cumulative injury claim from August 1, 2021 to August 12, 2022, to her head and nervous system (ADJ16698658); and her fourth claim was a cumulative injury claim from October 1, 2019 to August 2, 2022, to her neck, arm, back, and shoulders. (ADJ18451293.)

Applicant was ordered to appear at a deposition on April 20, 2023. (3/21/23 Order to Compel.) She was ordered to appear at the examination with panel QME Dr. Broderick on September 11, 2023, and again on December 20, 2023. (5/25/23 and 12/20/23 Orders to Compel.)

Defendant filed a petition to dismiss for lack of prosecution. Applicant objected, explaining in her filing that she “is gravely ill including a recent heart attack and cannot participate in the litigation.” (10/16/23 Objection.) Defendant’s petition to dismiss was denied on November 21, 2023. (11/21/23 Minutes.) Defendant requested dismissal again on February 7, 2024, citing applicant’s failure to attend the December 14, 2023 deposition and the January 22, 2024 QME examination. (2/7/24 DOR.)

At the February 27, 2024 mandatory settlement conference (MSC) applicant explained that there was a misunderstanding regarding her deposition, and that she appeared for her QME evaluation, but the doctor cancelled the evaluation when applicant refused to wear a “revealing gown.” (2/27/24 Minutes.) Applicant was again ordered to attend her deposition and QME evaluation. On the same date, however, the WCJ issued an “Order Allowing Replacement QME,” in which applicant’s request for a new QME panel was granted, and defendant was given an opportunity to object. Defendant subsequently filed an objection. (3/5/24 Objection.)

Applicant appeared in person, or through counsel, at all hearings prior to November 4, 2024. (See minutes of 3/31/23, 11/21/23, 2/27/24, 4/2/24, 5/7/24, 5/28/24, 6/13/24, 7/31/24, and 10/9/24.)

On October 9, 2024, applicant was present and the matter was set for trial on November 4, 2024. (10/9/24 minutes.) Defendant was designated to serve the minutes. (*Ibid.*) No proof of service for the October 9, 2024 minutes appears in the record.

The matter was next heard on November 4, 2024.¹ (11/4/24 minutes.) Applicant was not present. Defendant requested a notice of intention be issued, based on applicant's failure to appear. The WCJ denied this request. The minutes indicate that the matter was set for trial, but no trial date is listed on the minutes.

Once again, defendant was designated to serve the minutes, and there is no proof of service in the record indicating that the November 4, 2024 minutes were served.

On December 16, 2024, the matter was heard for trial in applicant's absence. On the same date, a "Notice of Intention to Dismiss Case" (NIT) was issued, which stated:

IT APPEARING THAT applicant failed to appear for the 12/26/2024 Trial as well as the 11/4/2024 trial.

NOTICE IS HEREBY GIVEN that an Order Dismissing the above entitled case, without prejudice, shall issue ten (10) days from the date of service hereof, unless good cause to the contrary is shown in writing within said time.

(12/16/24 NIT.)

A proof of service dated December 17, 2024 indicates that the December 16, 2024 minutes and NIT were served on applicant by defendant.

The WCJ issued the Order Dismissing Cases, pursuant to the NIT, on January 10, 2025.

Applicant filed and served her Petition on March 2, 2025.

DISCUSSION

I.

Former Labor Code section 5909² 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 There is some confusion about the date of this hearing, since the minutes indicate "Date of Hearing 11-3-24" at the top of the page, but are dated "11/4/24" at the bottom of the page. We will assume that the hearing took place on November 4, 2024, since that is the date listed on the Events tab in the Electronic Adjudication Management System (EAMS).

² All section references are to the Labor Code, unless otherwise indicated.

- (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 March 12, 2025 and 60 days from the date of transmission is Sunday, May 11, 2025. The next business day that is 60 days from the date of transmission is Monday, May 12, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on Monday, May 12, 2025, 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 March 12, 2025, and the case was transmitted to the Appeals Board on March 12, 2025. 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 March 12, 2025.

³ 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.

II.

Notices of Hearing are governed by section 5504 and WCAB Rule 10750. Section 5504 requires that,

A notice of the time and place of hearing shall be served upon the applicant and all adverse parties and may be served either in the manner of service of a summons in a civil action or in the same manner as any notice that is authorized or required to be served under the provisions of this division.

(Lab. Code, § 5504.)

WCAB Rule 10750 requires, in relevant part,

(a) Notice shall be served on all parties and their attorneys or non-attorney representative of record of the time and location, including whether the hearing will be conducted electronically, of each hearing scheduled, whether or not the hearing affects all parties, as provided in rule 10625.

(b) The Workers' Compensation Appeals Board may, in its discretion, designate a party or their attorney or agent of record to serve a notice of hearing as provided in rule 10629. Notice shall include the time and location, including whether the hearing will be conducted electronically and how to access any electronic hearing.

(Cal. Code Regs., tit. 8, § 10750.)

When a required party, after notice, fails to appear at a trial in the case in chief:

(a) If good cause is shown for failure to appear, the workers' compensation judge may take the case off calendar or may continue the case to a date certain.

(b) If no good cause is shown for failure to appear, the workers' compensation judge may issue a notice of intention pursuant to rule 10832, take the case off calendar or continue the case to a date certain.

(Cal. Code Regs., tit. 8, § 10756.)

The WCJ may issue an NIT for any proper purpose, including “[s]ubmitting the matter on the record.” (Cal. Code Regs., tit. 8, § 10832(a)(4).) If an objection to the NIT is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may:

- (1) Sustain the objection;
- (2) Issue an order consistent with the notice of intention together with an opinion on decision; or
- (3) Set the matter for hearing.

(Cal. Code Regs., tit. 8, § 10832(c).)

Article XIV, section 4 of the California Constitution mandates that the workers' compensation law shall be carried out "...to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character..." Based on the constitutional mandate to accomplish substantial justice, the Board has a duty to develop an adequate record. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394-395 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1120 [63 Cal.Comp.Cases 261].) Moreover, "[t]he Board 'is bound by the due process clause of the Fourteenth Amendment to the United States Constitution to give the parties before it a fair and open hearing...All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal.' " (*Rucker v. Workers' Comp Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805], citing *Kaiser Co. v. Industrial Acc. Com.* (1952) 109 Cal.App.2d 54, 58.) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker, supra*, at 157-158.) Due process requires "a 'hearing appropriate to the nature of the case.'" (*In re James Q.* (2000) 81 Cal.App.4th 255, 265, citing *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 313.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*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." (*Id.*, at p. 475.) The purpose of this requirement is to enable "the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]" (*Id.*, at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) "For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Ibid.*)

While the mere allegation of non-receipt of a document is insufficient to establish that it was not received, an applicant is entitled to a hearing where they are given an opportunity to produce "believable contrary evidence" that notice was not received. (*Castro v. WCAB* (1996) 61 Cal.Comp.Cases 1460, 1462 [an attorney's bare allegation of non-receipt was insufficient to

overcome the WCAB's proof of service of the F&O]; *Craig v. Brown & Root* (2000) 84 Cal.App.4th 416, 421-422, citing *Slater v. Kehoe* (1974) 38 Cal.App.3d 819, 832, fn. 12 [If a party proves that a letter was mailed, the trier of fact is required to find that the letter was received in the absence of any believable contrary evidence. If the adverse party denies receipt, the presumption is gone and the trier of fact must weigh the evidence and determine whether the letter was received.].) In *Suon v. California Dairies*, we explained, that, although a "letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail," that presumption is rebuttable. (*Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1817 (Appeals Bd. en banc) citations omitted.) "If the sending party thus produces evidence that a document was mailed, the burden shifts to the recipient to produce 'believable contrary evidence' that it was not received. [Citations.] Once the recipient produces sufficient evidence showing non-receipt of the mailed item, "the presumption disappears" and the "trier of fact must then weigh the denial of receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received. [citation.]" (*Ibid.*)

Defendant was designated to serve the October 9, 2024 minutes, which contained the November 4, 2024 hearing date, but the record contains no proof of service for the October 9, 2024 minutes. Similarly, at the November 4, 2024 hearing defendant was designated to serve the minutes, and the record again contains no proof of service. Moreover, even if the November 4, 2024 minutes had been served, they would not have provided adequate notice of hearing to applicant, because the date of the next hearing is missing from those minutes. (11/4/24 Minutes.)

We note that the record reflects that prior to November 4, 2024, applicant was routinely served with hearing minutes, and, when properly noticed, applicant consistently appeared in person (11/21/24, 2/27/24, 4/2/24, 5/7/24, 5/28/24, 6/13/24, 7/31/24 and 10/9/24 minutes) or through counsel. (10/31/23 minutes.) We observe that only on the two occasions when defendant failed to provide notice of hearing, did applicant not appear. (11/4/24 and 12/16/24 minutes.)

The December 16, 2024 NIT states that a dismissal order would issue, absent a showing of good cause, because it "APPEAR[s] THAT applicant failed to appear for the 12/26/2024 Trial as well as the 11/4/2024 trial." (12/16/24 NIT.) But the evidentiary record does not support this statement, as there is no adequate evidence that applicant was noticed for the November 4, 2024 proceeding, and because the second date listed, December 26, 2024, had not yet occurred when

the WCJ issued the NIT on December 16, 2024.⁴ Failure to appear is a basis for dismissal only “[w]hen a required party, after notice, fails to appear at a trial.” (Cal. Code Regs., tit. 8, § 10756, emphasis added.) Here, the record does not include evidence that applicant was noticed for the November 4 or December 16 hearing dates (nor the erroneous December 26 date), so there was no “failure to appear.”

The WCJ’s decision must be based on “admitted evidence in the record” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476), but the NIT issued here was not supported by an adequate evidentiary record. The NIT is invalid, too, because the WCJ denied defendant’s request to issue an NIT for failure to appear on November 4, 2024, and yet relied on the failure to appear on November 4, as a basis for the December 16, 2024 NIT. As nothing had changed between those two dates, there was no legal basis for the WCJ to reverse her prior order. The NIT was based on applicant’s failure to appear at two hearings, but there is no adequate evidence in the record that applicant was noticed for these hearings, so that there was no legal basis for the NIT. Under these circumstances, there was no legal basis for the NIT to issue, and the NIT is void. (Cal. Code Regs., tit. 8, § 10832.)

The Order was based upon the invalid NIT. (1/10/25 Order Dismissing Cases.) Since the Order dismissing applicant’s cases was based upon the invalid NIT, that Order is also void.⁵

Defendant had the opportunity to file an Answer, in response to applicant’s petition. It chose not to do so, thus forfeiting its opportunity to make an offer of proof explaining why there is no proof of service in the record for the October 9 or November 4, 2024 minutes, or to correct its error.

Lastly, we remind applicant that in order to receive benefits, she must attend all settlement conferences, hearings and medical evaluation appointments. (See Lab. Code, § 4054; Cal. Code Regs., tit. 8, §§ 34(h), 10752, 10755, 10756.)

Upon return to the trial level, if she determines that it is necessary, the WCJ may hold a hearing, create a record, and determine whether applicant had notice of the trial dates and, if so, why applicant failed to appear. If appropriate, the WCJ can reissue the NIT. Alternatively, it may

⁴ It is likely that the WCJ intended to reference the December 16, 2024 trial date. Assuming this is the case, the NIT is nevertheless invalid, because there is no adequate evidence that applicant was noticed for that date.

⁵ The WCJ’s Report indicated that applicant’s petition should be denied because it was not timely filed. We note, however, that timeliness of the petition is not at issue because a “void” order never existed.

be more expedient for the WCJ to focus on the merits of applicant's claims, including addressing the issue of whether a replacement QME should be appointed.

Accordingly, we grant applicant's Petition, rescind the WCJ's January 10, 2025 Order Dismissing Cases, and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order Dismissing Cases issued on January 10, 2025 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 9, 2025

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

**VERONICA EMMERICHS
LLARENA MURDOCK LOPEZ & AZIZAD, APC**

MB/ara

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