

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

ALEXANDRYA WOLFE, *Applicant*

vs.

**CLAIRES AND STONINGTON INSURANCE CO
c/o GALLAGHER BASSETT, *Defendants***

**Adjudication Numbers: ADJ17611095; ADJ17611096
Van Nuys District Office**

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

Applicant seeks reconsideration of the Order of Dismissal (Order) issued by the workers' compensation administrative law judge (WCJ) on November 26, 2024, in case numbers ADJ17611095 and ADJ17611096.

Applicant contends that they are receiving medical care and that applicant is ready, willing, and able to proceed with their cases. Further, applicant contends that the WCJ erred in dismissing the cases pursuant to WCAB Rule 10550, because applicant filed an objection to defendant's petition to dismiss and an objection to the WCJ's notice of intention to dismiss for inactivity.

Defendant filed an Answer.

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, the Answer, 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 Order of Dismissal in case numbers ADJ17611095 and ADJ17611096, and return the matter to the WCJ for further proceedings consistent with this decision.

BACKGROUND

In case number ADJ17611095, applicant filed an application for adjudication on April 25, 2023, claiming injury to her nervous system and psyche while employed by defendant as an assistant manager, during the period from November 15, 2021 to February 3, 2023.

In case number ADJ17611096, applicant filed an application for adjudication on April 25, 2023, claiming injury to her back, foot, and ankle while employed by defendant as an assistant manager, during the period from November 15, 2021 to February 4, 2023.

On August 8, 2024, defendant filed a petition to dismiss applicant's cases for lack of prosecution. (Cal. Code Regs., tit. 8, § 10550.)

On August 15, 2024, applicant filed an objection to defendant's petition to dismiss, stating:

1. The applicant has been treating at St. Rose Hospital and Eden Care;
2. The applicant is ready, willing and able to proceed with their case.

(August 15, 2024, objection to petition to dismiss inactive cases, p. 1.)

On October 15, 2024, the WCJ issued a notice of intention to dismiss for inactivity, stating:

IT APPEARING that applicant has not pursued his/her claim herein, and pursuant to request of Defendants;

NOTICE IS HEREBY given that the above-named case will be dismissed for lack of prosecution and Defendant will be ordered to pay, adjust or litigated any outstanding medical-legal costs, 20 days from the date of service hereof timely objection in writing is filed within said time.

(October 15, 2024, notice of intention to dismiss, p. 1.)

Thereafter, the matter was set for a Mandatory Settlement Conference (MSC) by the Court, scheduled for September 25, 2024. On November 9, 2024, the WCJ designated service of the Minutes from the September 25, 2024, hearing. According to the Minutes, applicant was represented by hearing representative Eric Johnson, and there is no indication whether applicant was present at the hearing as no box was checked relative to applicant's appearance.

On November 12, 2024, defendant served the Minutes from the September 25, 2024, hearing, which state as follows:

D/A filed Petition to Dismiss. Mr. Johnson contacted his client, and she advised him that she is no longer interested in pursuing her case. WCJ will issue NOI to Dismiss Case.

(Minutes filed November 12, 2024, p. 1.)

On November 12, 2024, applicant filed another objection in response to the WCJ's notice of intent, requesting that the notice of intention to dismiss be withdrawn on the following grounds:

1. The applicant has been treating at St. Rose Hospital and Eden Care;
2. The applicant is ready, willing and able to proceed with their case.

(November 12, 2024, objection petition to dismiss inactive cases, p. 1.)

On November 26, 2024, the WCJ issued an Order dismissing case numbers ADJ17611095 and ADJ17611096:

ORDER

Pursuant to Notice of Intention and no timely objection having been filed within the time allowed.

IT IS ORDERED that the above-entitled claim be and the same is dismissed without prejudice subject to payment, adjustment, or litigation of medical-legal costs by Defendant(s). The court reserves jurisdiction over unpaid medical legal liens.

(November 26, 2024, Order of Dismissal, p. 1.)

On December 12, 2024, applicant filed a Petition for reconsideration.

DISCUSSION

I.

Former Labor Code section¹ 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.

¹ All statutory references are to the Labor Code unless otherwise stated.

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 December 23, 2024, and 60 days from the date of transmission is Friday, February 21, 2025. This decision is issued by or on Friday, February 21, 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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on December 23, 2024, and the case was transmitted to the Appeals Board on December 23, 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 December 23, 2024.

II.

Subject to the limitations of section 5804, “[t]he appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] ... At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.” (Lab. Code, § 5803.)

WCAB Rule 10550 provides for administrative dismissal of inactive cases not activated for hearing within one year after the filing of the Application for Adjudication of Claim or the entry of an order taking off calendar, after notice and opportunity to be heard. Relevant here, WCAB Rule 10550 states in pertinent part:

(a) Unless a case is activated for hearing within one year after the filing of the Application for Adjudication of Claim or the entry of an order taking off calendar, the case may be dismissed after notice and opportunity to be heard.

....

(b) At least 30 days before filing a petition to dismiss, the defendant seeking to dismiss the case shall send a letter to the applicant and, if represented, to the applicant's attorney or non-attorney representative, stating the defendant's intention to file a "Petition to Dismiss Inactive Case" 30 days after the date of that letter, unless the applicant or applicant's attorney or non-attorney representative objects in writing, demonstrating good cause for not dismissing the case.

....

(Cal. Code Regs., tit. 8, § 10550(a)-(b), emphasis added.)

Although WCAB Rule 10550 authorizes dismissal of an inactive case after affording the applicant notice and an opportunity to be heard, dismissal is discretionary, not mandatory. (*Roth v. Workers' Comp. Appeals Bd.* (1971) 20 Cal.App.3d 452 [36 Cal.Comp.Cases 604].) There is a strong public policy favoring disposition of cases on their merits rather than on procedural grounds. (*Bland v. Workers Comp. Appeals Bd.* (1970) 3 Cal.3d 324 [35 Cal.Comp.Cases 513]; *Marino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485 [67 Cal.Comp.Cases 1273].)

Here, applicant filed an objection to defendant's petition to dismiss on August 15, 2024, stating that applicant was actively receiving medical treatment and was ready, willing, and able to proceed with their case. (August 15, 2024, objection petition to dismiss inactive cases, p. 1.)

Based on Minutes filed on November 12, 2024, it appears that a hearing representative on behalf of applicant appeared at a hearing on September 25, 2024, however, according to the Minutes, it is unclear whether applicant was or was not present at the hearing, as the Minutes fail to document same. (Minutes filed November 12, 2024, p. 1.) It is not entirely clear what issues were framed, or what stipulations were entered into at the conference, nor when the applicant allegedly relayed their desire not to pursue their case as stated in the Minutes. Moreover, no evidence has been admitted into the record.

Despite applicant's August 15, 2024, written objection to defendant's petition to dismiss, the WCJ issued a notice of intention to dismiss for inactivity. On November 12, 2024, applicant filed another objection in response to the WCJ's notice of intent, reiterating that they were receiving medical care and were ready, willing, and able to proceed with their cases.

Based on the scant record before us, when applicant filed the first written objection to dismissal on August 15, 2024, the WCJ should have either sustained the objection, dismissing defendant's petition, or set the matter for hearing. (Cal. Code Regs., tit. 8, §§ 10550, 10832.)

WCAB Rule 10832 provides as follows:

(a) The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose, including but not limited to:

- (1) Allowing, disallowing or dismissing a lien;
- (2) Granting, denying or dismissing a petition;
- (3) Sanctioning a party;
- (4) Submitting the matter on the record; or
- (5) Dismissing an application.

(b) A Notice of Intention may be served by designated service in accordance with rule 10629.

(c) **If an objection 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.**

(d) Any order issued after a notice of intention shall be served by the Workers' Compensation Appeals Board pursuant to rule 10628.

(e) An order with a clause rendering the order null and void if an objection is received is not a Notice of Intention and must be served by the Workers' Compensation Appeals Board.

(Cal. Code Regs., tit. 8, § 10832, emphasis added.)

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).) As required by section 5313 and explained in *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." (*Hamilton, supra*, at 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[.]" (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].)

Further, all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant . . .” (*Id.*, at 158.) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

The “essence of due process is simply notice and the opportunity to be heard.” (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish, supra*, at 1295, citing *Rucker, supra*, at 157-158.) The Appeals Board also has a constitutional mandate to “ensure substantial justice in all cases” and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The “Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee.” (*McKernan, supra*, at 937-938.)

Pursuant to the California Constitution and sections 5313 and 5815 of the Labor Code, a WCJ is charged with the duty to make determinations on all issues in controversy, to provide a statement of the reasons or grounds upon which those determinations were made, and to do so in a manner that is “expeditiously, inexpensively, and without encumbrance of any character.” (Cal. Const., art. XIV, § 4; Lab. Code, §§ 5313, 5815.) When applicant filed the November 12, 2024, objection in response to the WCJ's notice of intention to dismiss, the WCJ should have either: (1) sustained the objection; (2) issued 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).)

Alternatively, the WCJ could have treated applicant's objection or applicant's Petition for reconsideration as a Petition to set aside the Orders of Dismissal. WCAB Rule 10517 states,

“pleadings may be amended by the Workers’ Compensation Appeals Board to conform to proof.” (Cal. Code Regs., tit. 8, § 10517.) This Rule represents the application of California’s public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings. Informality of pleading in proceedings before the Board has long been recognized, and courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*McGee Street Productions v. Workers’ Comp. Appeals Bd.* (2003) 108 Cal.App.4th 717, 724 [68 Cal.Comp.Cases 708]; *Rubio v. Workers’ Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200-201 [50 Cal.Comp.Cases 160]; *Liberty Mutual Ins. Co. v. Workers’ Comp. Appeals Bd.* (1980) 109 Cal.App.3d 148, 152-153 [45 Cal.Comp.Cases 866].)

Accordingly, we grant applicant’s Petition, rescind the Order of Dismissal in case numbers ADJ17611095 and ADJ17611096, and return the matter to the WCJ for further proceedings consistent with this opinion.

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 of Dismissal in case number ADJ17611095, issued by the WCJ on November 26, 2024, is **RESCINDED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order of Dismissal in case number ADJ17611096, issued by the WCJ on November 26, 2024, is **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 21, 2025

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

**ALEXANDRYA WOLFE
LAW OFFICE OF BOB NEHORAY
AMARO BALDWIN LAW FIRM**

JB/pm



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