

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

ANDREW PADILLA, *Applicant*

vs.

**UNITED PARCEL SERVICE;
LIBERTY MUTUAL,
*Defendants***

**Adjudication Number: ADJ16407644
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings of Fact and Order (F&O) issued by the workers compensation administrative law judge (WCJ) on February 12, 2025, wherein the WCJ found that applicant has not demonstrated any basis for relief under Labor Code section 5813 with respect to defendants' alleged discovery.

Applicant alleges the WCJ's failure to impose sanctions was erroneous as a matter of law. We did not receive an answer from defendant.

The WCJ issued a Report and Recommendation recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and Recommendation (Report) of the 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, we will deny reconsideration.

Under Labor Code 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 10, 2025 and 60 days from the date of transmission is May 9, 2025. This decision is issued by or on May 9, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 10, 2025, and the case was transmitted to the Appeals Board on March 10, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 10, 2025.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



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**

**ANDREW PADILLA
NADEEM MAKADA
TOBIN LUCKS**

LN/md

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

Elizabeth Dehn, Workers' Compensation Judge, hereby submits her report and recommendation on the Petition for Reconsideration filed herein.

Introduction

On March 4, 2025 applicant, through his attorney of record, filed a Petition for Reconsideration of my February 11, 2025 Findings of Fact and Order. The petition for reconsideration was timely filed, and did include the required verification. To date, defendant has not filed an answer to the petition for reconsideration.

Petitioner does not list any of the enumerated grounds for reconsideration outlined in Labor Code section 5903 in support of the petition, but states that I erred as a matter of law and fact in declining to impose sanctions in this matter.

Facts

Andrew Padilla, [...] while employed on April 15, 2022 as a warehouse supervisor at South San Francisco, California, by UPS Customer Service sustained injury arising out of and in the course of employment to the trunk and abdomen. At the time of injury, the employer was insured for workers' compensation purposes by Liberty Mutual.

The matter proceeded to a mandatory settlement conference on April 22, 2024, at which time Stipulations were submitted. An Award was issued on May 3, 2024. Neither a petition to reopen nor a petition to reduce permanent disability has been filed.

Following the issuance of the Award, defendant served applicant's attorney on July 23, 2024 with sub rosa video taken on the applicant. (Applicant's Exhibit 4.) The video was taken in 2022 and 2023. (Applicant's Exhibit 8.) Applicant filed a petition for attorneys' fees and sanctions on September 19, 2024. (Applicant's Exhibit 4.)

Defendant solicited a supplemental report from Dr. Fujinaka by letter of May 13, 2024, which resulted in a June 30, 2024 supplemental PQME report. (Defendant's Exhibit B.)

Defendant also set the deposition of the PQME for October 8, 2024. (Applicant's Exhibit 7.) Applicant filed a petition to quash the deposition September 27, 2024. (Joint Exhibit 101.)

This matter proceeded to a mandatory settlement conference on December 9, 2024. The issues set for trial were whether defendant could depose the panel QME, applicant's claim of sanctions and attorneys' fees against defendant and

defendant's claim for costs, sanctions and attorneys' fees against applicant attorney.

At the January 28, 2025 trial, I issued an order quashing the deposition of the panel QME. The matter only proceeded on applicant's request for the imposition of Labor Code section 5813 sanctions and attorneys' fees. I issued my Findings and Order dated February 11, 2025 and served on February 12, 2025 in which I did not impose sanctions against defendant. It is from this Order that petitioner seeks reconsideration.

Discussion

Labor Code section 5813 states that a workers' compensation judge or the appeals board may order a party to pay attorneys' fees and costs as a result of bad-faith action and may order additional sanctions. (emphasis added.) The imposition of sanctions is discretionary. (See, *Stahl v. Costco Wholesale Corp.* 2012 Cal. Wrk. Comp. P.D. Lexis 390.)

The only petition for sanctions and attorneys' fees filed by applicant was the September 19, 2024 petition. (Applicant's Exhibit 4.) That petition requested sanctions because defendant disclosed sub rosa video on July 23, 2024, after the applicant's deposition and the April 22, 2024 mandatory settlement conference. There is nothing in evidence to indicate that the sub rosa video was sent to any medical evaluator. It was not among the records reviewed by Dr. Fujinaka in either his August 23, 2023 report or his June 30, 2024 report. (Defendant's Exhibit A and B.) As the video was never sent to an examiner, I exercised my judicial discretion and did not impose sanctions in this matter.

Applicant also raised issue of sanctions for defendant engaging in discovery after the case was settled by stipulations when no petition to reopen or a petition to reduce the disability had been filed. Defendant solicited a supplemental report from Dr. Fujinaka by letter of May 13, 2024, which resulted in the June 30, 2024 supplemental PQME report. (Defendant's Exhibit B.) This letter was written after the case resolved the stipulation on April 22, 2024. There is nothing in evidence to show that applicant objected to that requested supplemental report.

Defendant also set the deposition of the PQME for October 8, 2024. (Applicant's Exhibit 7.) Applicant filed a petition to quash the deposition September 27, 2024. (Joint Exhibit 101.) Although no separate sanctions petition was filed, the issue of sanctions and attorney's fees were raised as part of that petition to quash. Although I believe the attempts to do discovery were inappropriate, I exercised my judicial discretion and declined to impose sanctions for that post settlement discovery. There was no evidence that this defendant has engaged in a similar pattern of inappropriate conduct in other matters. Applicant attorney apparently also did not object to the solicitation of a supplement report from the QME but objected only once a deposition was set in this matter.

Recommendation

For the foregoing reasons, I recommend that defendant's Petition for [Reconsideration], filed herein on March 4, 2025, be denied. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

Date: 3/10/2025

Elizabeth C. Dehn
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE