

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

ANGELICA RODRIGUEZ, *Applicant*

vs.

**RECANA SOLUTIONS, LLC;
ZURICH AMERICAN INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ8511460
Los Angeles District Office**

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

Lien claimant Mednet Inc. seeks reconsideration of the Order of Dismissal of Lien of Mednet Inc. ("Order of Dismissal"), wherein the workers' compensation judge (WCJ) purported to dismiss the lien of lien claimant. Lien claimant contends that the Order of Dismissal should be vacated.

We have not received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be dismissed as untimely and unverified or denied.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Reconsideration and vacate the Order of Dismissal.

FACTS

Applicant claimed industrial injury to various body parts while working as a janitor for defendant on April 17, 2012. The case settled by a Compromise and Release Agreement (C&R) for \$150,000.00 signed by the parties on June 1, 2023; the parties agreed to the following in the

C&R: “Defendants to adjust, litigate, and/or pay all liens of record duly filed with the WCAB. WCAB to return jurisdiction.” The WCJ issued the Order Approving Compromise and Release (OACR) issuing on June 1, 2023.

On March 6, 2025, a lien conference took place.¹ According to the minutes of hearing (MOH), defendant’s attorney appeared for defendant, and a person appeared on behalf of lien claimant First Choice.² There is no indication on the minutes whether lien claimant appeared or failed to appear. (MOH, p. 1.) The WCJ noted that various liens were resolved that day, but there is no mention of lien claimant. (MOH, p. 1.) Defendant served the MOH on lien claimant by mail and/or email at their address in California on March 11, 2025.

On March 11, 2025, the WCJ issued the Order of Dismissal stating the following:

GOOD CAUSE APPEARING, and based on the failure of Lien Claimant MEDNET INC to appear at the Lien Conference held before the undersigned on 3/6/2025, pursuant to 8 CCR 10888(c) with Notice of such hearing contained in EAMS, and review of the WCAB file,

IT IS HEREBY ORDERED that the lien of MEDNET INC filed in case number(s) ADJ8511460 be DISMISSED without prejudice.

This Order becomes final ten days from service of this Order barring any written objection filed within that time showing good cause.

(Order of Dismissal, p. 1.)

The Order of Dismissal was served by the district office on March 11, 2025, on lien claimant, defendant’s attorneys, and defendant’s insurance company, which is located in Illinois.

On June 23, 2025, lien claimant filed its Petition for Reconsideration of the Order of Dismissal.

¹ According to Communications in the Electronic Adjudication Management System (EAMS), a notice of hearing was served on November 27, 2024. On February 11, 2025, defendant apparently served a notice of hearing for a lien conference on March 6, 2025 on multiple parties by mail, including lien claimant, but the notice is not admitted into evidence.

² The MOH contained a typographical error and referred to this other lien claimant as “Fiorst Choice” but the correct name of that lien claimant is First Choice.

DISCUSSION

I.

Former Labor Code³ section 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.

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 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 July 10, 2025, and 60 days from the date of transmission is September 8, 2025. This decision is issued by or on September 8, 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 July 10, 2025, and the case was transmitted to the Appeals Board on July 10, 2025. Service of the Report and transmission of the

³ All further statutory references are to the Labor Code unless otherwise noted.

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 July 10, 2025.

II.

The Order of Dismissal is void by operation of law as explained below.

First, the WCJ may issue a notice of intention for any proper purpose, including allowing, disallowing or dismissing a lien. (Cal. Code Regs., tit. 8, § 10832 (a)(1).) Specifically, the Appeals Board or a workers' compensation judge may order a lien dismissed for non-appearance by the lien claimant. (Cal. Code Regs., tit. 8, § 10888(a).) Before issuing an Order dismissing a lien, the Appeals Board or WCJ "shall issue a Notice of Intention to Dismiss the lien claim consistent with rule 10832 that provides at least 10 days for the lien claimant to file and serve a response showing good cause why an Order dismissing the lien should not issue." (Cal. Code Regs., tit. 8, § 10888(e).) Additionally, a "dismissal for failure to appear at a hearing shall only issue if the lien claimant was provided with notice of the lien conference or lien trial." (Cal. Code Regs., tit. 8, § 10888(c).) However, an "order with a clause rendering the order null and void if an objection is received is not a Notice of Intention. . . ." (Cal. Code Regs., tit. 8, § 10832(e).)

Thus, the Order of Dismissal was not a proper notice of intention as set forth in WCAB Rule 10888(e) because it stated that the Order of Dismissal would only become final if there was no written objection showing good cause within 10 days of service of the Order of Dismissal (a "self destruct" order).⁴

Next, we observe that the Order of Dismissal does not specify when the notice of hearing was served and only states that the "notice is provided in EAMS," and so it does not comply with WCAB Rule 10888(c). Specifically, there is no statement in the Order as to when notice of the hearing was served, and whether it was received by lien claimant. In her Report, the WCJ appears

⁴ We observe that self-destruct orders should be discouraged due to the difficulty of determining the date of finality. This challenge is illustrated in the instant case as the WCJ miscalculated the date that the Order of Dismissal would become final. The WCJ determined that the date the Order of Dismissal would become final was March 26, 2025. (Report, p. 1.) However, the proof of service for the Order of Dismissal showed service on at least one out of state address. When any document is served by mail, fax, or email, the period of time to act or respond is extended by 10 days if service includes an address that is out of state but within the United States. (Cal. Code Regs., tit. 8, § 10605(a)(2).) Therefore, lien claimant had 20 days to respond or object to the Order of Dismissal and the deadline was instead April 1, 2025.

to indicate that she relied on a notice of hearing by defendant. But, the notice of hearing and its proof of service were not admitted into evidence, so there is no evidence that lien claimant received notice as required by WCAB Rule 10888(c). Moreover, there is nothing in the MOH that documents that lien claimant failed to appear at the lien conference, and the presence or absence of lien claimant is not noted on the MOH. (MOH, p. 1.)

In fact, there is no evidence to demonstrate that lien claimant had notice of the hearing and no evidence to demonstrate that lien claimant failed to appear, and there must be a complete record for our review of the case. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc) [“[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision.”].)

Therefore, the Order of Dismissal is void because there was no proper notice of intention to dismiss as required by WCAB Rule 10888, subdivisions (c) and (e). It is also void because the language of the Order is not based on a proper evidentiary record.

In any event, we note that if the Order of Dismissal was not void by operation of law, we would have rescinded it and returned the matter to the WCJ to issue a proper notice of intention, hold a hearing and admit evidence, and then determine based on the record whether the lien should be dismissed. Thereby, there also would have been a complete record for our review.

We emphasize that the law is clear that “lien claimants may seek relief from the consequences of a failure to appear by utilizing a procedure substantially similar to Code of Civil Procedure section 473.” (*Fox v. Workers’ Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149].) Section 473 of the Civil Code states the “court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (Code Civ. Proc., § 473(b).) ***Hence, as a matter of due process, all persons appearing before the WCAB are entitled to seek relief under the statutory and decisional authority that makes Code of Civil Procedure section 473 applicable to our proceedings.***⁵ While we need not consider here whether lien claimant is entitled to relief for his failure to appear, if we were not vacating the Order on other grounds, lien claimant would have been entitled to seek relief

⁵ In her Report, the WCJ appears to state that the enactment of WCAB Rule 10888 somehow rendered *Fox, supra*, and its progeny inapplicable, and somehow abrogated a person’s right to seek relief at the WCAB based on excusable neglect. (Report, p. 6.)

from the dismissal of the lien. Thereafter, at a properly noticed hearing, he could have provided testimony or evidence regarding his claim of good cause based on what appears to be a serious personal health issue.

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].) 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 v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker, supra*, at pp. 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, quoting *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 313.) Although due process is "a flexible concept which depends upon the circumstances and a balancing of various factors," it generally requires the right to present relevant evidence. (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817.) In short, due process requires that a lien claimant's claim be heard on the merits.

Accordingly, we grant lien claimant's Petition for Reconsideration, and we vacate the Order of Dismissal.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the Order of Dismissal is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the Order of Dismissal is **VACATED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 8, 2025

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

**MEDNET, INC.
STOCKWELL HARRIS, WOOLVERTON & FOX**

JMR/abs

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