

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

**GENA GASTON, *Applicant***

**vs.**

**COUNTY OF LOS ANGELES PROBATION DEPT, permissibly  
self-insured, administrated by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ14094875  
Van Nuys District Office**

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

Lien claimant Unicare Surgery Center seeks reconsideration of the Order dismissing lien (Order), issued by the workers' compensation administrative law judge (WCJ) on September 16, 2024.

Lien claimant contends that they did not receive a notice of hearing for a lien conference, which resulted in an unintentional failure to attend.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be dismissed as untimely and unverified or in the alternative that the Petition should be denied on the merits.

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 for the reasons discussed below, we will grant lien claimant's Petition, rescind the Order, and return the matter to the WCJ for further proceedings consistent with this decision.

**BACKGROUND**

On May 24, 2023, lien claimant Unicare Surgery Center, through their non-attorney representative ARZ Lien Solutions, filed a notice and request for allowance of lien.

On May 2, 2024, defendant filed a Declaration of Readiness (DOR) to proceed to a lien conference.

On May 3, 2024, a notice of hearing issued for a lien conference on August 22, 2024.

On May 13, 2024, the notice of hearing addressed to ARZ Lien Solutions at P.O. Box 1208, Temecula, CA 92593 was returned as undeliverable, marked as “box closed,” “unable to forward,” and “return to sender.”

Per the minutes of hearing issued by the WCJ, lien claimant did not appear at the August 22, 2024, lien conference, and the minutes state: “NOI to dismiss Unicare Surgery Center will issue in a separate document.” (Minutes of Hearing from August 22, 2024 conference, served August 23, 2024, p. 1.)

On August 22, 2024, the WCJ executed a notice of intention to dismiss Unicare Surgery Center’s lien:

IT APPEARING THAT Lien Claimant UNICARE SURGERY CENTER was duly served with Notice of Conference in this matter and failed to appear at the conference on August 22, 2024, therefore, pursuant to 8 CCR §10888(c) and Good Cause Appearing:

NOTICE IS HEREBY GIVEN that an order dismissing lien with prejudice shall issue 10-days after service hereof, unless good cause to the contrary is shown in writing within said time.

(Notice of intention to dismiss lien, p. 1.)

The WCJ designated defendant to serve the notice of intention to dismiss. Defendant served lien claimant’s representative at ARZ Lien Solutions at P.O. Box 1208, Temecula, CA 92593 - the same address where an envelope was returned and marked as “box closed,” “unable to forward,” and “return to sender.”

On September 16, 2024, the WCJ issued an Order dismissing Unicare Surgery Center’s lien:

ORDER

Pursuant to Notice of Intention and no good cause to the contrary having been shown within the time allowed;

IT IS ORDERED that the above-entitled Lien be and the same is hereby DISMISSED with prejudice for failure to appear as noticed above.

Lien claimant's representative's name does not appear on the proof of service by the Court of the Order dismissing the lien.

## DISCUSSION

### I.

Former Labor Code section<sup>1</sup> 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 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 February 24, 2025, and 60 days from the date of transmission is April 25, 2025. This decision is issued by or on April 25, 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.

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<sup>1</sup> All statutory references are to the Labor Code unless otherwise stated.

Here, according to the proof of service for the Report by the WCJ, the Report was served on February 24, 2025, and the case was transmitted to the Appeals Board on February 24, 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 February 24, 2025.

## II.

There are 25 days allowed within which to file a petition for reconsideration from a “final” decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) However, contrary to WCAB Rules regarding filing and service of documents, lien claimant’s representative was not served with the Order dismissing Unicare Surgery Center’s lien. (Cal. Code Regs., tit. 8, §§ 10610, 10615, 10625, 10628.) Because lien claimant’s representative was not served with the Order of dismissal, the Petition is timely.

The notice of hearing for the lien conference was returned as undeliverable, thus it is not clear that lien claimant received notice of the hearing. (Lab. Code, § 5504; Cal. Code Regs., tit. 8, § 10625(d).) Lien claimant’s non-attorney representative asserts that they did not receive proper notice of the lien conference hearing, which raises procedural due process concerns as to whether the required notice was received. Further, lien claimant’s representative was not served with the Order of dismissal issued on September 16, 2024, in violation of WCAB Rule 10832(d).<sup>2</sup>

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].) It is one of the basic tenets of jurisprudence that a party must be provided notice and an opportunity to be heard before their case is dismissed. (See, e.g., *San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].)

The failure to serve lien claimant with the Order of dismissal constitutes a fundamental violation of lien claimant’s due process rights, rendering the resulting September 16, 2024 Order of dismissal void on its face. Lien claimant’s representative contends that “My office has been having a repeated issue with the board not sending notifications to my PO Box. The WCAB has

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<sup>2</sup> Cal. Code Regs., tit., 8, § 10832(d) states: “Any order issued after a notice of intention shall be served by the Workers’ Compensation Appeals Board pursuant to rule 10628.”

my PO box flagged as a bad address, but it is the true and correct address. I have contacted multiple employees at the WCAB to resolve this issue, but it still has not been resolved.” (Petition, p. 1.) We note, however, that an envelope addressed to ARZ Lien Solutions at P.O. Box 1208, Temecula, CA 92593 was returned to the District Office with a United States Postal Service label stating: “box closed,” “unable to forward,” and “return to sender.” It is a party’s duty to maintain an accurate mailing address with the Board, in part to effectuate service of documents. (Cal. Code Regs., tit. 8, §§ 10205.5.)

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]; *Fox v. Workers’ Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149].) In the *Fox* case, as here, a lien claimant’s case was dismissed due to failure to appear. (*Fox, supra*, at 1206.) The court of appeal held “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, supra*, at 1205; Code Civ. Proc., § 473; see Lab. Code, § 5506.) Code of Civil Procedure section 473(b) provides, in relevant part: “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).)

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.) “Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, § 5313; see *Hamilton, supra*, at 476.)

“The WCJ is also required to prepare an opinion on decision, setting forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on.” (*Hamilton, supra*, at 476.) “The opinion enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton, supra*, at 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68

Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].) Here, a record has not yet been created regarding lien claimant's assertions of defective service, leaving us unable to assess the merits of those assertions.

Accordingly, we grant lien claimant's Petition, rescind the Order of dismissal issued on September 16, 2024, and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return to the trial level, we recommend that the WCJ hold a hearing to allow the parties to frame the issues and any stipulations, submit exhibits as evidence, call witnesses, if necessary, lodge any objections, and make their legal arguments.

For the foregoing reasons,

**IT IS ORDERED** that lien claimant'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 issued by the WCJ on September 16, 2024 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**April 25, 2025**

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

**VEATCH CARLSON LAW  
ARZ LIEN SOLUTIONS  
UNICARE SURGERY CENTER**

**JB/pm**

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