

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

IVAN BABENKO, *Applicant*

vs.

**ENCORE GROUP; ACE AMERICAN INSURANCE COMPANY,
administered by CORVEL, *Defendants***

**Adjudication Number: ADJ18697538
Van Nuys District Office**

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

Defendant seeks reconsideration of the “Order Imposing Sanctions and Costs” (Order) issued on July 18, 2025, by the workers’ compensation administrative law judge (WCJ). The WCJ issued sanctions against defendant in the amount of \$1,500.00 and awarded costs of \$2,745.00 to applicant due to defendant’s failure to appear at an expedited hearing.

Defendant contends that it failed to appear at expedited hearing due to acute illness and that defendant informed applicant’s attorney of the illness.

We have received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ’s Report. Based on our review of the record we will grant defendant’s petition for reconsideration and as our Decision After Reconsideration, we will rescind the July 18, 2025 Order and return this matter to the trial level for further proceedings.

FACTS

Per the WCJ's Report:

On November 21, 2024 the matter came before the undersigned for an Expedited Trial based on a Declaration of Readiness to Appear (DOR) filed by Applicant's Attorney on October 18, 2024. Defendants had filed a timely objection to said DOR on October 22, 2024. However, there was no appearance by Defendants at the trial on November 21, 2024. The undersigned noted the failure to appear in the Minutes of Hearing (EAMS DOC ID# 78609362). The undersigned also issued the following order in the Minutes of Hearing: "DEFENSE COUNSEL FAILED TO APPEAR WITHOUT NOTICE TO THE COURT NOR LEAVE OF THE COURT. DEFENDANT IS ORDRED[sic] TO SHOW CAUSE WHY COSTS, ATTORNEY'S FEES AND SANCTIONS SHOULD NOT BE IMPOSED DUE WITHIN 10 DAYS OF TODAY." (EAMS DOC ID# 78609362). There was no response to this Order to Show Cause (OSC) by Defendants nor defense counsel.

On February 18, 2025 the matter came again before the undersigned for an Expedited Trial based on a DOR filed by Applicant's Attorney on January 13, 2025. Defendants did not file any objection to the DOR. The Defendant appeared by way of counsel but the issue of penalties and sanctions was not resolved and there was still no response to the OSC issued November 21, 2024. (see Minutes dated 2/18/2025 EAMS DOC ID# 78882267).

On February 19, 2025 the undersigned WCJ issued a NOTICE OF INTENT (NOI) TO IMPOSE COSTS, ATTORNEY'S FEES & SANCTIONS per Labor Code section 5813 and Cal. Code Regs., tit. 8, §10421(b)(1),(3), et. seq. (EMS DOC ID# 78882274). In the NOI, the undersigned, among other things, gave notice to the Applicant's Attorney to file a "Bill of Particulars" outlining their attorney's fees and costs as it relates to matters subject to the NOI.

On February 21, 2025, Applicant's attorney complied with the NOI and filed their itemized Bill of Particulars. (EAMS DOC ID#56497073). Defendants failed to file any objection to the NOI nor any response to Applicant's Attorney's pleading for costs and attorney's fees.

Five months later, on July 18, 2025, the court issued the ORDER IMPOSING SANCTIONS AND COSTS as outlined in the NOI of February 19, 2025. (EAMS DOC ID# 79386878).

(WCJ's Report, pp. 2-3.)

DISCUSSION

I.

Former Labor Code¹ 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.

(§ 5909.)

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 September 3, 2025, and 60 days from the date of transmission is Sunday, November 2, 2025, which by operation of law means this decision is due by Monday, November 3, 2025. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on November 3, 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

¹ Further statutory references are to the Labor Code unless noted.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on September 3, 2025, and the case was transmitted to the Appeals Board on September 3, 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 September 3, 2025.

II.

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10761.)

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.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, “[The] commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law.” (*Id.* at 577.)

“It is the policy of the law to favor, whenever possible, a hearing on the merits. Appellate courts are much more disposed to affirm an order when the result is to compel a trial on the merits than when the default judgment is allowed to stand. Therefore, when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court’s order setting aside

a default.” (*Fox v. Workers’ Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205-1206 [57 Cal. Comp. Cases 149].)

Here, it appears that defendant failed to appear for an expedited hearing, failed to respond to an order to show cause, and failed to respond to a notice of intention to impose sanctions and costs. We have treated defendant’s Petition for Reconsideration as a request for relief from what is essentially a default judgment of sanctions and costs on the grounds of mistake, inadvertence, or excusable neglect. (See Code Civ. Proc., § 473(b).) We will return this to the trial level to evaluate defendant’s arguments in the first instance. The trial judge may conduct appropriate proceedings prior to deciding the issue of sanctions and costs. We make no judgment as to the merits of the Order issued.

Accordingly, we grant defendant’s petition for reconsideration and as our Decision After Reconsideration, we rescind the Order Imposing Sanctions and Costs issued on July 18, 2025, and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that defendant’s petition for reconsideration of the Order Imposing Sanctions and Costs issued on July 18, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Imposing Sanctions and Costs issued on July 18, 2025, by the WCJ is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 31, 2025

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

**IVAN BABENKO
LAW OFFICES OF DIANA B. BERLIN
DAVID JANE & ASSOCIATES**

EDL/mc

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