

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

JACOB GILL, *Applicant*

vs.

**J B IMPORTERS, INC.;
ZENITH INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ17889850
San Bernadino District Office**

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

Applicant seeks reconsideration of the Order Dismissing Case (Order) of January 9, 2025, wherein the workers' compensation judge (WCJ) dismissed the case for applicant's failure to prosecute the case. Applicant contends that the Order should be rescinded as he wishes to proceed with his case; and that his Petition for Reconsideration be considered despite any untimeliness issues.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be dismissed.

We have considered the Petition for Reconsideration, the Answer, 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, rescind the WCJ's Order, and return this matter to the WCJ for further proceedings consistent with this decision.

FACTS

Applicant claimed industrial injury to his wrist, hand, and nervous system when he cut his wrist while working as a general laborer for defendant on September 2, 2022. He filed his Application for Adjudication on June 29, 2023. Defendant denied the claim. The initial WCJ granted defendant's petition to change venue to the San Bernadino district office on August 7, 2023.

On November 18, 2024, defendant filed a "Petition to Dismiss Inactive Case Pursuant to CCR 10550."

On December 17, 2024, the WCJ issued a "Notice of Intent to Dismiss Case for Lack of Prosecution" (NIT), stating that the case would be dismissed if applicant did not show good cause in writing as to why the case should be not dismissed within 15 days after service of the NIT. According to the proof of service on the NIT, all parties were served, including defendant employer at its Miami, Florida address.

On January 9, 2025, 23 days after service of the NIT, applicant filed "Applicant's Objection to Notice of Intention to Dismiss" (Objection), alleging good cause as to why the case should not be dismissed.

Also on January 9, 2025, the WCJ issued the Order Dismissing the Case (Order). The proof of service again reflects that all parties were served, including defendant employer at its Miami, Florida address.

Applicant filed his Petition for Reconsideration of the Order on February 4, 2025.

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.

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

(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 February 13, 2025, and 60 days from the date of transmission is April 14, 2025. This decision is issued by or on April 14, 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 February 13, 2025, and the case was transmitted to the Appeals Board on February 13, 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 13, 2025.

II.

Applicant’s Petition for Reconsideration was timely. 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 and 30 days if served by mail to an address outside of California but

within the United States. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1), (2).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

The Order was served on January 9, 2025, and included an out of state address. Therefore, the parties had 30 days from that date to file a Petition for Reconsideration. (Cal. Code Regs., tit. 8, §§ 10600, 10605(a)(2).) Applicant filed his Petition for Reconsideration on February 4, 2025. As applicant filed his Petition for Reconsideration within 30 days of the Order, the Petition for Reconsideration was timely filed.

III.

The WCJ may issue a notice of intention for any proper purpose. (Cal. Code Regs., tit. 8, § 10832 (a).) A proper purpose includes, but is 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. (*Id.*)

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.)

The WCJ issued the NIT on December 17, 2024, and gave the parties 15 days after service of Order to object in writing. The proof of service for the NIT 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, applicant had 25 days to respond or object to the NIT. Applicant filed his Objection on January 9, 2025, within the 25-day deadline to object. Therefore, the WCJ's Order was void ab initio as the WCJ issued the Order before the deadline for a response or objection from applicant.²

Therefore, we grant applicant's Petition for Reconsideration, rescind the Order, and return the matter to the WCJ. Upon return, we recommend that the WCJ consider setting a status conference to discuss next steps.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the January 9, 2025 Order Dismissing Case is **GRANTED**.

² Furthermore, we observe that based on our review of the record, both the NIT and the Order that were served on applicant were returned to the district office for having an incorrect address. While those return envelopes are not yet in evidence so that we do not take them into account in reaching this decision, if applicant did not receive either the NIT or the Order, applicant was not provided with due process, thereby providing another basis to find that the NIT and/or the Order were void.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the January 9, 2025 Order Dismissing Case is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 14, 2025

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

**JACOB GILL
LAW OFFICES OF ROBERT OZERAN
CHERNOW, PINE & WILLIAMS**

JMR/abs

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