

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

JACOB GILL, *Applicant*

vs.

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

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

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

Applicant seeks reconsideration of the Order Dismissing Case (Order) of April 18, 2025, wherein the workers' compensation judge (WCJ) dismissed the case for applicant's failure to prosecute. Applicant contends that the Order should be rescinded because the defect of lack of verification was cured; he has shown good cause not to dismiss; and that due process, the interests of justice, and equity all favor allowing the case to proceed.

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

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 Order, deny defendant's Petition to Dismiss Inactive Case Pursuant to CCR 10550 (Petition to Dismiss), and return this matter to the presiding workers compensation judge (PWCJ) for reassignment to a new WCJ for further proceedings and decision by the new WCJ.

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 its Petition to Dismiss.

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.

On January 9, 2025, 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 an Order Dismissing the Case.

Applicant filed a Petition for Reconsideration of the Order on February 4, 2025. The Appeals Board issued an Opinion and Order Granting Petition and Decision After Reconsideration on April 14, 2025 (Opinion and Order), finding that the WCJ's Order Dismissing Case of January 9, 2025, was void ab initio as the WCJ issued that order before the deadline for a response or objection from applicant; rescinded that order; and returned the matter to the WCJ for further proceedings consistent with the opinion. The Appeals Board also recommended that the WCJ consider setting a status conference to discuss next steps.

Without setting a status conference or holding a hearing, the WCJ issued the Order on April 18, 2025, on the basis that applicant's Objection was not signed or verified and did not show good cause. On April 24, 2025, applicant filed an Affidavit of Applicant Jacob Gill (Affidavit) stating reasons for prior inactivity in his case, including that he had changed his phone number and forgot to inform his attorney, and that he was committed to actively pursuing his case. On the same date, applicant also filed the Petition for Reconsideration of the Order.

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.

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 May 5, 2025 and 60 days from the date of transmission is Friday, July 4, 2025. The next business day that is 60 days from the date of transmission is Monday, July 7, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, July 7, 2025, so that we have timely acted on the petition as required by Labor Code 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 All further statutory references are to the Labor Code unless otherwise noted.

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 May 5, 2025, and the case was transmitted to the Appeals Board on May 5, 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 May 5, 2025.

II.

“Unless a case is activated for hearing within one year after the filing of the Application for Adjudication of Claim or the entry of an order taking off calendar, the case *may* be dismissed *after notice and opportunity to be heard*.” (Cal. Code Regs., tit. 8, § 10550(a), emphasis added.) Following the NIT requiring the applicant to show good cause as to why the case should not be dismissed, the WCJ issued the earlier Order Dismissing Case. That Order Dismissing Case was void ab initio as the WCJ issued it before the deadline for a response or objection from applicant. We also observed that both the NIT and the Order served on applicant were returned to the district office for having an incorrect address, and thus, both the NIT and the Order may have been void. We further recommended that the WCJ consider setting a status conference. (Opinion and Order and fn., pp. 4-5.) The WCJ thereafter, however, simply re-issued a new Order Dismissing Case. Therefore, we will address defendant's Petition to Dismiss.

As discussed in the previous Opinion and Order by the Appeals Board, 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.) Therefore, due process requires hearing applicant’s case on the merits.

Additionally, according to defendant in its Petition to Dismiss Inactive Case, applicant obtained a QME Panel from the DIR Medical Unit in June 2024. That action shows that defendant was aware of, and that applicant planned on, proceeding with his case.

Further, applicant showed good cause why his case should not be dismissed, as required by the NIT. In the Affidavit, applicant stated that he had previously changed his phone number and forgot to inform his attorney and that he was dealing with some personal hardships that distracted him. (Affidavit, p. 1.) He further stated that he did not intend to abandon or stop pursuing his case and that he was unaware that his lack of communication could lead to dismissal of his claim. (Affidavit, p. 1.) He had reestablished communication with his attorney on or around January 9, 2025, and was committed to actively participating in the legal process going forward. (Affidavit, pp. 1-2.) This verified Affidavit from applicant shows good cause not to dismiss applicant’s case.

Due process can only be satisfied in this case by allowing applicant to proceed with his case and allow it to be heard on the merits. Defendant’s Petition to Dismiss is therefore denied.³

³ In the Order of April 17, 2025, as well as in the Report, the WCJ states that the case should be dismissed due to a lack of verification or a signature by applicant, as required by WCAB Rule 10510 (Cal. Code Regs., tit. 8, § 10510(d)). (Order, pp. 2-5.) “However, it has long been recognized that lack of verification does not necessitate automatic dismissal of a nonconforming pleading.” (*Torres v. Contra Costa Schs. Ins. Group* (2014) 79 Cal. Comp. Cases 1181, 1186, citing *United Farm Workers v. Agricultural Labor Relations Bd.* (1985) 37 Cal.3d 912, 915; *Mullane v. Industrial Acc. Com.* (1931) 118 Cal.App. 283, 286; *Wings West Airlines v. Workers' Comp. Appeals Bd. (Nebelon)* (1986) 187 Cal.App.3d 1047 [51 Cal.Comp.Cases 609]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 712, fn.3 [57 Cal.Comp.Cases 230].) A party may correct a lack of verification within a reasonable time after receiving notice of the defect. (*Torres v. Contra Costa Schs. Ins. Group, supra*, 79 Cal. Comp. Cases at p. 1186.) Applicant did not receive notice of the defect prior to the original Order Dismissing Case of January 9, 2025. Applicant has now filed the verified Affidavit on April 24, 2025. We find that applicant has cured the defect of lack of verification.

III.

Finally, the case is being returned to the PW CJ for reassignment to a new WCJ. “The appeals board may appoint one or more workers’ compensation administrative law judges in any proceeding, as it may deem necessary or advisable, and may refer, remove to itself, or transfer to a workers’ compensation administrative law judge the proceedings on any claim.” (Lab. Code, § 5310.) The Appeals Board also has authority to, on “its own motion, and with or without notice, direct and order a workers’ compensation judge: (a) To try the issues in any proceeding before it, whether of fact or of law, and make and file a finding, order, decision, or award based thereon.” (Lab. Code, § 5309.)

We are guided by Labor Code section 5311, which provides that a party may seek to disqualify a WCJ upon any one or more of the grounds specified in Code of Civil Procedure section 641. (Lab. Code, § 5311; see also Code Civ. Proc., § 641.) Among the grounds for disqualification under section 641 are that the WCJ has demonstrated “[t]he existence of a state of mind . . . evincing enmity against or bias toward either party.” (Code Civ. Proc., § 641(g).) “Due Process is violated where there is even an appearance of bias or unfairness in administrative hearings. (citations).” (*Robbins v. Sharp Healthcare, et al.* (2006) 71 Cal.Comp.Cases 1291, 1302 (*Robbins*).) The appearance of bias may be sufficient to require disqualification. As to the appearance of bias, the objective test to be applied is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with impartiality. (*Id.* at p. 1307.) Bias against a party’s attorney may be a ground for disqualification. (*Id.* at p. 1306.) Pursuant to the rationale in *Robbins, supra*, “[d]ue process is violated where there is even an appearance of bias or unfairness in administrative hearings.” (*Id.* at p. 1302.) We conclude that the actions of WCJ Petty toward applicant and/or applicant’s attorney could reasonably raise concerns as to the appearance of unfairness or bias to a “reasonable person with knowledge of the facts of this case.” Thus, we return the matter to the PW CJ for assignment to a different WCJ. (Cal. Code Regs., tit. 8, § 10346(a).)

Therefore, we grant applicant’s Petition for Reconsideration, rescind the Order, deny defendant’s Petition to Dismiss, and return the matter to the PW CJ for reassignment to a new WCJ for further proceedings and decision by the new WCJ.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the April 18, 2025 Order Dismissing Case is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the April 18, 2025 Order Dismissing Case is **RESCINDED**.

IT IS FURTHER ORDERED, that defendant's November 18, 2024 Petition to Dismiss Inactive Case pursuant to CCR 10550 is **DENIED** and that the matter is **RETURNED** to the presiding judge for reassignment to a new WCJ for further proceedings and decision by the new WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 7, 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 OFFICE OF ROBERT OZERAN
CHERNOW, PINE & WILLIAMS**

JMR/pm

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