

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

JOAN MARASON, *Applicant*

vs.

QUALITY COMP. INC.; ATHENS ADMINISTRATORS, *Defendants*

**Adjudication Number: ADJ10531138
Los Angeles District Office**

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

Lien claimant representative Alex Kauffman seeks reconsideration of the December 17, 2024 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) found that Mr. Kauffman engaged in conduct that was disruptive and unprofessional, and imposed corresponding monetary sanctions.

Mr. Kauffman contends that the F&O does not adequately describe the basis for the imposition of monetary sanctions and does not reflect a review of the entire record.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration and return this matter to the trial level for further proceedings.

FACTS

Applicant sustained admitted injury to her left arm while employed as a Director of Recreation and Enrichment by defendant Junior Blind of America on January 30, 2016.

Applicant's claim resolved with the issuance of an Award on October 24, 2017. The instant dispute arises out of supplemental proceedings involving the lien claim of White Memorial Medical Center, and its lien representative Alex Kauffman.

On June 24, 2024, lien claimant and defendant appeared at lien conference. The parties prepared a Pre-trial Conference Statement (PTCS) and appeared before the WCJ. The Minutes of Hearing reflect the following:

Lien claimant [declaration of readiness to proceed to hearing] and request for Lien trial. Defendant Rosenberg Yudin opposes lien claimant request to set for lien trial. Per defendant, they were retained in December 2023, and are in need of a copy of bill review documents in order to settle or set lien trial date. Lien claimant opposes OTOC [Order Taking the matter Off Calendar], and requests trial. After indicating the matter is taken off calendar, lien claimant rep continued making the same argument that he is opposed to OTOC and Demanded trial. Judge indicated his position was noted in the [Minutes of Hearing], and indicated it has been determined The case is OTOC. Lien claimant rep was repeatedly instructed to stop interrupting, and he refused, continuing to state the case should be set for trial. Judge indicated an NOI [Notice of Intent re] sanctions would issue, and lien claimant rep once again interrupted. NOI to issue.

(Minutes of Hearing, dated June 24, 2024.)

On June 27, 2024, the WCJ issued his Notice of Intent to Impose Sanctions on Lien Claimant, noting that “non-attorney hearing representative Alex Kauffman, appearing on behalf of White Memorial on June 24, 2024, engaged in conduct that was disruptive and unprofessional, by repeatedly interrupting the undersigned.” (Notice of Intent to Impose Sanctions on Lien Claimant, issued June 27, 2024.)

On July 12, 2024, Mr. Kauffman filed an Objection to the Notice of Intent apologizing for “any interruption or outburst,” during the lien conference and asserting that lien claimant was “shocked by defense counsel’s request for further discovery to perform a bill review analysis.” (Objection to Notice of Intent, dated July 12, 2024, at p. 4:19.) The objection disclaimed any defiance or blatant disregard of the WCJ’s directives, and requested “relief as appropriate.” (*Id.* at p. 5:22.)

On August 12, 2024, the parties appeared at Mandatory Settlement Conference, at which time the issue of the sanctions was set for trial. The WCJ indicated that “defendant is not required to appear but [may] appear if desired.” (Minutes of Hearing, date August 12, 2024.)

On October 15, 2024, lien claimant's representative appeared for trial. There was no appearance by defense counsel. The sole issue framed for decision was "Notice of intent to impose sanctions dated 6-25-2024." (Minutes of Hearing, dated October 15, 2024 (Minutes), at p. 2:7.) The WCJ received in evidence lien claimant's exhibits as pertinent to the underlying lien, and further took judicial notice of the June 24, 2024 Minutes of Hearing, the Notice of Intent re Sanctions issued on June 27, 2024, and the lien claimant's objection, dated July 12, 2024. The matter was submitted for decision without testimony. (*Id.* at p. 1:23.)

On December 17, 2024, the WCJ issued his F&O, finding that "Alex Kauffman engaged in conduct that was disruptive and unprofessional by repeatedly interrupting proceedings and preventing court from continuing." (F&O, p. 1.) The WCJ imposed monetary sanctions solely on Mr. Kauffman in the amount of \$250.00.

On January 2, 2025, lien claimant's representative "Alan Law/Grant & Weber" and Mr. Kauffman filed the instant Petition. Lien claimant avers the WCJ's decision "does not appear to review and take into consideration the complete history of the lien representatives' position as described ... [in the] objection to notice of intent...." (Petition, at p. 2:10.) Lien claimant avers "misleading facts and evidence by defendant," and seeks relief from the imposition of monetary sanctions.

The WCJ's Report observes that lien claimant's Petition improperly attempts to justify the lien claimant's disruptive actions as warranted by the circumstances at the time, and recommends we deny lien claimant's Petition.

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 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 on January 8, 2025 and 60 days from the date of transmission is Sunday, March 9, 2025. The next business day that is 60 days from the date of transmission is Monday, March 10, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, March 10, 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 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 January 8, 2025, and the case was transmitted to the Appeals Board on January 8, 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 January 8, 2025.

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.

II.

The Appeals Board is authorized to impose sanctions, costs and attorney's fees under section 5813, which states, in pertinent part, that:

(a) The workers' compensation referee or appeals board may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars (\$2,500) to be transmitted to the General Fund.

(b) The determination of sanctions shall be made after written application by the party seeking sanctions or upon the appeal board's own motion.

(Lab Code, § 5813(a) and (b).)

Sanctions under section 5813 are designed to punish litigation abuses and to provide the court with a tool for curbing improper legal tactics and controlling their calendars. (*Duncan v. Workers' Comp. Appeals Bd.* (2008) 166 Cal.App.4th 294, 302 [82 Cal.Rptr.3d 664].) Accordingly, sanctions are similar to penalties under section 5814, in that they are designed to have both remedial and penal aspects. (See *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324 (Appeals Board En Banc).)

Orders for sanctions, costs and attorney's fees can be based upon the WCJ's own motion or on a petition filed pursuant to Workers' Compensation Appeals Board (WCAB) Rule 10510. (Cal. Code Regs., tit. 8, §§ 10421(a), 10510.) Before issuing such an order, "the alleged offending party or attorney must be given notice and an opportunity to be heard." (Cal. Code Regs., tit. 8, § 10421(a).) WCAB Rule 10421, subdivision (b), authorizes sanctions for a party who has committed "[b]ad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay including actions or tactics that result from willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit." (Cal. Code Regs., tit. 8, § 10421(b).) Subdivision (b) provides a comprehensive but non-exclusive list of actions that could be subject to sanctions. As applicable here, violations subject to sanctions, pursuant to WCAB Rule 10421(b), include:

(9) Using any language or gesture at or in connection with any hearing, or using any language in any pleading or other document:

(A) Where the language or gesture:

(i) Is directed to the Workers' Compensation Appeals Board, to any of its officials or staff or to any party (or the attorney or non-attorney representative for a party); and

(ii) Is patently insulting, offensive, insolent, intemperate, foul, vulgar, obscene, abusive or disrespectful....

(Cal. Code Regs., tit. 8, § 10421(b)(9).)

Here, the lien claimant avers his conduct at hearing arose out of a dispute with defendant at the June 24, 2024 lien conference. However, the evidentiary record contains no testimony from lien claimant's representative, and defendant was excused from the ensuing sanctions proceedings. (Minutes of Hearing, dated August 12, 2024.)

All WCJs are subject to the Code of Judicial Ethics and its commentary. (Lab. Code, § 123.6(a).) Canon 2(A) provides, in relevant part, that "[a] judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The Advisory Committee commentary to Canon 2(A) observes that, "[t]he prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge," and that "[t]he test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence." We are further mindful that due process is violated when there is an appearance of bias or unfairness in administrative hearings. (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1024-1027 [119 Cal.Rptr.2d 341].)

Bearing the above in mind, we observe that *the only record* of the allegedly sanctionable conduct by lien claimant's representative is contained in the minute reflection of the WCJ. Because the record sets forth no other evidentiary basis for sanctions and because the WCJ is now a potential witness to the events of the June 24, 2024 hearing, we are concerned that *based on the existing record* a reasonable person may entertain doubts regarding the impartiality of the trier of fact. With due consideration of the facts and circumstances presented in this case, and to the extent

that a reasonable person could entertain doubts concerning the WCJ's impartiality because he is a potential witness to this case, we will grant lien claimant's petition and rescind the F&O.

In so doing, we note that the WCJ has broad latitude in resolving discovery disputes and has the authority to enforce decorum in his courtroom. "A courthouse—and, especially, a courtroom—is a nonpublic forum ... [w]ithin this staid environment, the presiding judge is charged with the responsibility of maintaining proper order and decorum." (*Berner v. Delahanty* (1998) 129 F.3d 20 [cert. den. 523 U.S. 1023 [118 S. Ct. 1305].) The WCJ is thus empowered to conduct the proceedings in his courtroom with the goal of expeditious resolution of the presented disputes. Moreover, our rules provide that the WCJ may issue sanctions when a party or attorney acts with willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board. (Cal. Code Regs., tit. 8, §§ 10421(b).) We also note, however, that in weighing an appropriate response to courtroom misconduct, the WCJ has a broad range of options available. The WCJ may wish to consider whether admonishment is sufficient under the circumstances, or whether the offending behavior is sufficiently egregious or is part of a larger pattern warranting the imposition of monetary sanctions. (See, e.g., *Hernandez v. Aramark Uniform & Career* (July 5, 2012, ADJ4467882 [2012 Cal. Wrk. Comp. P.D. LEXIS 348].)

Accordingly, we will rescind the F&O and return this matter to the trial level for further proceedings. Upon return of this matter we recommend the WCJ address all pending issues simultaneously, including the underlying lien dispute, along with the instant sanctions issue. We further recommend that once the record has been appropriately augmented that the WCJ consider whether an admonishment, monetary sanctions, or other responsive measures are appropriate and necessary to curb improper legal tactics and to control the court's calendar. (*Duncan v. Workers' Comp. Appeals Bd.*, *supra*, 166 Cal.App.4th at p. 302.)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of December 17, 2024 is **GRANTED**.

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued December 17, 2024 is **RESCINDED** and that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 10, 2025

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

**WHITE MEMORIAL MEDICAL CENTER
ALAN LAW/GRANT & WEBER
ROSENBERG YUDIN**

SAR/abs

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