

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

**JONATHAN SILVERA, *Applicant***

**vs.**

**J HOWARD IV, LLC dba PRIME PIZZA; HARTFORD CASUALTY INSURANCE  
COMPANY, administered by THE HARTFORD, *Defendants***

**Adjudication Numbers: ADJ16635028, ADJ16634492  
Long Beach District Office**

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

Lien claimant Premier Psychological Services seeks reconsideration of the Order of dismissal (Order), issued by the workers' compensation administrative law judge (WCJ) on January 13, 2025.

Lien claimant contends that it was deprived of due process when the WCJ dismissed its lien without a hearing.

We have not received an Answer from any party.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition 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 December 18, 2023, lien claimant Premier Psychological Services filed a notice and request for allowance of lien in case number ADJ16635028.

On February 6, 2024, Stanley B. Johnson of Paperwork & More filed a notice of representation by non-attorney representative on behalf lien claimant in case numbers ADJ16634492 and ADJ16635028.

The case-in-chief settled by compromise and release (C&R) and a Joint Order Approving Compromise and Release (OACR) issued on April 4, 2024, in case numbers ADJ16634492 and ADJ16635028.

On October 5, 2024, lien claimant filed a Declaration of Readiness (DOR), stating:

According to EAMS, the case in chief is resolved. However, the lien claim of Premier Psychological Services remains an issue. Prior resolution efforts by way of submitting the bills and supporting documents and/or demand letter(s) have been unsuccessful. Therefore, the assistance of the WCAB is requested.

Please note, that if resolution is not reached on or before the hearing discovery may be necessary.

The defendant or any other party or authority may contact the author of this DOR at: [sbjohnson@paperworkandmore.com](mailto:sbjohnson@paperworkandmore.com).

(DOR, dated October 4, 2024, served October 5, 2024, p. 7, original in all-caps.)

On November 8, 2024, The Hartford filed a substitution of attorney, appointing Law Offices of Lydia Newcomb in place of Albert & Mackenzie in both case numbers. Lien claimant's non-attorney representative Paperwork & More was not listed on the proof of service.

On December 5, 2024, Daniel Szabatura of the Law Offices of Lydia B. Newcomb appeared at a lien conference. No appearance was entered for lien claimant. The minutes state "NOI to dismiss Premier Psych shall issue." (Minutes, dated December 17, 2024, p. 1.) The WCJ designated The Hartford to serve the minutes. When the minutes were served on January 3, 2025, lien claimant's non-attorney representative Paperwork & More was not listed on the proof of service.

On December 30, 2024, a notice of intention to dismiss lien issued:

Lien Claimant, PREMIER PSYCHOLOGICAL SVCS LONG BEACH, having been served with notice and having failed to appear for Conference on December 5, 2025, at 8:30 am, and;

GOOD CAUSE APPEARING:

NOTICE IS HEREBY GIVEN that ten (10) days hence an order dismissing said lien claim shall issue absent an objection showing good cause to the contrary filed and served within said time.

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

On January 6, 2025, lien claimant Premier Psychological Services filed a written objection to the notice of intention to dismiss the lien, stating in pertinent part:

[] The undersigned was the individual assigned to attend the hearing on December 5, 2024. However, there was an in-house clerical error which caused the non-appearance.

[] Our office had mistakenly scheduled this matter for the afternoon, rather than the morning. In fact, on December 5, 2024, at 12:18 PM, while preparing for what I thought was afternoon hearing, I was surprised to discover that this matter was actually set and heard in the AM. Therefore, I immediately emailed the handling defense attorney explaining the error and requesting the results. ....

(Objection to notice of intention to dismiss lien, p. 2.)

On January 13, 2025, the WCJ issued an Order dismissing the lien.

On February 7, 2025, lien claimant filed a timely Petition for reconsideration.

## **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.

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

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 11, 2025, and 60 days from the date of transmission is Saturday, April 12, 2025. The next business day that is 60 days from the date of transmission is Monday, April 14, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, 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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on February 11, 2025, and the case was transmitted to the Appeals Board on February 11, 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 11, 2025.

## II.

While we are sympathetic to the WCJ’s frustration about the court’s time and resources, 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

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<sup>2</sup> 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.

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].)

As to the WCJ's statement that because lien claimant was given the opportunity to file an objection to the notice of intent, lien claimant "has received Due Process in accordance with the Regulations and procedures set forth for addressing nonappearances at a lien conference[]" (Report, p. 3), we remind the WCJ that judgments on the pleadings are not permitted in Workers' Compensation. (Cal. Code Regs., tit. 8, 10515.)

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 157-158.) A fair hearing includes, but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish, supra*, at 1295; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

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, subd. (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].)

The WCJ must prepare a Minutes of Hearing and Summary of Evidence (MOH/SOE) at the conclusion of each hearing. (Cal. Code Regs., tit. 8, § 10787(c).) The MOH/SOE must include the issues and matters in controversy, a descriptive listing of exhibits received in evidence, if any, and the disposition of the matter. (Cal. Code Regs., tit. 8, § 10787(c)(3)-(4).) The Appeals Board’s record of proceedings is maintained in the adjudication file, however, “[d]ocuments that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings.” (Cal. Code Regs., tit. 8, § 10803.)

Here, the adjudication file in EAMS does not contain a MOH/SOE, there are no stipulations and/or issues identified, and there is no evidence admitted into the record. When lien claimant filed the objection to the notice of intention to dismiss the lien, the WCJ could have set the matter for hearing, pursuant to WCAB Rule 10832, created a record, and then issued a decision. (Lab. Code, § 5313; Cal. Code Regs., tit. 8, §§ 10750, 10832.) In the absence of an evidentiary record, we are unable to evaluate the basis of the WCJ’s Order. Therefore, we must return this matter to the trial level for further proceedings.

Accordingly, we grant lien claimant’s Petition, rescind the Order issued on January 13, 2025, 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 January 13, 2025 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/ JOSÉ H. RAZO, 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.**

**PREMIER PSYCHOLOGICAL SERVICES  
PAPERWORK & MORE  
LAW OFFICE OF LYDIA NEWCOMB  
HAMIDEH LAW**

**JB/pm**

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