

**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 imposing sanctions (Order), issued by the workers' compensation administrative law judge (WCJ) on July 10, 2025.

Lien claimant contends that it was deprived of due process when the WCJ issued sanctions without a hearing and that the underlying conduct did not warrant sanctions.

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.

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.

(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 without a hearing.

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

On April 14, 2025, we granted reconsideration, rescinded the Order of dismissal, dated January 13, 2025, and returned the matter to the WCJ for further proceedings and to issue a decision consistent with the requirements of Labor Code section¹ 5313.

On April 15, 2025, the WCJ issued a notice of intention to impose sanctions, arising out petitioner's failure to appear at the December 5, 2024, lien conference.

IT APPEARING THAT PREMIER PSYCHOLOGICAL SVCS LONG BEACH represented by PAPERWORK MORE CARSON failed to appear at the properly noticed and scheduled lien conference before the undersigned on December 5, 2025 at 8:30 am. The failure to appear at a hearing violates CCR 10875 and is conduct subject to sanctions pursuant CCR 10421 (b)(1).

NOTICE IS HEREBY GIVEN that an Order Imposing Sanctions of up to \$2,500.00 will be imposed against PREMIER PSYCHOLOGICAL SVCS LONG BEACH and PAPERWORK MORE CARSON, jointly and severally, unless an objection, in writing, demonstrating Good Cause to the contrary is shown within twenty (20) days from the date of service hereof. If Good Cause is shown within the allowable timeframe, the Board will exercise its discretion to act pursuant to CCR 10832(c).

(April 15, 2025 Notice of Intention to Impose Sanctions, p. 1.)

On April 16, 2025, the WCJ issued a notice of hearing for an in-person lien conference on May 13, 2025. The notice of hearing delineated two issues for hearing and stated that:

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

...[T]he parties are expected to execute a Pre-Trial Conference Statement limited to the following two issues:

(1) Whether there is Good Cause to sustain the 1/6/25 Objection to the 12/30/24 Notice of Intention to Dismiss Lien, and (2) Whether sanctions are appropriate for Premier Psychological Services and Paperwork and More having missed the December 5, 2024 lien conference.

(April 16, 2025 Notice of Hearing, p. 1.)

On May 7, 2025, defendant filed a pre-trial conference statement.

On May 9, 2025, lien claimant filed an objection to notice of intention to impose sanctions.

On May 12, 2025, defendant filed a joint request that the lien conference be ordered taken off calendar on the grounds that the parties had reached a settlement. The WCJ granted the request and the conference was ordered off calendar.

On July 10, 2025, the WCJ issued an Order imposing sanctions, without a hearing.

On August 4, 2025, lien claimant filed a timely Petition for Reconsideration.

DISCUSSION

I.

Former 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 August 14, 2025, and 60 days from the date of transmission is October 13, 2025. This decision is issued by or on October 13, 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 August 14, 2025, and the case was transmitted to the Appeals Board on August 14, 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 August 14, 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 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].)

Here, the WCJ issued a notice of intent to dismiss lien claimant's lien, absent an objection showing good cause to the contrary, served within ten (10) days. Lien claimant filed a timely written objection. Notwithstanding the timely objection, the WCJ determined that "lien claimant failed to demonstrate by a preponderance of the evidence that there is good cause to sustain said objection." The WCJ proceeded to dismiss the lien without a hearing, thus depriving lien claimant of due process.

After the Order dismissing the lien was rescinded and the matter returned to the WCJ to make a record, the WCJ issued a notice of intention to issue sanctions - without first setting the matter for hearing on the whether there was good cause to dismiss the lien.

In the notice of intent to impose sanctions, the WCJ states that lien claimant “failed to appear at the properly noticed and scheduled lien conference before the undersigned on December 5, 2025 at 8:30 am. The failure to appear at a hearing violates CCR 10875 and is conduct subject to sanctions pursuant CCR 10421 (b)(1).”

WCAB Rule 10875 sets forth the following regarding lien conferences:

(a) All defendants and lien claimants shall appear at all lien conferences, either in person or by attorney or non-attorney representative. Each defendant, lien claimant, attorney and non-attorney representative appearing at any lien conference:

...

(b) If a lien claimant fails to appear at a lien conference, the worker’s compensation judge may issue a notice of intention to dismiss consistent with rule 10888, or defer the lien.

...

(e) Any violation of the provisions of this rule *may* give rise to monetary sanctions, attorney’s fees and costs under Labor Code section 5813 and rule 10421.

(Cal. Code Regs., tit. 8, § 10875, emphasis added.)

Section 5813 authorizes a WCJ and/or the WCAB to “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.” (Lab. Code, § 5813.)

WCAB Rule 10421(b) states in relevant part that:

Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a 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.

WCAB Rule 10421(b) goes on to provide a comprehensive but non-exclusive list of actions that could be subject to sanctions. As applicable here, subdivision (b)(1) states that a party may be subject to sanctions where the party has engaged in the following actions:

Failure to appear or appearing late at a conference or trial where a reasonable excuse is not offered or the offending party has demonstrated a pattern of such conduct.

(Cal. Code Regs., tit. 8, § 10421(b)(1).)

Here, there is no evidence of a pattern of such conduct, as no evidence has been admitted to the record. Lien claimant offered an explanation regarding the failure to appear, however, the WCJ declined to hold a hearing on the reasonableness of the excuse. We reiterate the following from our April 14, 2025, Opinion and Decision:

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.)

(April 14, 2025, Opinion and Decision, p. 5.)

Although the WCJ did not repeat this argument with respect to due process, we note that the WCJ still has not yet held a hearing on the reasonableness of lien claimant's explanation for missing the lien conference on December 5, 2024.

Because the hearing on sanctions and the new lien conference were both scheduled for May 13, 2025, taking the lien conference off-calendar resulted in the current confusion. On one hand, it appears that the WCJ did not intend to take the sanctions hearing off calendar, while on the other hand, it appears that perhaps lien claimant misunderstood and assumed that sanctions were no longer at issue. While lien claimant's confusion is unfortunate, there is no evidence that lien claimant intended to submit on the issue of sanctions without a hearing. We note that the WCJ could have kept the May 13, 2025 conference on calendar and sorted this all out. In any event, because the conference was taken off-calendar and a hearing on sanctions never went forward, there is no record regarding whether sanctions are warranted.

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.)

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 August 14, 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 lien claimant to frame the issues, 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 imposing sanctions issued by the WCJ on July 10, 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 13, 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 OFFICES OF LYDIA B. NEWCOMB**

JB/pm

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