

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

**KIMBERLY ARREOLA CORTES, *Applicant***

**vs.**

**OC DIRECT DELIVERY; OLD REPUBLIC INSURANCE COMPANY;  
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ16905183  
San Diego District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Applicant seeks reconsideration of the January 24, 2025 Notice of Intention to Dismiss Case (NIT) issued by the workers' compensation administrative law judge (WCJ). The NIT indicated that an order of dismissal would issue without prejudice within 20 days of service of the NIT unless good cause was shown in writing by applicant as to why her case should not be dismissed.

Applicant appears to believe that the NIT is a final order and contends that due to personal circumstances and a relocation to Arizona she was unable to attend scheduled evaluations with panel Qualified Medical Evaluator (QME), Dr. Ryan Culver, but is now ready to "prosecute her claim to secure benefits." (Petition, pp. 1- 2.)

We have not 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 (Petition) and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will dismiss the Petition.

## FACTS

Applicant claimed that, while employed by defendant as a delivery associate on October 15, 2022, she sustained an injury arising out of and in the course of employment (AOE/COE) to her right ankle and foot.

The parties retained Dr. Ryan Culver as the panel QME. Defendant scheduled an evaluation with Dr. Culver for June 3, 2024. Notice for this evaluation was served on March 2, 2024 to applicant at an address located in San Diego. Applicant did not attend the QME.

Defendant rescheduled the evaluation with Dr. Culver for July 29, 2024. Notice for this evaluation was served on June 10, 2024 to applicant at the same address. Applicant was again not in attendance.

A petition to compel attendance for a third evaluation scheduled for November 4, 2024 was filed by defendant and served on September 4, 2024. Following the petition, the WCJ issued an order compelling attendance, which was served on September 17, 2024 to applicant at a second San Diego address. Applicant was again not in attendance.

On September 27, 2024, applicant filed a notice of change of address informing parties she had moved out-of-state to an address in Arizona.

On December 12, 2024, defendant served applicant's counsel and applicant with correspondence advising of their intention to file a petition to dismiss her case due to inactivity under WCAB Rule 10550. The letter was served on December 12, 2024 to applicant's new Arizona address.

On January 13, 2025, defendant filed a petition for dismissal of claim which was also served on applicant at her Arizona address.

Thereafter, on January 24, 2025, the WCJ issued a NIT indicating that an order of dismissal without prejudice would "issue twenty (20) days from the date of service hereof, unless good cause to the contrary is shown in writing within said time." The NIT was served on applicant at her Arizona address.

On January 31, 2025, applicant filed an "Objection to NOI for Dismissal, or in the Alternative [, a] Petition for Reconsideration Regarding Order to Dismiss."

## DISCUSSION

### I.

Preliminarily, former Labor Code<sup>1</sup> 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 under the Events tab 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 3, 2025, and 60 days from the date of transmission is April 4, 2025. This decision was issued by or on April 4, 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 constitute notice of transmission.

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<sup>1</sup> All further statutory references will be to the Labor Code unless otherwise indicated.

Here, according to the proof of service for the Report, it was served on February 3, 2025, and the case was transmitted to the Appeals Board on February 3, 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 3, 2025.

## II.

Turning to the Petition, pursuant to WCAB Rule 10832:

- (a) The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose, including but 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.
- (b) A Notice of Intention may be served by designated service in accordance with rule 10629.
- (c) If an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may: (1) Sustain the objection; (2) Issue an order consistent with the notice of intention together with an opinion on decision; or (3) Set the matter for hearing.
- (d) Any order issued after a notice of intention shall be served by the Workers' Compensation Appeals Board pursuant to rule 10628.
- (e) An order with a clause rendering the order null and void if an objection is received is not a Notice of Intention and must be served by the Workers' Compensation Appeals Board.

(Cal. Code Regs., tit. 8, § 10832.)

Applicant here is under the impression that the January 24, 2025 NIT serves as an order, such as that outlined under subsection (e) above. However, the NIT in the instant case simply provides notice of the WCJ's intent to dismiss applicant's case. No actual order has been issued. As such, applicant's Petition is premature.

Additionally, we find it important here to highlight the fact that on September 27, 2024, applicant filed a notice of change of address informing the parties of her new address in Arizona. Subsequent to this filing, defendant served applicant with a letter notifying her of their intent to dismiss her claim under WCAB Rule 10550, which states, in relevant part that:

- (a) 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.

....

- (b) At least 30 days before filing a petition to dismiss, the defendant seeking to dismiss the case shall send a letter to the applicant and, if represented, to the applicant's attorney or non-attorney representative, stating the defendant's intention to file a "Petition to Dismiss Inactive Case" 30 days after the date of that letter, unless the applicant or applicant's attorney or non-attorney representative objects in writing, demonstrating good cause for not dismissing the case.

(Cal. Code Regs., tit. 8, § 10550(a)-(b).)

Pursuant to subsection (b) above, service of said letter from defendant must occur at least 30 days before the filing of a petition for dismissal. (Cal. Code Regs., tit. 8, § 10550(b).) Further, if, within the 30 days, applicant provides a written objection showing good cause for why her case should not be dismissed, the petition for dismissal may not be filed. (*Ibid.*) With respect to service of the letter, WCAB Rule 10605(a) states, in relevant part, that:

- a) When any document is served by mail, fax, e-mail or any method other than personal service, the period of time for exercising or performing any right or duty to act or respond shall be extended by:
  - (1) Five calendar days from the date of service, if the place of address and the place of mailing of the party, attorney, or other agent of record being served is within California;
  - (2) Ten calendar days from the date of service, if the place of address and the place of mailing of the party, attorney, or other agent of record being served is outside of California but within the United States

(Cal. Code Regs., tit. 8, § 10605(a).)

Here, defendant served their notice of intent to dismiss case to applicant at her Arizona address on December 12, 2024. Pursuant to subsection (a)(2) above, given applicant's out-of-state address, the 30-day period under WCAB Rule 10550(b) is to be extended by 10 days. As such, the earliest defendant could have filed their petition for dismissal under WCAB Rule 10550(a) was on January 21, 2025, which is 40 days after December 12, 2024. Unfortunately, defendant's petition for dismissal was filed and served on January 13, 2025. As such, it appears that both applicant's

Petition for Reconsideration and defendant's petition for dismissal are premature. Accordingly, applicant's Petition is dismissed.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the January 24, 2025 Notice of Intention to Dismiss Case is **DISMISSED** and this matter **RETURNED** to the trial level for further proceedings.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**APRIL 3, 2025**

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

**KIMBERLY ARREOLA CORTES  
PACIFIC ATTORNEY GROUP  
DIETZ GILMOR  
SEDGWICK**

**RL/cs**

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