

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

KOKAYI ELDRIDGE, *Applicant*

vs.

**CALIFORNIA HEALTH BENEFIT EXCHANGE, legally uninsured;
STATE COMPENSATION INSURANCE FUND, adjusting agency, *Defendants***

**Adjudication Numbers: ADJ16824578, ADJ16974663
Sacramento District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the “Order Dismissing Applications for Adjudication of Claim with Prejudice” (Order) of March 5, 2025, wherein the workers’ compensation administrative law judge (WCJ) dismissed applicant’s applications for adjudication. Applicant contends that she was unable to appear at the hearing due to a dental emergency and her medical condition and requested that her case be reopened.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be dismissed as premature and the case remanded to treat the Petition as a petition to set aside the Order.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based on our review of the record, for the reasons discussed below, we will dismiss reconsideration and return this matter to the WCJ to treat the Petition as a petition to set aside the Order.

FACTS

Applicant claimed cumulative injury to her nervous system, respiratory system, and mouth while employed by defendant as a program technician 2 from December 14, 2021 to July 1, 2022, in case ADJ16824578. Applicant claimed a specific injury to her nervous system and back while employed by defendant as a program technician 2 on December 14, 2021, in case ADJ16974663.

Applicant and her attorney were present at the hearing on March 7, 2024; the WCJ granted applicant's request to continue the hearing. (3/7/24 Minutes of Hearing (MOH), p. 1.)

Applicant's initial attorney was relieved as counsel on March 8, 2024. The WCJ granted applicant's request to continue the hearing scheduled for May 9, 2024. (5/9/24 MOH, p. 1.) After initially denying applicant's request to continue the hearing scheduled for June 20, 2024 (6/4/24 Order Denying Request for Continuance, p. 1), the WCJ continued that hearing to August 1, 2024, and ordered applicant's prior attorney to serve her file on her within 10 days. (6/20/24 MOH, p. 1.)

Applicant did not appear at the hearing on August 1, 2024; the WCJ ordered her to appear at the next hearing and to complete the Pre-Trial Conference Statement (PTCS) by then. (8/1/24 MOH, p. 1.) Applicant did not appear at the hearing on September 12, 2024, but called in to say she was unable to be present due to a family emergency. (9/12/24 MOH, p. 1.) The WCJ ordered her to appear at the next hearing. (9/21/24 MOH, p. 1.) Applicant did not appear at the hearing on November 7, 2024, due to a death in the family and the hearing was continued. (11/7/24 MOH, p. 1.)

At the hearing on December 5, 2024, defendant completed the PTCS stating that applicant claimed industrial injury to her psyche and that the issue for trial was whether the injury arose out of and in the course of employment (AOE/COE). The WCJ ordered that applicant had five days from the date of service to amend the PTCS and file it with the court. The WCJ served the PTCS on December 5, 2024.

Applicant did not appear at the hearing on January 28, 2025; defendant was able to reach her by phone, and she stated that she needed time to retain an attorney. (1/28/25 MOH, p. 1.) The WCJ then issued a "Notice of Intention to Issue Order Dismissing Application for Adjudication of Claim with Prejudice" (NIT) that the WCJ would dismiss both of applicant's applications for adjudication if she did not file a written objection within 10 days. Based on our review, no objection was filed.

On February 3, 2025, defendant State Compensation Insurance Fund (SCIF) served the NIT and the January 28, 2025 MOH on the parties. (2/3/25 Proof of Service for Trial 1/28/25; NIT to Dismiss Claim with Prejudice, pp. 1-2.)

On March 5, 2025, the WCJ issued the Order. The Order stated:

Following a Notice of Intention with No Objection:

GOOD CAUSE APPEARING:

Applicant failed to appear at a duly noticed trial. Based on the failure to appear either in person or via a representative, the Applications for Adjudication of Claim in ADJ16824578 and ADJ16974663 are hereby dismissed. The applications are dismissed with prejudice.

(Order, p. 1.)

Applicant filed her Petition for Reconsideration on March 11, 2025.

DISCUSSION

I.

Former Labor Code 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, Labor Code 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 Labor Code 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 March 12, 2025, and 60 days from the date of transmission is Sunday, May 11, 2025. The next business day that is 60 days from the date of transmission is Monday, May 12, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, May 12, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 March 12, 2025, and the case was transmitted to the Appeals Board on March 12, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 12, 2025.

II.

The Appeals Board “has continuing jurisdiction over all its orders, decisions, and awards At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor. (Lab. Code, § 5803.) Further, WCAB Rule 10832 states the Appeals Board may issue a notice of intention for any proper purpose, including dismissing an application. (Cal. Code Regs., tit. 8, § 10832(a).)

However, there must be a complete record for our review of the case. “[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision.” (*Hamilton v. Lockheed Corporation* (2001) 66

¹ 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.

Cal.Comp.Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Bd. en banc).) Moreover, all parties in workers' compensation proceedings retain their 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] (*Rucker*).) 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 v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, 82 Cal.App.4th at pp. 157-158, citing *Kaiser Co. v. Industrial Acc. Com.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710-712 [57 Cal.Comp.Cases 230].)

Accordingly, as recommended by the WCJ, we dismiss the Petition as premature. Upon return of this matter to the trial level, the WCJ may treat the Petition as a petition to set aside and set a hearing so applicant can provide evidence in support of the arguments contained in the Petition and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, any aggrieved person may then timely seek reconsideration of that decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 12, 2025

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

**KOKAYI ELDRIDGE
STATE COMPENSATION INSURANCE FUND**

JMR/abs

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