

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

LORRAINE GONSALVES, *Applicant*

vs.

**FRONTIER MANAGEMENT, LLC; CHURCH MUTUAL INSURANCE
COMPANY administered by CHURCH MUTUAL MERRILL, *Defendants***

**Adjudication Numbers: ADJ11896735; ADJ3117080
Sacramento District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant, in pro per,¹ seeks reconsideration of an Order of Dismissal (Order) issued by the presiding workers' compensation administrative law judge (PWCJ) on December 2, 2020.

The crux of applicant's contention appears to be that she is entitled to a hearing, including with respect to the Order.

We have not received an Answer from defendant.

The PWCJ 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 as discussed below, we will dismiss the Petition as premature, and return this matter to the trial level for consideration of the Petition as one to set aside the Order of dismissal.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to various body parts (including chest, shoulder, back) while employed by defendant as a caregiver on November 13, 2018.

¹ A Notice of Dismissal of Attorney, signed on May 1, 2019, was filed May 3, 2019.

On February 19, 2019, defendant filed an Answer to Application for Adjudication of Claim, admitting injury to the right shoulder. The Answer also noted that temporary disability indemnity was paid at \$320.00 per week from December 29, 2018, and continuing.

The following background was set forth in the PWCJ's Report.

On March 19, 2019, applicant's attorney filed a Declaration of Readiness on the issue of Primary Treating Physician authorization and temporary disability.

On April 2, 2019, applicant attorney filed a petition entitled Withdrawal of Declaration of Readiness to Proceed noting that the issues had been resolved.

On April 8, 2019, the undersigned ordered the case off calendar.

On May 1, 2019, applicant's attorney filed a Notice of Dismissal of Attorney noting that the applicant had dismissed her attorney and was unrepresented going forward.

On July 24, 2019, defendant filed a Declaration of Readiness to Proceed on the issue of discovery, asking for assistance to move the case forward. Defendant noted that applicant dismissed her attorney on May 1, 2019, and that defendant had reached out to applicant regarding treatment and further discovery with no response.

On August 14, 2019, the applicant failed to appear at the status conference and the case was continued due to her non-appearance.

On September 18, 2019, the applicant again failed to appear at the hearing. Defendant's request for continuance was denied and the case was ordered off calendar.

On October 20, 2020, defendant filed a Petition for Dismissal pursuant to California Code of Regulations § [10550].

On October 28, 2020, a Notice of Intention to Dismiss Case issued.

On November 4, 2020, defendant filed the proof of service for the Notice of Intention to Dismiss Case.

On December 2, 2020, the order dismissing case issued in ADJ11896735 after no objection was received.

On December 8, 2020, defendant filed the proof of service for the order dismissing case.

(Report, pp. 2-3.)

DISCUSSION

I.

Former Labor Code section² 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 December 17, 2024, and 60 days from the date of transmission is Saturday, February 15, 2025. The next business day that is 60 days from the date of transmission is Tuesday, February 18, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on Tuesday, February 18, 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

² All statutory references are to the Labor Code unless otherwise stated.

³ 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.

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 PWCJ, the Report was served on December 17, 2024, and the case was transmitted to the Appeals Board on December 17, 2024. 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 December 17, 2024.

II.

Subject to the limitations of section 5804, “[t]he appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] ... At any time, upon notice and after the 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.)

WCAB Rule 10550 provides for administrative dismissal of inactive cases not 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, after notice and opportunity to be heard. Although WCAB Rule 10550 authorizes dismissal of an inactive case upon demonstration of the conditions that allow dismissal under the rule, and after affording the applicant notice and an opportunity to be heard, dismissal is discretionary, not mandatory. (*Roth v. Workers’ Comp. Appeals Bd.* (1971) 20 Cal.App.3d 452 [36 Cal.Comp.Cases 604].) 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]; *Marino v. Workers’ Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485 [67 Cal.Comp.Cases 1273].)

The Appeals Board’s record of proceedings is maintained in the adjudication file and includes: the pleadings, minutes of hearing, summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits identified but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator’s file, if any. “Documents 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.)

Despite the Proof of Service filed by defendant's attorney in the EAMS, which indicates that defendant served the Notice of Intention to Dismiss on applicant on November 4, 2020, at the address listed on the Official Address Record, it is unclear whether applicant actually received the Notice of Intention. Based on a review of the electronic adjudication file, it is not clear what applicant understands with respect to the status of her case, which calls into question whether she received a copy of the 30-day notice required under WCAB Rule 10550, the Notice of Intention, or the Order of Dismissal.

Based on a review of the record, in the year prior to the Petition for Dismissal, it appears that applicant received temporary disability indemnity, was seeking a panel Qualified Medical Evaluator (QME), and may have received medical treatment.

While the mere allegation of non-receipt of a document is insufficient to establish that it was not received, an applicant is entitled to a hearing and given an opportunity to produce "believable contrary evidence" that notice was not received. (*Castro v. WCAB* (1996) 61 Cal.Comp.Cases 1460, 1462 [an attorney's bare allegation of non-receipt was insufficient to overcome the WCAB's proof of service of the F&O]; *Craig v. Brown & Root* (2000) 84 Cal.App.4th 416, 421-422, citing *Slater v. Kehoe* (1974) 38 Cal.App.3d 819, 832, fn. 12 [If a party proves that a letter was mailed, the trier of fact is required to find that the letter was received in the absence of any believable contrary evidence. If the adverse party denies receipt, the presumption is gone and the trier of fact must weigh the evidence and determine whether the letter was received.] In *Suon v. California Dairies*, we explained, that, although a "letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail," that presumption is rebuttable. (*Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1817 (Appeals Bd. en banc), citations omitted.) "If the sending party thus produces evidence that a document was mailed, the burden shifts to the recipient to produce 'believable contrary evidence' that it was not received. [Citations.] Once the recipient produces sufficient evidence showing non-receipt of the mailed item, "the presumption disappears" and the "trier of fact must then weigh the denial of receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received. [citation.]" (*Ibid.*)

Defendant's attorney filed a Proof of Service in EAMS, which indicates that the Order dismissing the case was served on December 8, 2020. We note that the PWCI designated service of the Order dismissing the case pursuant to WCAB Rule 10629, however, WCAB Rule 10628

states that “The Workers’ Compensation Appeals Board shall not designate a party, or their attorney or agent of record, to serve any final order, decision or award relating to a submitted issue.” (Cal. Code Regs., tit. 8, § 10628(a).) As an Order of dismissal is final order, effectively terminating benefits, the designated service of the Order of Dismissal did not comply with WCAB Rule 10628.

Article XIV, section 4 of the California Constitution mandates that the workers’ compensation law shall be carried out “...to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character...” Based on the constitutional mandate to accomplish substantial justice, the Board has a duty to develop an adequate record. (*Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal. Comp. Cases 924]; *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1120 [63 Cal.Comp.Cases 261].)

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].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant . . .” (*Id.*, at 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. (See *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *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].)

The “essence of due process is simply notice and the opportunity to be heard.” (*San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936.) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties’ rights to due process. (*Gangwish, supra*, at 1295, citing *Rucker, supra*, at 157-158.) Due process requires “a ‘hearing appropriate to the nature of the case.’” (*In re James Q.* (2000) 81 Cal.App.4th 255, 265, quoting *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 313.) Although due process is “a flexible concept which depends upon the circumstances and a balancing of various factors,” it generally requires the right to present relevant evidence. (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817.)

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) (*Hamilton*)). 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.) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*Hamilton, supra*, at 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].)

WCAB Rule 10517 states that “pleadings may be amended by the Workers’ Compensation Appeals Board to conform to proof.” (Cal. Code Regs., tit. 8, § 10517.) This Rule represents the application of California’s public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings. Informality of pleading in proceedings before the Board has long been recognized, and courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*McGee Street Productions v. Workers’ Comp. Appeals Bd.* (2003) 108 Cal.App.4th 717, 724 [68 Cal.Comp.Cases 708]; *Rubio v. Workers’ Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200-201 [50 Cal.Comp.Cases 160]; *Liberty Mutual Ins. Co. v. Workers’ Comp. Appeals Bd.* (1980) 109 Cal.App.3d 148, 152-153 [45 Cal.Comp.Cases 866].)

The Appeals Board also has a constitutional mandate to “ensure substantial justice in all cases” and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The “Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee.” (*San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 937-938 [64 Cal.Comp.Cases 986].)

Treating the Petition for reconsideration as a Petition to set aside the Order of Dismissal is a necessary preliminary step. (Cal. Code Regs., tit. 8, § 10517.) Thus, upon return to the trial level, we recommend that the PWCI 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. (Lab. Code, § 5313; Cal. Code Regs., tit. 8, §§ 10750, 10758, 10759, 10832.)

Accordingly, we dismiss applicant's Petition as premature, and return the matter to the PWCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 18, 2025

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

**LORRAINE GONSALVES (in pro per)
STANDER REUBENS**

JB/pm

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