

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

LOUIS ROGELIO SANCHEZ, *Applicant*

vs.

**FFBH MOTORS LLC, administered by
OCCUSURE CLAIMS SERVICES, *Defendants***

**Adjudication Number: ADJ18918866, ADJ18919434
Fresno District Office**

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

Defendant Occusure Claims Services seeks reconsideration of the “Order Imposing Monetary Sanctions and Cost [Labor Code section 5813, Board Rule 10561]” (Sanctions Order), issued by a workers’ compensation administrative law judge (WCJ) on April 17, 2025. The WCJ ordered defendant Occusure Claims Services (Occusure) to pay monetary sanctions in the amount of \$500.00 for its failure to appear at the August 27, 2024 status conference and the October 8, 2024 mandatory settlement conference. The WCJ issued the Sanctions Order after issuing a prior notice of intention to issue sanctions (Sanctions NOI) explaining that Occusure had been served with notice of the two conferences and had failed to communicate with the court regarding either failure to appear.

Occusure contends that reconsideration is warranted because at all relevant times, these two claims of specific injury have been administered by AmTrust Claims and therefore Occusure was erroneously joined as a party in these matters; and, because its failure to appear at the two conferences or respond to the WCJ’s Sanctions, NOI was not intentional, but rather the result of administrative and clerical oversight given that Occusure never had open claims and was not previously involved in these matters. Occusure contends that sanctions are not meant to be imposed pursuant to Labor Code¹ section 5813 or WCAB Rule 10561 (Cal. Code Regs., tit. 8, § 10561)

¹ All further references are to the Labor Code unless otherwise noted.

under these circumstances, which are the type of inadvertence and excusable neglect for which Code of Civil Procedure section 473 permits relief.

There is no answer filed in response to the Petition for Reconsideration. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied because Occusure failed to offer a “reasonable excuse for not appearing” and for not responding to the Sanctions NOI but instead “demonstrated a pattern [of] conduct” in failing to appear and respond based on its own determination that it was erroneously joined in these cases, when only the Workers’ Compensation Appeals Board possesses the jurisdiction to make that determination. (Report, pp. 4-5.)

We have reviewed the record in these matters, the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record and for the reasons set forth below, we grant reconsideration. As our decision after reconsideration, we rescind the Sanctions Order and return this matter to the trial level for further proceedings consistent with this decision.

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 cases 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 cases were transmitted to the Appeals Board on May 8, 2025, and 60 days from the date of transmission is July 7, 2025. This decision is issued by or on July 7, 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 May 8, 2025 and the cases were transmitted to the Appeals Board on May 8, 2025. Service of the Report and transmission of the cases 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 May 8, 2025.

II.

The procedural facts in these cases do not appear to be disputed.² The original Application for Adjudication of Claim (Application) was served on February 26, 2024 but was *not served* on Occusure. (Proof of Service, Application, dated February 26, 2024, filed February 27, 2024.)

A Declaration of Readiness to Proceed (DOR) was filed by Tobin Lucks on behalf of defendant FFBH Motors LLC on April 29, 2024, claiming an inability to contact the workers’ compensation carrier. (DOR, filed April 29, 2024.) The DOR was *not served* on Occusure. (Proof of Service, DOR, filed April 29, 2024.)

² The record in the Electronic Adjudication Management System (EAMS) for both cases is nearly identical, and all documents and dates referenced here apply to the records in both ADJ numbers.

A status conference was held on May 21, 2024, but was continued to July 16, 2024 so that Occusure could appear. (Minutes of Hearing (MOH), May 21, 2024, Other/Comments.) On July 16, 2024, Occusure did not appear at the status conference. (MOH, July 16, 2024, Other/Comments.) However, it was noted that Occusure was *not served*, and the status conference was continued in order for Tobin Lucks to serve Occusure per the official address record. (*Ibid.*) On July 31, 2024, Tobin Lucks served Occusure by mail with the July 16, 2024 Minutes of Hearing pursuant to the WCJ's order. (Proof of Service, dated July 31, 2024, filed August 6, 2024.)

On August 5, 2024, an Amended Application for Adjudication of Claim (Amended Application) *was served* by mail on Occusure. (Proof of Service, Amended Application, dated August 5, 2024, filed August 6, 2024.)³

A Notice of Hearing was issued per the official address record, including Occusure, on July 23, 2024 for a continued status conference on August 27, 2024. (EAMS, Communications.) Occusure did not appear and therefore, the WCJ ordered Occusure to contact Tobin Lucks as soon as possible. (MOH, August 27, 2024, Other/Comments.) The matter was taken off calendar. (*Id.*) Tobin Lucks served Occusure with the August 27, 2024 MOH by mail on September 5, 2024. (Proof of Service, MOH, August 27, 2024.)

On September 17, 2024, applicant filed a DOR requesting a mandatory settlement conference (MSC) on various issues and stated that he had reached out to Occusure several times in 2023 and as late as September 3, 2024, with no response. (DOR, September 17, 2024, p. 2.) Applicant stated that Occusure had not set up the cases or assigned them to an adjustor. (*Ibid.*) The DOR was served by mail on Occusure on September 17, 2024. (Proof of Service, DOR, September 17, 2024.)

A Notice of Hearing was issued per the official address record, including Occusure, on September 23, 2024 for an MSC on October 8, 2024. (EAMS, Communications.) Occusure did not appear at that MSC and did not attempt to communicate with the court regarding its non-appearance. (MOH, October 8, 2024, Other/Comments; Report, p. 3.) The WCJ then issued and served the Sanctions NOI. (*Ibid.*; see Order NOI to Impose Sanctions for Non-Appearance,

³ We note that the Amended Application was rejected for filing, and we do not find a corrected application or the additional lien filings requested in the Notice of Document Discrepancy filed in the record of this case. (Discrepancy Letter, August 7, 2024.)

October 8, 2024.) Occusure did not respond in any way to the Sanctions NOI, and therefore the WCJ issued the Sanctions Order on April 17, 2025.

We note that instead of the P.O. Box indicated in the official address record for Occusure, the WCJ served Occusure with the Sanctions NOI on October 8, 2024 “via electronic mail.” (Sanctions NOI, Proof of Service, p. 2.)⁴ We do not treat this as a failure of service given that Occusure does not complain in its Petition for Reconsideration that it was not properly served with the Sanctions NOI.

The Sanctions Order issued on April 17, 2025.

III.

It is undisputed that Occusure was named as a party in and served with the Amended Application on August 5, 2024. Consequently, Occusure was thereafter required to appear at every noticed hearing in these cases (excluding lien conferences and lien trials). (Cal. Code Regs., tit. 8, § 10752 (a).) It is also undisputed that Occusure was served with notice of but failed to appear at the October 8, 2024 MSC without communicating with anyone regarding its non-appearance. When a party fails to appear at an MSC without a showing of good cause, the WCJ may issue a notice of intention for any purpose allowed by WCAB Rule 10832, including to issue sanctions against that party. (Cal. Code Regs., tit. 8, § 10755(b), 100832(a)(3).) In addition, the failure to appear at a duly noticed status conference is a failure to comply with the court’s order and is therefore sufficient cause to support the WCJ’s Sanctions NOI based on section 5813 and WCAB Rule 10421. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10561(b)(4).) Therefore, the WCJ had the authority to issue the Sanctions NOI as a result of Occusure’s failure to appear at the August 27, 2024 status conference and the October 8, 2024 MSC.

It is also undisputed that Occusure failed to provide good cause in response to the Sanctions NOI, thereby creating sufficient grounds for the Sanctions Order.

Occusure now seeks reconsideration of the Sanctions Order, requesting relief from the Sanctions Order pursuant to Code of Civil Procedure section 473:

The applicant, Rogelio Sanchez, filed two claims for specific injuries allegedly sustained to his back while employed by FFBH Motors, with claimed injury

⁴ Moreover, the WCJ states in the Sanctions Order that the Sanctions NOI was served on October 21, 2024. Regardless, there was more than sufficient time between either service date and the April 17, 2025 Sanctions Order for the parties to respond to the Sanctions NOI.

dates of August 28, 2014, and May 23, 2017. The matter was set for hearings before the Workers' Compensation Appeals Board on August 27, 2024, and October 8, 2024. At all relevant times, the claims were administered by AmTrust Claims. Occusure Claims Services was not the third-party administrator for FFBH Motors during either period and had no involvement in adjusting or managing the claims. Nonetheless, Occusure was erroneously joined as a party to the matter.

Because no claim file was established within Occusure's system, WCAB correspondence—including the Notice of Intent to Issue Sanctions—was not routed for internal handling or review. The resulting non-response was a clerical and administrative oversight, not a deliberate refusal to comply. Occusure did not willfully ignore any order or engage in disruptive conduct. Once the Order Imposing Sanctions was issued on April 16, 2025, Occusure promptly conducted an internal investigation, confirmed the lack of involvement, and now respectfully seeks reconsideration of the sanction imposed.

(Petition for Reconsideration, p. 2.)

Occusure is actually requesting relief pursuant to Labor Code section 5506 which states in pertinent part:

If the defendant fails to appear or answer, no default shall be taken against him, but the appeals board shall proceed to the hearing of the matter upon the terms and conditions which it deems proper. A defendant failing to appear or answer, or subsequently contending that no service was made upon him, or claiming to be aggrieved in any other manner by want of notice of the pendency of the proceedings, may apply to the appeals board for relief substantially in accordance with the provisions of Section 473 of the Code of Civil Procedure.

(Lab. Code, § 5506.)

Code of Civil Procedure section 473 states that we may, “upon any terms as may be just, relieve a party or his or her legal representative from a judgment, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (Code Civ. Proc., § 473(b).) “An overriding feature of the workers' compensation system is the liberal construction mandated by Labor Code section 3202.” (*Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205, fn. 4 [57 Cal.Comp.Cases 149].)

There is no dispute that Occusure was served with the Amended Complaint on August 5, 2024 and had notice of both the August 27, 2024 status conference and the October 8, 2024 MSC. In addition, there is no dispute that Occusure was served with the Sanctions NOI and thus that it already had the opportunity to raise its mea culpa in response to that NOI.

However, it also appears that its allegations in support of section 473 relief are the same as those in support of its failure to appear at the two hearings *and* for its failure to respond to the Sanctions NOI. We also note that given the lack of hearing on the issue, it cannot yet be determined whether Occusure “demonstrated a pattern [of] conduct” in failing to appear and respond based on its own determination that it was erroneously joined in these cases.” (See Report.) Indeed, Occusure alleges procedural failures within its organization rather than an intentional flouting of the Appeals Board’s jurisdiction.

Given these circumstances, we are compelled to grant reconsideration as the determination of an issue without giving the parties notice *and* the opportunity to be heard violates a party’s rights to due process. (*Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].)

We also note that the potential impact of the failure to properly serve Occusure with the original Application, the original DOR filed by Tobin Lucks, and the original notice of status conference in these cases should be considered when this matter is returned for further proceedings. For example, Occusure was not served with anything in these cases until July 31, 2024 when it was served with the July 16, 2024 Minutes of Hearing. Even so, Occusure had yet to be served with the Amended Application, which was thereafter served, by mail, on August 5, 2024.⁵ Applicant’s DOR was then served on Occusure on September 17, 2024 – again, by mail.

Any Answer to an Application for Adjudication of Claim shall be filed and served no later than the shorter of either: **10 days after service of a Declaration of Readiness to Proceed, or 90 days after service of the Application** for Adjudication of Claim.

(Cal. Code Regs., tit. 8, § 10465, bold added.)

Therefore, Occusure had 15 days from September 17, 2024 to answer the Amended Application, i.e., October 2, 2024. The MSC was set for six days later, on October 8, 2024, where discovery would be closed on permanent disability, future medical care and Occusure’s defenses, affirmative or otherwise, and all issues and evidence would be identified for trial. Even had

⁵ Tobin Lucks served Occusure with the July 16, 2024 Minutes of Hearing on July 31, 2024 *by mail*. (See Lab. Code, § 5316; Cal. Code Regs., tit. 8, § 10605(a)(1) [time within which to act when document is served by mail extended five days]; *Matute v. L.A. Unified Sch. Dist.* (2015) 80 Cal.Comp.Cases 1036, 1042 (Appeals Bd. en banc).)

Occusure timely answered the Amended Application and appeared at the MSC, it is improbable that any WCJ could have protected the due process rights of such a late joined party before closing discovery. (See DOR, September 17, 2024.)

Accordingly, to protect the parties' right to due process, we grant reconsideration. It is our decision after reconsideration to rescind the Sanctions Order and to return these cases to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that defendant Occusure Claims Services' Petition for Reconsideration of the Order Imposing Monetary Sanctions and Cost [Labor Code section 5813, Board Rule 10561] issued by a workers' compensation administrative law judge on April 17, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Imposing Monetary Sanctions and Cost [Labor Code section 5813, Board Rule 10561] issued by a workers' compensation administrative law judge on April 17, 2025 is **RESCINDED** and these cases are **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 7, 2025

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

**LUIS ROGELIO SANCHEZ
TOBIN LUCKS
PACIFIC COMP CLAIM
H&R LAW GROUP
OCCUSURE CLAIMS SERVICES**

AJF/mc

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