

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

MARIMAR GUERRERO, *Applicant*

vs.

**CW SERVICES, CW SERVICES INC;
TRAVELERS SAINT PAUL, TRAVELERS SACRAMENTO,
*Defendants***

**Adjudication Number: ADJ16751221
Oakland District Office**

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

Lien claimant has petitioned for reconsideration of the Findings of Fact, Notice of Intention and Orders of the workers' compensation administrative law judge (WCJ) which found that applicant was entitled to reasonable fees pursuant to Labor Code¹ section 5813 as a result of lien claimant's sanctionable conduct. Lien claimant asserts the imposition of such sanctions are unjustified and violates their due process rights.

We have received an Answer from applicant. The WCJ has prepared a Report and Recommendation (Report), recommending that the petition be denied.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report.. Based on our review of the record, we will grant reconsideration, amend Finding of Fact 6 to clarify that pursuant to section 5813, applicant's counsel may be entitled to reasonable fees as a result of the sanctionable conduct of lien claimant, pursuant to the WCJ's Notice of Intention, and otherwise affirm the Findings of Fact and Orders.

I.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

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.”

According to Events, the case was transmitted to the Appeals Board on January 31, 2025 and 60 days from the date of transmission is April 1, 2025. This decision is issued by or on April 1, 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 be notice of transmission.

According to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on January 31, 2025, and the case was transmitted to the Appeals Board on January 31, 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 January 31, 2025.

II.

The Appeals Board is authorized to impose sanctions, costs and attorney's fees under section 5813, which states, in pertinent part, that:

(a) The workers' compensation referee or appeals board may 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. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars (\$2,500) to be transmitted to the General Fund.

(b) The determination of sanctions shall be made after written application by the party seeking sanctions or upon the appeal board's own motion.

(Lab Code, § 5813(a) and (b).)

Orders for sanctions, costs and attorney's fees can be based upon the WCJ's own motion or on a petition filed pursuant to Workers' Compensation Appeals Board (WCAB) Rule 10510. (Cal. Code Regs., tit. 8, §§ 10421(a), 10510.) Before issuing such an order, "the alleged offending party or attorney must be given notice and an opportunity to be heard." (Cal. Code Regs., tit. 8, § 10421(a).)

In this instance we find the phrasing finding number 6 that: "[p]ursuant to Labor Code Section 5813, Christina Lopez, Esq. is entitled to reasonable fees as a result of the sanctionable misconduct" premature, as such finding is subject to the Notice of Intention to sanction defendant.

WCAB Rule 10832 states, in pertinent part, that (a) The Workers' Compensation Appeals Board may issue a notice of intention (NIT) for any proper purpose, including sanctioning a party. (Cal. Code Regs., tit. 8, § 10832(a)(3).) Further, section (c) states that [i]f an objection is filed with the time provided, the WCJ, in its discretion may either sustain the objection, issue an order

consistent with the notice of intention together with an opinion on decision; or set the matter for hearing. (Cal. Code Regs., tit. 8 § 10832(c).)

Here, petitioner has objected to the findings and order of the WCJ as it relates to the NIT to sanction lien claimant. Due process requires that a party be provided with reasonable notice and an opportunity to be heard. (*Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 711-712 [57 Cal.Comp.Cases 230].)

Thus, we will amend the language in finding 6 to clarify that applicant's counsel claims she is entitled to reasonable fees as a result of petitioner's sanctionable conduct, subject to the notice and opportunity to be heard afforded petitioner with respect to the WCJ's Notice of Intention to impose sanctions. (Cal. Code Regs., tit. 8, § 10421(a).)

Therefore, we grant reconsideration and amend Findings of Fact number 6. We otherwise affirm the Findings of Fact and Orders and return this matter to the WCJ to consider the objections raised in defendant's petition as an objection to the WCJ's Notice of Intention to impose sanctions.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact and Orders issued on January 2, 2025 by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Orders issued on January 2, 2025 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

6. Pursuant to Labor Code Section 5813, Christina Lopez, Esq. claims that she is entitled to reasonable fees as a result of the sanctionable misconduct.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 1, 2025

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

**MARIMAR GUERRERO
CHRISTINA A. LOPEZ
BRIDGES LAW FIRM**

LN/md

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