

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

MARVIN PINEDA CONTRERAS, *Applicant*

vs.

SOUTHWEST PLASTERING, INC.; ZENITH INSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ17569878
Riverside District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Lien Claimant, Oracle Imaging Riverside (Oracle), seeks reconsideration of the Order Dismissing Lien (Order) issued on December 23, 2024 wherein the workers' compensation administrative law judge (WCJ) dismissed Oracle's lien pursuant to "CCR 10888 & 10875(b)" following a "Notice of Intention dated 11/27/2024 and served 12/03/24" and Oracle's alleged failure to issue an "objection within the time allowed[.]"

Oracle contends that they "had not received proper notice of the hearing date" which resulted in an "unintentional failure to attend." (Petition, p. 3.) Oracle further contends that the Appeals Board is "not sending notifications" to its P.O. Box due to it being flagged as a "bad address" despite the address being "true and accurate[.]" (*Ibid.*)

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 as premature and return this matter to the trial level so that the WCJ may consider the Petition as one seeking set aside.

FACTS

Applicant claimed that while employed by defendant as construction worker during the period from November 14, 2021 through November 14, 2022, he sustained an industrial injury to his back, arms, hands, fingers, right groin, and hernia.

The claim was ultimately settled by way of a Compromise and Release Agreement. An Order Approving Compromise and Release (OACR) was issued on August 17, 2023 by the WCJ.

On August 5, 2024, Oracle filed a Notice and Request for Allowance of Lien in the amount of \$9,100 alleging unpaid imaging services commencing on February 6, 2023.

On September 4, 2024, ARZ Lien Solutions Pomona (ARZ), on behalf of Oracle, filed a Declaration of Readiness to Proceed to a Lien Conference.

The matter was set for a Lien Conference on November 4, 2024. Oracle did not attend the hearing.

On November 20, 2024, defendant filed a Notice of Intent to Dismiss pursuant to WCAB Rule 10770.1 seeking dismissal of Oracle's lien due to their alleged failure to attend the November 4, 2024 Lien Conference. ¹

On December 3, 2024, the WCJ issued a Notice of Intention to Dismiss Lien pursuant to "CCR 10888 and CCR 10875(b)" noting an intent to dismiss Oracle's lien "absent an objection showing good cause" within 10 days.

Oracle did not file an objection.

On December 23, 2024, the WCJ issued an Order Dismissing Lien. The Order was issued pursuant to a "Notice of Intention dated 11/27/2024 and served 12/03/24" and based upon Oracle's failure to issue an "objection within the time allowed[.]"

DISCUSSION

I.

Preliminarily, former Labor Code² 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

¹ WCAB Rule 10770.1 was repealed on January 1, 2020, and has been replaced by sections 10875, 10877, 10880, and 10888.

² All further statutory references will be to the Labor Code unless otherwise indicated.

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 26, 2025, and 60 days from the date of transmission is April 27, 2025, which is a Sunday. The next business day that is 60 days from the date of transmission is Monday, April 28, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision was issued by or on April 28, 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 shall constitute notice of transmission.

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.

Here, according to the proof of service for the Report, it was served on February 26, 2025, and the case was transmitted to the Appeals Board on February 26, 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 26, 2025.

II.

Subject to the limitations of section 5804, “The 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.)

In the instant matter, the WCJ issued an Order Dismissing Lien pursuant to WCAB Rules 10875 and 10888. Per subsection (b) of WCAB Rule 10875, “If a lien claimant fails to appear at a lien conference, the workers compensation judge may issue a notice of intention to dismiss consistent with rule 10888[.]” (Cal. Code Regs., tit. 8, § 10875(b).) Subsection (a) of WCAB Rule 10888 states that “The Appeals Board or a workers’ compensation judge may order a lien dismissed for lack of prosecution, non-appearance by the lien claimant or failure to comply with the provisions of the Labor Code[.]” (Cal. Code Regs., tit. 8, § 10888(a).) Subsection (c) notes that “dismissal for failure to appear at a hearing shall only issue if the lien claimant was provided notice of the lien conference or lien trial.” (Cal. Code Regs., tit. 8, § 10888(c).)

Here, Oracle’s representative, ARZ, argues that they “had not received proper notice of the hearing date” which “resulted in an unintentional failure to attend.” (Petition, p. 3.) ARZ alleges that they have had “repeated issue[s] with the board not sending notifications to [their] PO Box” and claim that the “PO box [has been] flagged as a bad address” despite the address is “true and correct” and despite prior contact with “multiple employees at the WCAB” in attempts to resolve the issue. (*Ibid.*)

Notwithstanding the fact that both the P.O. box address for ARZ and a second separate address for Oracle appear on numerous proofs of service, including defendant’s November 20, 2024 notice of intent to dismiss lien and the WCJ’s December 3, 2024 Notice of Intent (NIT) to dismiss lien, we note that in substance, Oracle seeks to set aside the WCJ’s December 23, 2024

Order. As such, Oracle's Petition for Reconsideration is premature. The matter should therefore be returned to the trial level so that the WCJ may consider Oracle's Petition as one seeking set aside.

Accordingly, we dismiss applicant's Petition as premature and return the matter to the trial level for consideration of the Petition as one to set aside the Order Dismissing Lien. 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 Oracle's Petition for Reconsideration of the Order Dismissing Lien issued on December 23, 2024 is **DISMISSED** and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 28, 2025

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

**ORACLE IMAGING
ARZ LIEN SOLUTIONS
ZENITH**

RL/cs

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