

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

ROBERT GARCIA, *Applicant*

vs.

**LAKE ELISNORE TIRE & AUTO INC.;
PREFERRED EMPLOYERS INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ18487574
Marina del Rey District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant's attorney seeks reconsideration of the Order Dismissing Case Without Prejudice (Order) which was issued by the workers' compensation administrative law judge (WCJ) on August 29, 2025.

Applicant's attorney contends, in relevant part, that the Order should be set aside and further time be granted to initiate contact with applicant. Otherwise, a dismissal would violate applicant's due process and long-standing case law that favors judicial resolution of a case rather than a dismissal.

We have not received an Answer from the defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration (Petition) be denied.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record and for the reasons discussed below, we will dismiss the Petition and return this matter to the trial level for consideration of the Petition as one to set aside the Order.

FACTS

We will briefly review the relevant facts.

On October 30, 2023, applicant filed an Application for Adjudication (Application) claiming an injury on January 18, 2020 to the hip(s) while employed by defendant as an auto mechanic.

On March 12, 2024, applicant filed an amended Application, adding the claimed body parts of abdomen and hernia.

On November 22, 2024, defendant served applicant's attorney with a Notice of Intention (NOI) to File a Petition to Dismiss Inactive Case. Defendant served a copy of the NOI that was directed to applicant's attorney to applicant.

On January 30, 2025, defendant filed a Petition to Dismiss Inactive Case.

On February 5, 2025, the WCJ issued an Order Denying Petition to Dismiss Inactive Case without Prejudice as defendant's NOI to File a Petition to Dismiss Inactive Case was only directed to the applicant's attorney.

On February 20, 2025, applicant's attorney filed an Objection to Petition to Dismiss Inactive Case (Objection). In the Objection, applicant's attorney stated a dismissal would be inequitable, improper, and violate applicant's right to due process as applicant was ready, willing, and able to pursue his claim. (Objection to Petition to Dismiss Inactive Case, February 20, 2025, at p. 1.)

On May 13, 2025, defendant served another NOI. This time, defendant directed the NOI to both applicant and applicant's attorney.

On July 14, 2025, defendant filed another Petition to Dismiss Inactive Case.

On July 18, 2025, the WCJ issued a NOI to Dismiss Case, which defendant served on July 22, 2025.

On August 29, 2025, as there was no objection, the WCJ issued an Order Dismissing Case Without Prejudice. While it is not entirely clear, it appears that the Order was served on September 3, 2025.¹

On September 19, 2025, applicant's attorney filed the Petition for Reconsideration.

¹ The Order in Filenet in the Electronic Adjudication Management Systems (EAMS) does not include a proof of service. The Order in Communications in EAMS contains names of persons who should be served, but it is undated and it is unsigned. According to Case Events, the Order was filed on September 3, 2025.

DISCUSSION

I.

Former Labor Code section 5909² 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 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 September 22, 2025, and 60 days from the date of transmission is Friday, November 21, 2025. This decision is issued by or on Friday, November 21, 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.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on September 22, 2025, and the case was transmitted to the Appeals Board on September 22, 2025. Service of the Report and

² All section references are to the Labor Code, unless otherwise indicated.

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 September 22, 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.)

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. Relevant here, WCAB Rule 10550 states in pertinent part:

(a) Unless a case is 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, the case may be dismissed after notice and opportunity to be heard.

....

(b) At least 30 days before filing a petition to dismiss, the defendant seeking to dismiss the case shall send a letter to the applicant and, if represented, to the applicant’s attorney or non-attorney representative, stating the defendant’s intention to file a “Petition to Dismiss Inactive Case” 30 days after the date of that letter, unless the applicant or applicant’s attorney or non-attorney representative objects in writing, demonstrating good cause for not dismissing the case.

....

(Cal. Code Regs., tit. 8, § 10550(a)-(b).)

Here, although applicant filed an Objection to defendant’s initial Petition to Dismiss Inactive Case, applicant did not file an objection to defendant’s NOI to File a Petition to Dismiss Inactive Case, the second Petition to Dismiss Inactive Case, nor the WCJ’s NOI to Dismiss Case. 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 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc).) The Appeals Board’s record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence

received in the course of a hearing, exhibits marked 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.)

A WCJ is required to “make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).) The WCJ's opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

In the absence of a record, we are unable to evaluate applicant attorney's contentions. 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].) Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Id.*) A fair hearing includes 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.4 703, 710 [57 Cal.Comp.Cases 230].)

Accordingly, we will dismiss the Petition for Reconsideration and return this matter to the trial level. Upon return, we recommend that the WCJ treat the Petition as a petition to set aside the Order and set a hearing as there is currently no evidence admitted into the record regarding applicant attorney's contentions. At the hearing, the parties will have an opportunity to create a record, raise all relevant issues, and submit evidence upon which a decision can be made by the

WCJ. After the WCJ issues a decision, either party 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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 20, 2025

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

**ROBERT GARCIA
JERRY JACOBSON, ESQ.
PREFERRED EMPLOYERS INSURANCE COMPANY**

JL/abs

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