

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

ROSALBA GARCIA, *Applicant*

vs.

**J6 DESIGNS, INC.; TECHNOLOGY INSURANCE COMPANY,
administered by AMTRUST, *Defendants***

**Adjudication Number: ADJ16292687
Van Nuys District Office**

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

Lien claimant Oracle Imaging seeks reconsideration of the Order of dismissal (Order), issued by the workers' compensation administrative law judge (WCJ) on December 18, 2024.

Lien claimant contends that they did not receive a notice of hearing for a lien conference, which resulted in an unintentional failure to attend.

We have not received an Answer from any party.

The WCJ 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 for the reasons discussed below, we will grant lien claimant's Petition, rescind the Order, and return the matter to the WCJ for further proceedings consistent with this decision.

BACKGROUND

On September 6, 2023, lien claimant Oracle Imaging filed a notice and request for allowance of lien in case number ADJ16292687.

The case-in-chief settled by compromise and release (C&R) and the WCJ signed a Joint Order Approving Compromise and Release (OACR) on March 7, 2024, in case numbers ADJ16292687; ADJ16303891; and ADJ16302115. The WCJ designated AMTRUST to serve the OACR. The OACR was served on March 11, 2024.

On April 10, 2024, lien claimant filed a Declaration of Readiness (DOR) to proceed to a lien conference in case number ADJ16292687.

On May 6, 2024, AMTRUST served a notice of hearing for a lien conference on July 16, 2024.

Per minutes issued by the WCJ, lien claimant did not appear at the July 16, 2024, lien conference. The WCJ designated AMTRUST to serve the minutes, which were served on July 30, 2024.

On July 16, 2024, the WCJ signed a notice of intention to dismiss Oracle Imaging's lien:

Lien Claimant, ORACLE IMAGING and their representative ARZ LIEN SOLUTIONS having filed the declaration of readiness to proceed to a Lien Conference, having been served with notice and having failed to appear in person, or by attorney, or representative, or have a person with settlement authority immediately available by telephone for Conference on JULY 16, 2024, and; GOOD CAUSE APPEARING: NOTICE IS HEREBY GIVEN that ten (10) days hence an order dismissing said lien claim shall issue absent an objection showing good cause to the contrary filed and served within said time.

(Notice of intention to dismiss lien, p. 1.)

The WCJ designated AMTRUST to serve the notice of intention to dismiss. The notice of intention to dismiss was served on October 29, 2024, more than three months after the WCJ signed it.

On December 18, 2024, the WCJ issued an Order dismissing Oracle Imaging's lien:

IT APPEARING THAT Oracle Imaging failed to object to the Notice of Intention to Dismiss their lien served on July 30, 2024, and GOOD CAUSE APPEARING;

IT IS ORDERED THAT the lien of Oracle Imaging be and hereby is dismissed.
IT IS SO ORDERED.

(Order dismissing lien, p. 1.)

The WCJ designated AMTRUST to serve the Order dismissing Oracle Imaging's lien.¹

¹ The WCJ designated service of the Order dismissing the lien 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, the designated service of the Order did not comply with WCAB Rule 10628.

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 February 21, 2025, and 60 days from the date of transmission is April 22, 2025. This decision is issued by or on April 22, 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 be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on February 21, 2025, and the case was transmitted to the Appeals Board on February 21, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day.

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

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 21, 2025.

II.

Lien claimant's non-attorney representative stated that lien claimant did not receive the notice of intention to dismiss from the WCAB, which raises procedural due process concerns as to whether the required notice was received. 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].) It is one of the basic tenets of jurisprudence that a party must be provided notice and an opportunity to be heard before their case is dismissed. (See, e.g., *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].) Thus, the failure to serve lien claimant with the Notice of intention to dismiss is not only a violation of WCAB Rules; it constitutes a fundamental violation of lien claimant's due process rights, rendering the resulting December 18, 2024 Order of dismissal void on its face.

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]; *Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149].) In the *Fox* case, as here, a lien claimant's case was dismissed due to failure to appear. (*Fox, supra*, at 1206.) The court of appeal held "that lien claimants may seek relief from the consequences of a failure to appear by utilizing a procedure substantially similar to Code of Civil Procedure section 473." (*Fox, supra*, at 1205; Code Civ. Proc., § 473; see Lab. Code, § 5506.) Code of Civil Procedure section 473(b) provides, in relevant part: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Code Civ. Proc., § 473(b).)

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).) 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.) “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, § 5313; see *Hamilton, supra*, at 476.)

“The WCJ is also required to prepare an opinion on decision, setting forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on.” (*Hamilton, supra*, at 476.) “The opinion 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, supra*, at 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].)

The WCJ must prepare a Minutes of Hearing and Summary of Evidence (MOH/SOE) at the conclusion of each hearing. (Cal. Code Regs., tit. 8, § 10787(c).) The MOH/SOE must include the issues and matters in controversy, a descriptive listing of exhibits received in evidence, if any, and the disposition of the matter. (Cal. Code Regs., tit. 8, § 10787(c)(3)-(4).) The Appeals Board’s record of proceedings is maintained in the adjudication file, however, “[d]ocuments 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.)

Accordingly, we grant lien claimant’s Petition, rescind the Order of dismissal issued on December 18, 2024, and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return to the trial level, we recommend that the WCJ 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.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order of dismissal issued by the WCJ on December 18, 2024 is **RESCINDED** and 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/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 22, 2025

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

**AMTRUST LAW FIRM
ARZ LIEN SOLUTIONS
JOHN ALTIERI LAW FIRM
LAW OFFICE OF NATALIE KAPLAN
ORACLE IMAGING**

JB/pm

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