

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

RUBEN BRAVO ZARATE, *Applicant*

vs.

BARON HR, et. al., *Defendants*

Adjudication Numbers: ADJ10529376

Pomona District Office

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

Attorney, Eric Welch, seeks reconsideration of the “Order Re: Sanctions (L.C. 5813, C.C.R. § 10421)” (Order) issued on January 9, 2024, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that Mr. Welch failed in his duty to investigate and act in good faith and ordered Eric Welch and Baron HR, jointly and severally, to pay a sanction of \$2,500.00 to the general fund.

Mr. Welch argues that he did not receive notice of the order imposing sanctions and requests that the order be set aside.

The WCJ filed a Report recommending that the Petition for Reconsideration be dismissed as untimely.

We have considered the allegations in the Petition for Reconsideration, the contents of the Report, and we have reviewed the record. Based upon our review of the record, we will grant the Petition for Reconsideration and as our Decision After Reconsideration we will rescind the January 9, 2024 Order, and return this matter to the trial level for further proceedings.

FACTS

Per the WCJ's Report:

Mr. Eric Welch was counsel for Baron HR during the period in question. Baron HR was illegally uninsured and was proceeding with administering and paying claims. The uninsured Employers Benefit Trust Fund was not initially joined as Baron HR indicated they would be paying out of pocket.

At Priority Conference on May 17, 2023, the parties informed the WCJ that the case had been settled in principle and the settlement documents were being drafted and circulated. Also, Mr. Welch informed the court at the hearing that the lien of EDD had been resolved. The parties were informed of Practice and Procedure manual sec 1.93 that Baron HR needed copies of certified checks funding the settlement as they were uninsured. This was documented in the minutes of hearing. The case was continued to June 14, 2023.

At the June 14, 2023 hearing, Mr. Welch informed the court that the C&R documents were not ready, and Baron HR had not issued certified checks as they indicated they would at the prior hearing. Also, Mr. Welch then informed the court that the EDD lien was in fact NOT settled. The reason being that there was only a tentative settlement previously and that the codefendants had not agreed to participate in the settlement. A Notice of Intent to Sanction in the amount of \$1,000.00 issued June 14, 2023 and Mr. Welch was informed of this personally by the WCJ at the hearing. Mr. Welch was also personally informed that all future misrepresentations would result in escalating Sanctions. The matter was continued to July 18, 2023.

At the July 18, 2023 hearing, No response had been received to the Notice of Intent to Issue Sanctions. Mr. Welch was late to the 8:30 a.m. hearing. When Mr. Welch finally appeared at the hearing he was directly asked if he had prepared a response to the NOI Sanctions? [Sic] He said he thought he did, but could not produce a copy or even confirm that a response had been prepared. Therefore an Order for Sanctions Issued July 18, 2023 for \$1,000.00. As Mr. Welch and Baron HR had still not produced a C&R, or certified checks, after assurances at the June 14, 2023 hearing that it would be done prior to the instant hearing. Therefore, a new NOI sanctions issued July 18, 2023 in the amount of \$1,500.00. Mr. Welch was again personally informed of the Sanction Order for \$1000.00 and the new NOI sanctions for \$1,500.00. The case was continued again for submission of the C&R, Lien settlement, and certified checks.

At the continued hearing held August 29, 2023, Mr. Welch again appeared late. Also, there had been no response to the July 18, 2023 NOI sanctions. Mr. Welch was again asked if a response had been filed. Mr. Welch could not verify that a response had been prepared.

Therefore, as there had been no response to the NOI, an Order for Sanctions in the amount of \$1,500.00 issued. At this hearing, the compromise and release had

been filed, but Mr. Welch and Baron HR had not procured certified checks. The case was continued again, but no new NOI issued at that hearing.

The case was continued to October 5, 2023. Unfortunately, WCJ Bentley, who had been hearing this case on a Priority track, was not available that day. Therefore, as the certified checks had still not been issued, and due to the history of the case, the matter was continued to another date before WCJ Bentley.

At the November 30, 2023 hearing, certified checks had still not been produced. Another new NOI Sanctions were prepared for \$2,500.00 for the bad faith delay tactic. Additionally, as it had become clear that Baron HR was either unwilling or unable to make good on the proposed settlement, the WCJ Ordered that the UEBTF be joined. The matter was continued again.

At the January 9, 2024 hearing a response to the NOI sanctions had not been filed. Once again, Mr. Welch did not indicate that a response had been prepared. Therefore, an Order of sanctions for \$2,500.00 issued.

(WCJ's Report, pp. 2-4.)

DISCUSSION

I.

Former Labor Code section 5909¹ 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.

(§ 5909.)

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

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 December 20, 2024, and 60 days from the date of transmission is Tuesday, February 18, 2025. This decision is issued by or on February 18, 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 WCJ, the Report was served on December 20, 2024, and the case was transmitted to the Appeals Board on December 20, 2024. 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 December 20, 2024.

II.

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].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant . . .” (*Id.* at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, [The] commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law. (*Id.* at 577.)

A fair hearing includes but is not limited to 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].)

WCAB Rule 10625 states in pertinent part that:

(c) “Proof of service” means a dated and verified declaration identifying the document(s) served and the parties who were served, and stating that service has been made and the method by which it has been made. If the proof of service names attorneys for separately represented parties, it must also state which party or parties each of the attorneys served represents.

(Cal. Code Regs., tit. 8, § 10625(c).)

WCAB Rule 10628 states in pertinent part that:

(b) If the Workers' Compensation Appeals Board effects personal service of a document at a hearing or at a walk-through proceeding, the proof of personal service shall be made by endorsement on the document, setting forth legibly the name(s) of the person(s) served, the date of service and the fact of personal service. The endorsement shall bear the legibly printed name and signature of the person making the service.

(Cal. Code Regs., tit. 8, § 10628(b).)

WCAB Rule 10629 states in pertinent part that:

(a) The Workers' Compensation Appeals Board may, in its discretion, designate a party or their attorney or agent of record to serve any order that is not required to be served by the Workers' Compensation Appeals Board in accordance with rule 10628.

(b) When a party or their attorney or agent of record is designated to serve an order, the workers' compensation judge shall indicate which parties to serve.

(Cal. Code Regs., tit. 8, § 10629(a),(b).)

Our review of the minutes from the hearing of May 17, 2023 and subsequent minutes shows that Mr. Welch appeared on behalf of Baron and that the WCJ designated Mr. Welch to serve the minutes. Preliminarily, we wish to make clear that designating a party to serve is not “service,” and it is not the same as personally serving that person. When a person is designated to serve, the person becomes responsible for service, and the effective date of service is the date on the proof of service when the designated person serves the document on all persons.

We now turn to the notices of intention. With respect to the notice of intention on June 14, 2023, according to the proof of service, Mr. Welch was not served with the notice. Next, the WCJ issued another notice of intention on July 19, 2023, and Mr. Welch is not listed on the proof of service. On November 30, 2023, the WCJ issued another notice of intention, and again Mr. Welch was not listed on the proof of service. On January 9, 2024, the WCJ issued another notice of intention, and again Mr. Welch was not listed on the January 11, 2024 proof of service.

It is unclear from the record why the WCJ did not ensure that Mr. Welch was added to any of the proofs of service of the notices. Without proper notice, any order based on the notice renders the order void as against the person who was not properly served. It is important to remember that the California State Bar regulates individual attorneys and does not regulate legal entities. To be effective as a disciplinary measure, any order against an attorney must individually identify the attorney. (See Lab. Code, § 4907 [applying disciplinary rules to non-attorneys].)

Here, Mr. Welch seeks to set aside the January 9, 2024 Order imposing sanctions. Upon review of the proofs of service attached to the January 9, 2024 Order, and the preceding notices of intent, both were served upon all parties listed on the Official Address Record as required by WCAB Rule 10628(c). However, at the time of service, Mr. Welch had not filed a notice of

representation as required by WCAB Rule 10400. (Cal. Code Regs, tit. 8, § 10400.) Under WCAB Rule 10390 (Cal. Code Regs., tit. 8, §10390), all parties must provide their full legal name on all pleadings and at any appearance, including the names of the employer, insurance company and any third-party administrator. (See *Coldiron v. Compuware Corp.* (2002) 67 Cal.Comp.Cases 289 (Appeals Board en banc) [failure to do so may subject the offending party to sanctions]. Furthermore, given the number of errors that are likely, it is the duty of all parties and their representatives to ensure that the Official Address Record in EAMS is correct. (Cal. Code Regs., tit. 8, § 10205.5.) Failing to ensure that the correct address is in the court's record could be described as frivolous and/or bad-faith conduct. Mr. Welch is admonished to follow all rules, including the requirement to timely file notices of representation in all future matters.

Accordingly, since none of the notices of intention were properly served against Mr. Welch, the Order as against Mr. Welch is not enforceable, and thus we will issue an order rescinding the January 9, 2024 Order, which imposed sanctions.

However, we decline to address the merits of sanctions as the issue is not before us. If good cause exists to reissue a notice of intent with direct service upon Mr. Welch, the WCJ may take appropriate measures at the trial level bearing in mind the rules regarding appearances and proper service.

The WCJ correctly notes that under ordinary circumstances, Mr. Welch's petition would be untimely. However, a petitioner for reconsideration may be filed within 20 days of *service* of any final order, decision, or award. (§ 5903.) Here, and for the reasons discussed above, we agree with Mr. Welch that the Order was not served upon him. Thus, the Petition for Reconsideration is timely.

Accordingly, we grant the Petition for Reconsideration and as our Decision After Reconsideration we rescind the January 9, 2024 Order, and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that Eric Welch's Petition for Reconsideration of the Order issued on January 9, 2024, is **GRANTED**.

IT IS FURTHER ORDERED as our Decision After Reconsideration that the Order issued on January 9, 2024 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 18, 2025

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

**ERIC M. WELCH, ESQ., THE WELCH LAW GROUP (FOR BARON HR)
RUBEN BRAVO ZARATE
PEREZ LAW CORP PC
LAW OFFICES OF TOBIN LUCKS LLP
OFFICE OF THE DIRECTOR, LEGAL-LOS ANGELES**

EDL/mc

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