

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

RUTILIO PORTILLO GUARDADO, *Applicant*

vs.

**JBC282 AUTO, dba JAY'S AUTO WRECKING;
UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants***

**Adjudication Numbers: ADJ9388991; ADJ9388992
Long Beach District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the "Findings and Orders" (F&O) issued on August 19, 2025, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant was a vexatious litigant and issued an order requiring pre-filing review of all petitions filed.

Applicant contends that he did not receive a settlement check.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report. Based on our review of the record and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will deny applicant's petition for reconsideration.

DISCUSSION

I.

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.

(§ 5909.)

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 September 5, 2025, and 60 days from the date of transmission is Tuesday, November 4, 2025. This decision is issued by or on November 4, 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 September 5, 2025, and the case was transmitted to the Appeals Board on September 5, 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 September 5, 2025.

II.

Pursuant to WCAB Rule 10430 a person may be declared a vexatious litigant where the person: “repeatedly files unmeritorious motions, pleadings or other papers, repeatedly conducts or attempts to conduct unnecessary discovery, or repeatedly engages in other tactics that are in bad faith, are frivolous or are solely intended to cause harassment or unnecessary delay[.]” (Cal. Code Regs., tit. 8, § 10430.) Here, and for the reasons discussed in the WCJ’s Report, we agree with the WCJ’s determination that applicant is a vexatious litigant.

Accordingly, we deny applicant’s petition for reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's petition for reconsideration of the Findings and Orders issued on August 19, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 4, 2025

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

**RUTILIO PORTILLO GUARDADO, IN PRO PER
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.
KL

**REPORT AND RECOMMENDATION OF
WORKERS' COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION
AND NOTICE OF TRANSMITTAL**

**I
INTRODUCTION**

Applicant has filed a timely, verified Petition for Reconsideration whereby he is aggrieved by the recent Findings and Order that he is a vexatious litigant and is now subject to a Pre-Filing Order. The Petition alleges:

That the order, decision, or award was procured by fraud.

Unfortunately, nothing in the applicant's Petition for Reconsideration explains how the Findings and Order was procured by fraud, or what exactly the applicant disputes regarding the Findings and Order. The Petition does not even mention the Findings declaring the applicant a vexatious litigant or the Pre-Filing Order issued.

The applicant, born XX-XX-XXXX, claimed to have sustained injury to his arm on November 1, 2013 (ADJ9388991) and claimed to have sustained injury to his upper extremity, arm, wrist, and shoulders on December 17, 2013, all while working as a day laborer for JBC828 Auto dba Jay's Auto Wrecking, willfully uninsured. The Uninsured Employers Benefits Trust Fund (UEBTF) settled all of the applicant's claims by way of Compromise and Release which was signed by the applicant on or about August 7, 2022, and approved by Judge Marsteiner on October 13, 2022. Subsequent to the Order Approving Compromise and Release, hearings were held on the issue of withheld attorney's fees and payment of the balance of the withheld fees to the applicant. The applicant repeatedly claimed he never received the check from the UEBTF after the division of attorney's fees. The applicant finally acknowledged receipt of the check on April 23, 2025 (see defendant's Exhibits C and B).

Even though there are no issues left to adjudicate, the applicant has continued to file Declaration of Readiness to Proceed forms (DORs) and has repeatedly appeared at the Long Beach District Office demanding we hand him a check. The Office of the Director-Legal Units (OD Legal) on behalf of the UEBTF subsequently filed a Petition for Finding of Vexatious Litigant (see defendant's Exhibit A).

II **DISCUSSION**

A trial was held on the issue of whether or not the applicant should be found to be a vexatious litigant on June 25, 2025. The applicant was present, as was an attorney for OD Legal. The proceedings were translated for the applicant by a certified Spanish language interpreter. My Opinion on Decision gives a thorough analysis of significant events and supports my finding that the applicant should be declared a vexatious litigant. It is set forth as follows:

The sole issue in this proceeding is the issue of whether or not the applicant should be declared a vexatious litigant. This proceeding was set after receiving the Petition for Finding of Vexatious Litigant filed by the Office of the Director-Legal Units (OD Legal) on behalf of the Uninsured Employers Benefits Trust Fund (UEBTF).

The applicant, then represented by competent legal counsel, the Law Offices of Dennis Fusi, filed these cases against his former employer who was illegally uninsured. The uninsured employer was initially represented by counsel, and a Compromise and Release (C&R) agreement was drafted on or about March 8, 2017, based on a proposed agreement between the uninsured employer and the applicant. However, that C&R was never signed by the employer or by applicant's attorney, and the uninsured employer ceased defending the case and dismissed its counsel on October 20, 2017. At or about that time, the UEBTF, which had previously been joined in August 2014 as a party, stepped up to defend the case through its counsel, OD Legal.

On March 6, 2018, in response to a Petition to Be Relieved as Attorney, Judge Mary Anne Thompson issued an Order Dismissing Dennis Fusi as attorney of record. As can be seen by the Minutes of Hearing of November 17, 2018, the applicant, then acting in pro per, was under the belief that the unsigned C&R was a valid and enforceable document. The applicant filed with the Board the unsigned C&R and alleged that the UEBTF had paid the settlement mentioned therein, \$28,000.00, to his prior attorney, Mr. Fusi. Judge Thompson set the matter for trial on the issue of the enforceability of the unsigned C&R.

On January 16, 2019, an amended Pre Trial Conference Statement (PTCS) was filed by the parties in preparation for trial. Stipulations were listed, but the sole issue remained the enforceability of the C&R. On January 16, 2019, Judge Gene Lee conducted the trial which was submitted on the documentary evidence without any testimony. On February 1, 2019, Judge

Lee issued his Findings of Fact finding essentially that the C&R was not fully executed and could not therefore be approved or enforced.

The applicant filed a Petition for Reconsideration of Judge Lee's Findings on February 20, 2019, claiming only that he was certain that Mr. Fusi collected money paid by the employer, and he wanted Mr. Fusi to be ordered to attend a hearing. On April 22, 2019, the Board issued an Opinion and Order Dismissing the Petition for Reconsideration.

The case thereafter continued to be litigated by the applicant and the UEBTF. Numerous hearings in the case were held, and on August 2, 2022, a fully-signed C&R was filed settling the case for \$22,000.00 payable by the UEBTF less attorneys' fees to be withheld for the applicant's prior attorney. A required Notice of Intention to Approve the C&R was issued, and then an Order Approving the C&R was issued by Judge Marsteiner on October 13, 2022.

On January 3, 2024, the applicant filed a Declaration of Readiness to Proceed (DOR) requesting a hearing stating, "15% of interest for physical damages personal and permanent disability of \$50 per hour. The amount due is \$215,040000.00." [sic] A hearing before Judge Marsteiner was held on January 31, 2024, wherein the applicant said he wanted to pursue fraud proceedings against his attorney. Judge Marsteiner indicated he could file those in the appropriate venue and took the matter off calendar (see Minutes of Hearing dated 1/31/24). The issue of attorneys' fees withheld from the C&R was still pending.

On February 28, 2024, a DOR was filed by Dennis Fusi regarding his attorneys' fees withheld from the C&R. On March 6, 2024, the applicant filed a DOR requesting permanent disability (PD), future medical care, and settlement. A hearing was held before Judge Marsteiner on March 20, 2024, in which the parties came to an agreement regarding the division of attorneys' fees.

On August 16, 2024, the applicant filed a DOR claiming that the settlement amount approved was \$285,975,100.00 and the applicant appeared to be claiming that the amount was paid to Mr. Fusi, it arrived at his office, and then disappeared. The applicant, in the DOR, asked to be paid "day by day more than 15%, the total of \$357,000 for personal permanent physical damages for \$2,300 per week." [sic] Judge Marsteiner conducted another hearing on September 4, 2024, which was continued as the applicant was unable to appear by telephone. The case was again heard by Judge Marsteiner on November 6, 2024, at which time the applicant was instructed that his case

had been settled and all issues resolved. The applicant then told Judge Marsteiner that his case for \$215 million was still open. He was told that there was no such case in this court, and he must stop filing DOR's under the workers' compensation jurisdiction. He then claimed his check from UEBTF was missing, and he was instructed to sign a form for UEBTF indicating that the check was missing which he agreed to do.

The applicant has been a regular visitor to the Long Beach District Office's front counter complaining repeatedly that he wants his "check." He was directed numerous times to contact UEBTF for his "missing" check, and at times he has refused to leave our office, and he has been rude to our staff. He has had to be escorted off our premises by our CHP Officer on more than one occasion when he refused to leave. I have talked to him repeatedly over the past year after he yelled at staff or refused to leave our office insisting we give him his check. Through an interpreter, he admitted to me that he had received his check but insisted that he is owed more money, literally millions of dollars. He also admitted to me, through a certified interpreter, that he has lied about not receiving his check from the UEBTF.

On May 30, 2025, UEBTF filed the Petition for Finding of Vexatious Litigant, and the matter was set on said Petition before me, the Presiding Judge, on June 4, 2025, for an MSC. The applicant failed to appear for the MSC. The matter was then set for trial before me on June 25, 2025, at 1:30 p.m. The applicant appeared at the trial which was on the sole issue of whether he should be declared a vexatious litigant. The nature of the hearing was explained to him by I&A Officer Veronica Leiva, and the trial was interpreted by a certified interpreter, Joseph Medrano.

The Petition for Findings of Vexatious Litigant (Exhibit A) gives a description of the applicant's conduct with regard to the UEBTF staff and OD Legal staff. The applicant testified that everything listed in the Petition happened and it explained everything that occurred (see Summary of Evidence (SOE) Page 3, lines 5-7). The record further reflects that the applicant's case is settled and payment is complete. The applicant, however, refuses to accept this. His testimony at trial is clearly evidence of this. He testified that his settlement was approved for \$286,332,100.00 (SOE Page 3, line 9). He believes that others connected to his case received \$1,000,000.00 (SOE Page 3, lines 11.5 and 12). The applicant expressed his hope that I, as Presiding Judge, would hand him a check for \$286,322,100.00 "today" (the day of the trial) (SOE Page 3, lines 16-18). The applicant is further waiting to receive \$2,300 per week as

disability which he testified was approved (SOE Page 3, lines 20.5-22). No such order exists. Since the trial, less than 2 months ago, the applicant has made numerous visits to our office to “pick up his check.” The I&A Officer, Veronica Leiva, has repeatedly told him that no further money on his case is forthcoming. He has further attempted to file numerous DOR’s which were rejected due to the case being under submission. It is clear from the court record that the applicant’s case is settled, he has been paid pursuant to the settlement terms, and his file should be closed. The applicant refuses to accept this, and he is clearly a vexatious litigant as defined under 8 CCR Section 10430(a)(1) as follows:

A party who, while acting in propria persona in proceedings before the Workers’ Compensation Appeals Board, repeatedly relitigates, or attempts to relitigate, an issue of law or fact that has been finally determined against that party by the Workers’ Compensation Appeals Board

These cases require a “prefiling order” as set forth in 8 CCR Section 10430(a)(1), and same shall be ordered to reduce the wasting of judicial resources on matters that have previously been adjudicated.

The applicant’s Petition for Reconsideration is basically nonsensical. It is written in Spanish, and it was interpreted by our bilingual, Spanish-speaking Information and Assistance Officer. I believe from his prior statements to me and the language used in his Petition for Reconsideration that the applicant is still seeking a check from the UEBTF for \$286,332,000.00, a sum I believe it is safe to say that has certainly never been granted in a compromise and release against the UEBTF. Since my Findings that the applicant is declared a vexatious litigant issued, the applicant has repeatedly appeared at our offices and has made repeated phone calls asking for his \$286,332,000.00 check. Needless to say, no such check will be forthcoming.

III
RECOMMENDATION

It is respectfully recommended that Reconsideration be denied for the reasons set forth above.

This matter was transmitted to the Recon Unit on September 5, 2025.

Date: September 5, 2025

CYNTHIA A. QUIEL
PRESIDING WORKERS'
COMPENSATION JUDGE