

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

SARAH MCILROY, *Applicant*

vs.

**CHARTWELL STAFFING SERVICES, INC.;
OLD REPUBLIC INSURANCE COMPANY, administered by GALLAGHER BASSETT,
*Defendants***

**Adjudication Number: ADJ16767852
Pomona District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the “Order Dismissing Case for Failure to Appear” (Order) wherein the workers’ compensation judge (WCJ) notified the parties that it would dismiss the case for applicant’s failure to appear at the trial on November 16, 2023, if there was no objection within 10 days showing good cause. Applicant contends that she could not participate in her case initially as she was homeless but that she recently reached out to her attorney and is ready, willing, and able to participate now as she has found housing.

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on Petition for Reconsideration (Report), recommending that the Petition be granted and the Order Dismissing be rescinded or, alternatively, that the Petition be dismissed and the case referred back to the trial level to consider whether the Order Dismissing should be set aside.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the WCJ’s Order.

FACTS

Applicant claimed industrial injury to her chest, arms, shoulder, and multiple body parts when she tripped and fell while working as a laborer for defendant on January 31, 2022.

The case proceeded to trial on November 16, 2023. According to the minutes, applicant did not appear at the trial, but her attorney was present. The WCJ issued the Order based on applicant's failure to appear, which stated that it would become final absent timely objection and that no additional order would follow. The Order indicated that applicant's attorney was "unable to locate applicant. She may be homeless." The WCJ designated defendant's attorney to serve the Order, and defendant filed a proof of service indicating that it served applicant and her attorney on November 21, 2023. Applicant did not file an objection.

Applicant filed the Petition on February 21, 2024.

DISCUSSION

WCAB Rule 10305(c) states that: "Appear" means to act on behalf of any party." Each applicant and defendant shall appear or have an attorney or non-attorney representative appear at all hearings pertaining to the case in chief. (Cal. Code Regs., tit. 8, § 10752(a).) A WCJ may issue a notice of intention pursuant to WCAB Rule 10832 for failure to comply with this rule. (Cal. Code Regs., tit. 8, §§ 10752(e), 10832.) Further, WCAB Rule 10832(e) states that "An order with a clause rendering the order null and void if an objection is received is not a Notice of Intention and must be served by the Workers' Compensation Appeals Board."

Here, applicant's attorney appeared at the trial on November 16, 2023, and therefore, there was no violation of WCAB Rule 10752(a). As there was no basis for a notice to dismiss, the Order is void *ab initio*. We also note that since the Order stated that it would be effective if there was no timely objection and without a further order (a "self destruct" order), it should have been served by the WCAB, and the WCJ's choice to designate service to defendant provides another basis for our conclusion that the Order is void.

Finally, we reiterate that 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].) Since the WCJ acknowledged that applicant was likely homeless, it is unlikely that she was properly served. If applicant did not receive the Order, applicant was not provided with due process thereby providing another basis to find that the Order was void.

Accordingly, we rescind the Order.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Dismissing Case for Failure to Appear is **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 9, 2025

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

**SARAH MCILROY
SOLIMON RODGERS
EMPLOYERS DEFENSE GROUP**

JMR/abs

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