

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

**SASHA OLIVERA, *Applicant***

**vs.**

**ASSIL EYE INSTITUTE; THE HARTFORD, *Defendants***

**Adjudication Number: ADJ16866401  
Van Nuys District Office**

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

Applicant seeks reconsideration of the December 27, 2024 Order of Dismissal of Case (Order) wherein the workers' compensation administrative law judge (WCJ) dismissed applicant's claim without prejudice pursuant to WCAB Rule 10550(a) (Cal. Code Regs., tit. 8, § 10550(a)) due to applicant's alleged lack of prosecution and failure to issue a timely objection to the WCJ's notice of intent to dismiss (NIT) dated September 3, 2024 and served September 17, 2024.

Applicant's attorney contends that he lost contact with applicant and took "extensive efforts" to locate applicant but was unable to reach her until after the dismissal. (Petition, p. 3.) Applicant's attorney also contends that applicant is now ready, willing, and able to pursue her case. (Petition, pp. 2-3.)

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 denied.

We have considered the Petition for Reconsideration (Petition), the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition, rescind the December 27, 2024 Order, and return this matter to the trial level for further proceedings consistent with this opinion.

## FACTS

Applicant claimed that, while employed by defendant on September 19, 2022 as a receptionist, she contracted COVID-19 and sustained an injury arising out of and in the course of employment (AOE/COE) to her respiratory system, mouth, nose, and head.

After a period of apparent inactivity, on April 16, 2024, defendant sent applicant a notice of intent to seek dismissal after the passage of 30 days, absent a showing of good cause under WCAB Rule 10550(a).

On June 11, 2024, after failing to hear from applicant, defendant filed a petition for dismissal due to lack of prosecution. The following day, defendant also filed a declaration of readiness to proceed.

On August 21, 2024, applicant's attorney and defendant attended a status conference wherein applicant's attorney conveyed that he had lost contact with applicant. (Minutes of Hearing, August 21, 2024.)

Thereafter, the WCJ issued a NIT pursuant to WCAB Rule 10550(a), indicating that the case would be "dismissed for lack of prosecution and Defendant will be ordered to pay, adjust, or litigated any outstanding medical-legal costs, 10 days from the date of service hereof [unless] timely objection in writing is filed within said time frame." The NIT was dated September 3, 2024, and served September 17, 2024. Defendant also served a copy of the NIT on applicant and applicant's attorney on September 23, 2024.

On September 26, 2024, applicant's attorney filed an objection to the NIT requesting that the matter be set for a mandatory settlement conference and that notice of the hearing be served on applicant. Applicant's attorney noted that if applicant failed to appear, he would be agreeable to the WCJ taking "whatever action he or she deems is necessary." (Objection to NIT, September 26, 2024.)

On December 27, 2024, the WCJ issued an order of dismissal "[p]ursuant to Notice of Intention and no timely objection having been filed within the time allowed."

## DISCUSSION

### I.

Preliminarily, former Labor Code<sup>1</sup> 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.

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 under the Events tab 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 January 29, 2025, and 60 days from the date of transmission is March 30, 2025, which is a Sunday. The next business day that is 60 days from the date of transmission April 1, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision was issued by or on April 1, 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

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<sup>1</sup> All further statutory references will be to the Labor Code unless otherwise indicated.

<sup>2</sup> WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on January 29, 2025, and the case was transmitted to the Appeals Board on January 29, 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 January 29, 2025.

## II.

Turning to the merits of the Petition, WCAB Rule 10550(a) 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. (Cal. Code Regs., tit. 8, § 10550(a).) 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).)

Although WCAB Rule 10550(a) authorizes dismissal of inactive cases upon demonstration of the above conditions, dismissal is discretionary, not mandatory. (*Roth v. Workers' Comp. Appeals Bd.* (1971) 20 Cal.App.3d 452 [36 Cal.Comp.Cases 604].) 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.App.3d 324 [35 Cal.Comp.Cases 513]; *Marino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485 [67 Cal.Comp.Cases 1273]; *Moore v. Waste Management* (2014) 2014 Cal.Wrk.Comp.P.D. LEXIS 621 (panel decision).) Moreover, in

determining whether to dismiss a case for lack of prosecution, the WCJ may balance the equities of the respective parties. (*Gutierrez v. Ramirez AG Service* (2010) Cal. Wrk. Comp. P.D. LEXIS 410.)

In the instant case, defendant sent applicant a notice of intent to seek dismissal on April 16, 2024. Upon receiving no response from applicant, on June 11, 2024, defendant then filed a petition for dismissal of claim. The following day, defendant filed a declaration of readiness to proceed. On August 21, 2024 a status conference pertaining to the petition for dismissal was held and attended by applicant's attorney and defendant. Applicant was not present. Following the hearing, the WCJ issued a NIT indicating that applicant's case would be dismissed for lack of prosecution and defendant ordered to pay, adjust, or litigate any outstanding medical-legal costs "10 days from the date of service hereof [unless] timely objection in writing is filed within said time frame." (NIT, September 17, 2024.) The NIT was dated September 3, 2024 and served September 17, 2024.

Pursuant to the clear language of WCAB Rule 10550(a), a case may not be dismissed until the passage of "one year after an order taking off calendar." (Cal. Code Regs., tit. 8, § 10550(a).) Given that the last order taking off calendar issued on August 21, 2024, the earliest applicant's case may be dismissed is August 21, 2025. Here, the WCJ issued the NIT on September 17, 2024. As such, the NIT is premature and void. The December 27, 2024 Order is therefore similarly premature and void as it was issued based upon the improper NIT.<sup>3</sup>

Accordingly, we grant applicant's Petition, rescind the December 27, 2024 Order, and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the December 27, 2024 Order of Dismissal of Case is **GRANTED**.

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<sup>3</sup> We also note that it is unclear whether the WCJ considered applicant's objection before issuing the Order, which is potentially another basis to rescind the Order as applicant's objection was timely served upon the parties and WCJ within 10 days of service of the NIT.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the December 27, 2024 Order of Dismissal of Case is **RESCINDED** and the matter **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**MARCH 28, 2025**

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

**SASHA OLIVERA  
LAW OFFICES OF BOB NEHORAY  
LAW OFFICES OF LYDIA B. NEWCOMB**

**RL/cs**

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