

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

LARA WITHOP, *Applicant*

vs.

**SUTTER LAKESIDE COMMUNITY SERVICES;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ1545786
Santa Rosa District Office**

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

Applicant seeks reconsideration of the Order Allowing Withdrawal of Attorney of Record (Order) dated October 27, 2025, by the workers' compensation administrative law judge (WCJ), wherein the WCJ ordered that applicant's attorneys, Matthew Schondel and the Law Office of Kneisler & Schondel, be relieved as attorney of record for applicant, Lara Withop.

Applicant, proceeding in pro per, contends that the WCJ erred in dismissing her attorney and that she filed an objection to the WCJ's notice of intention to dismiss (NIT).

We have not received an answer from applicant's attorney or defendant.

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 applicant's Petition and the contents of the Report with respect thereto. Based on our review of the record, and as discussed below, we will grant the Petition for Reconsideration, rescind the decision and return the matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

We will briefly review the relevant facts.

On August 27, 2025, defendant filed a declaration of readiness to proceed (DOR) to a status conference on the principal issue of settlement.

At the corresponding status conference on September 22, 2025, applicant was not present. Jointly, counsel for applicant and counsel for defendant requested that the matter go off calendar. The WCJ granted the request and noted on the Minutes of Hearing that “applicant has not participated in the case for over a year. [Applicant’s attorney] is filing a renewed petition to be dismissed as counsel. [Defendant’s attorney] is filing a Petition to Dismiss Case due to inactivity.¹”

On September 30, 2025, applicant’s attorney filed a “Petition to Withdraw as Attorney of Record” (petition to withdraw).

On October 2, 2025, the WCJ prepared an NIT in response to the petition to withdraw. The WCJ gave notice that “absent a timely objection showing good cause within ten (10) days, an Order shall issue dismissing Kneisler & Schondel as Applicant’s attorney.” Although it was applicant’s attorney’s motion, the WCJ appeared to designate service to defendant State Compensation Insurance Fund (SCIF) because only defendant SCIF was served with the NIT. To date, the record does not contain any other proof of service of the NIT.

On October 27, 2025, the WCJ prepared the Order. Applicant’s attorney was “designated to serve this document on all parties as shown on the Official Address Record.” To date, the record does not contain any other proof of service of the Order.

That same day, applicant filed and served an Objection to the NIT. Applicant objected and alleged that she is addressing a serious family matter, is not reliably at home and is unable to receive communications, and that she cannot represent herself.

DISCUSSION

I.

Former Labor Code section 5909² 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.

¹ No corresponding Petition to Dismiss Case due to inactivity has been filed. This is likely because the case was activated for a hearing, and applicant’s attorney appeared at the hearing on September 22, 2025. (See Cal. Code Regs., tit. 8, § 10550.)

² All section references are to the Labor Code, unless otherwise indicated.

(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 January 27, 2026 and 60 days from the date of transmission is Saturday, March 28, 2026. The next business day that is 60 days from the date of transmission is Monday, March 30, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on Monday, March 30, 2026, 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.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on January 27, 2026, and the case was transmitted to the Appeals Board on January 27, 2026. 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 27, 2026.

³ 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.

II.

All parties in workers' compensation proceedings retain their 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].) 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 p. 577.)

Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Rucker, supra*, at pp. 157-158.) 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 pp. 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]. Additionally, decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Board 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.” (*Id.* at p. 475.) We held that the record of proceeding must contain, at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Ibid.*) Here, the record must be developed regarding applicant's contentions in her Objection.

Furthermore, we remind the parties and the WCJ that WCAB Rule 10629 states:

(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.

(c) In addition to the service required by rule 10625, service shall also be made on the injured employee or any dependent of a deceased employee, whether or not the employee or dependent is represented.

(d) Within 10 days from the date on which designated service is ordered, the person designated to make service shall serve the document and shall file the proof of service.

(Cal. Code Regs., tit. 8, § 10629.)

The WCJ provides in the Report:

Mr. Schondel filed a Petition to Withdraw as Attorney of Record on September 30, 2025. A Notice of Intent issued on October 2, 2025 allowing Ms. Withop ten (10) days to object. The Notice of Intent was served on Ms. Withop and no mail was returned.

As no objection was received, an Order Allowing Withdrawal of Applicant's Attorney Kneisler Schondel issued on October 27, 2025. Again, Ms. Withop was served with the Order and no mail was returned.

On October 28, 2025, Ms. Withop filed a letter objecting to the Order; however, the Order had already issued.

(Report, at p. 2, EAMS citations omitted.)

Where an order can be shown to have been defectively served, the time limit begins to run as of the date of receipt of the order. (*Hartford Accident & Indemnity Co. v. Workers' Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1 [43 Cal.Comp.Cases 1193].)

Hence, the WCJ has proceeded as if no objection to the NIT was filed by applicant, which is incorrect. On this record, we are unable to determine when the time for objection commenced because defendant failed to file a proof of service of the NIT, so that we cannot determine the effective date of the NIT. We also observe that if the WCJ wished to designate service, it would have been more appropriate to designate it to the applicant's attorney since the petition to withdraw was by applicant's attorney. Accordingly, we treat applicant's objection to the NIT as timely filed, and it must be considered by the WCJ.

Moreover, the WCJ then designated service of the Order to applicant's attorney, and there is no proof of service of that Order in the record.

There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the

last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

The Petition in this matter was filed on January 15, 2026. While the Order was served on applicant's attorney by designation, there is no proof of service in the record. This means that we are unable to determine the effective date of the Order, and we treat applicant's Petition for Reconsideration as timely filed. We note that in her Petition, applicant refers to delays in receipt of mail, and that she "only just became aware" of the Order.

Applicant's attorney had the opportunity to file an answer in response to applicant's petition. He chose not to do so, thus forfeiting his opportunity to make an offer of proof explaining why there is no timely proof of service in the record for the October 27, 2025 Order or to otherwise correct his error.

We remind applicant that she has a duty to furnish a correct mailing address, email address, and telephone number. (See Cal. Code Regs., tit. 8, §§ 10205.5; 10401.) If applicant is unable to timely receive her mail, she must make other arrangements, or otherwise her case is subject to dismissal.

As explained above, upon return, the WCJ should set a hearing and create a record with respect to applicant's attorney's petition to withdraw.

Accordingly, we grant the Petition for Reconsideration, rescind the Order and return the matter for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Order Allowing Withdrawal of Attorney of Record dated October 27, 2025 is **GRANTED**.

IT IS FURTHER ORDERED that the Order Allowing Withdrawal of Attorney of Record dated October 27, 2025 is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 30, 2026

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

**LARA WITHOP
KNEISLER & SCHONDEL
STATE COMPENSATION INSURANCE FUND**

SL/abs

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