

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

LUIS SEPULVEDA, *Applicant*

vs.

**KENTUCKY FRIED CHICKEN; AMERICAN ZURICH INS. CO.,
administered by ZURICH, *Defendants***

**Adjudication Number: ADJ14513544
Long Beach District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

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

Defendant, American Zurich Insurance Company (Zurich), seeks reconsideration of the Order of Sanctions (Order) issued on May 3, 2023 by the workers' compensation administrative law judge (WCJ).

Zurich contends the WCJ erred because it had legal representation, Zurich was not required to attend lien hearings, and any failure to appear at any hearing was not in bad faith or frivolous and that, alternatively, it is entitled to a hearing on the issue.

The WCJ issued a Report and Recommendation on the Petition for Reconsideration (Report) recommending that we deny reconsideration.

We received a reply from Zurich's prior counsel, Manning, Kass, Ellrod, Ramirez, and Trester, LLP (Manning Kass), which we treat as an Answer.¹

In response to Manning Kass's Answer, Zurich filed a supplemental petition. We remind petitioner that WCAB Rule 10964 requires that supplemental pleadings or responses shall be considered only when specifically requested or approved by the Appeals Board and that a party seeking to file a supplemental pleading should request permission. (Cal. Code Regs., tit. 8, §

¹ To the extent that defendant's former attorney Michelle Ritchie refers to communications between defendant's attorneys and their client Zurich, she is reminded that even after an attorney no longer represents a client, such communications continue to be subject to the attorney-client privilege.

10964(a).) Thus, as Zurich did not seek permission, we decline to accept and consider the supplemental pleading.

We have considered the allegations of the Petition for Reconsideration and the Answer, and the contents of the Report of the WCJ. Based on our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will rescind the May 3, 2023 Order.

FACTUAL BACKGROUND

Applicant claimed specific injury to multiple body parts arising out of and occurring in the course of employment by defendant on March 1, 2020. The case in chief settled by way of compromise and release approved on October 6, 2022, and served on October 10, 2022.

On December 13, 2022, according to Communications in the Electronic Adjudication Management System (EAMS), a notice of hearing by the WCAB was served that included Zurich and its attorneys Manning Kass.

On February 21, 2023, a lien conference took place. According to the Minutes, “Manning Kass” is listed as representing defendant, but the appearance box is not checked. The Comments indicate that: “NO APPEARANCES BY DEFENDANT; SERVICE OF TODAYS HEARING MADE 12/12/2022; DEFENDANT IS ORDERED TO APPEAR.”

On February 23, 2023, according to Communications in EAMS, a notice of hearing was served by the WCAB that included Zurich and its attorneys Manning Kass.

On March 21, 2023, a lien conference took place. According to the Minutes, “Manning Kass” is listed as representing defendant, but the appearance box is not checked. The Comments indicate that: “ZURICH has indicated it will be handling the liens in house as per Manning & Kass. NOI TO SANCTION ZURICH FOR FAILURE TO APPEAR LC SEC.5813, 8 CCR 10421 MATTER OF SANCTION TO BE HEARD AT NEXT HEARING.”

On March 22, 2023, the WCJ issued a “Notice of Intention to Sanction for Failure to Appear, Notice of Hearing [8 C.C.R. §10875]” as follows:

IT APPEARING THAT party defendant, AMERICAN ZURICH c/o ZURICH LOS ANGELES, on behalf of the employer, has/have failed to appear at Lien Conference on February 21, 2023 and March 21, 2023 before the undersigned, after having been served with Notice of same, therefore:

NOTICE IS HEREBY GIVEN that this matter is continued to Lien Conference on 4/25/2023, at 10:00 a.m. on the issue brought forward by the Declaration of Readiness filed on December 12, 2022 by lien claimant, 4600

BOEHM/LAC UCLA MEDICAL, and, on SANCTIONS, not to exceed \$2,500.00 for each violation of the Rules or Code against AMERICAN ZURICH C/O ZURICH LOS ANGELES, regardless of whether the parties resolve the underlying lien.

On April 10, 2023, according to Communications in EAMS, a notice of hearing reschedule was served by the WCAB that included Zurich and its attorneys Manning Kass.

On May 2, 2023, a further lien conference took place. According to the Minutes, a hearing representative from Manning Kass appeared on behalf of defendant and an attorney appeared on behalf of lien claimant. The Comments indicate that: “NOI TO SANCTION IS PENDING.”

On May 3, 2023, the WCJ issued the Order dated May 2, 2023. The Order states in pertinent part that:

There being no objection to the Notice of Intention to Impose Sanctions dated March 21, 2023, for the reasons stated in the Notice of Intention and for disregarding the Court’s prior Order to Appear, dated February 21, 2023, and having heard no Good Cause to the contrary at the hearing of May 2, 2023,

DEFENDANT/Lien Claimant, AMERICAN ZURICH INS. CO. administered by ZURICH LOS ANGELES is hereby Ordered to pay a sanction of \$1,000.00 . . .

Thereafter, Zurich sought reconsideration of the Order.

On June 7, 2023, Manning Kass filed a Substitution of Attorneys.

On June 22, 2023, Manning Kass filed their Answer.

DISCUSSION

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].) Due process guarantees all parties the right to notice and an opportunity to be heard. (*San Bernardino Cmty. Hosp. v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].)

With respect to notice, “[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [Citations.]” (*Armstrong v. Manzo* (1965) 380 U.S. 545,

550.) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker, supra*, at pp. 157-158.)

Under WCAB Rule 10750, notices of hearing shall be served by the WCAB. (Cal. Code Regs., tit. 8, § 10750.) Here, notices of the hearings were served by the WCAB on December 13, 2022, February 23, 2023, and April 10, 2023. Contrary to the WCJ's belief, a notation on the Minutes does not satisfy the notice requirement in WCAB Rule 10750.

Under WCAB Rule 10305(c), "[a]pppearance' means a party or their representative's presence." (Cal. Code Regs., tit. 8, § 10305(c).) Under WCAB Rule 10875(a): "All defendants and lien claimants shall appear at all lien conferences, *either* in person *or* by attorney or non-attorney representative. . ." (Cal. Code Regs., tit. 8, § 10875(a), emphasis added.)

At the February 21, 2023 hearing, the WCJ noted on the Minutes that "defendant" is ordered to appear. When a WCJ issues an order to appear, the person who is to appear must be identified with particularity and served with the order, and to ensure due process, a separate order is favored. Under the circumstances here, an appearance by counsel was sufficient. It is not entirely clear from the Minutes of March 21, 2023 whether the WCJ's reference to Zurich "handling the liens in house as per Manning & Kass" meant that someone appeared on its behalf, but in any event, she did not indicate that defendant did not appear. Relying on the unchecked box as evidence of non-appearance is not sufficient because all too often, a party appears and the name of the representative is listed, but the box is inadvertently not checked.

Pursuant to WCAB Rule 10832, the WCJ may issue a notice of intention for any proper purpose including but not limited to sanctioning a party. (Cal. Code Regs., tit. 8, § 10832(a)(3).)

In ordering sanctions, WCAB Rule 10421 provides that:

(a) On its own motion or upon the filing of a petition pursuant to rule 10510, the Workers' Compensation Appeals Board may order payment of reasonable expenses, including attorney's fees and costs and, in addition, sanctions as provided in Labor Code section 5813. Before issuing such an order, the alleged offending party or attorney *must be given notice and an opportunity to be heard*. In no event shall the Workers' Compensation Appeals Board impose a monetary sanction pursuant to Labor Code section 5813 where the one subject to the sanction acted with reasonable justification or other circumstances make imposition of the sanction unjust.

(Cal. Code Regs., tit. 8, § 10421, emphasis added.)

Thus, as a matter of due process, a notice of intention must clearly state the reason(s) for its issuance and identify a means to respond.

Here, the NIT issued by the WCJ failed to inform the parties that they could make a showing of good cause prior to the Order issuing and it failed to set forth the period of time in which the parties had to act. (Cal. Code Regs., tit. 8, §§ 10421; 10832(c).) Arguably, if the WCJ's intention was to allow parties to object on the record at a hearing, rescheduling the hearing scheduled for April 25, 2023, without reissuing the NIT, did not give proper notice and meant that Zurich was denied the opportunity to be heard. Moreover, there is nothing to indicate that the WCJ intended to go forward with a hearing on the rescheduled date of May 2, 2023, as there were no Minutes of Hearing created pursuant to WCAB Rule 10787. (Cal. Code Regs., tit. 8, § 10787). Because Zenith was not afforded adequate notice and a meaningful opportunity to respond, the corresponding Order issued thereafter is invalid.

Further, even if the NIT and the Order had been properly issued and served, we are unable to provide meaningful review due to the lack of a record. No record was created to support the Order, and without an ability to review the evidentiary record, we would not be able to complete a meaningful review of the Petition for Reconsideration. (See Lab. Code, § 5313; see also *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc); *Rucker, supra*, at pp. 157-158; *Gangwish, supra*, at p. 1295.) Even though the WCJ's Report is well reasoned, without a record, she improperly placed herself in the role of an evidentiary witness.

Finally, with respect to Zenith's allegation that its attorneys were responsible for the failure to appear, upon return, if the WCJ intends to pursue the issue of sanctions, we recommend that the WCJ set a hearing and take in evidence to determine where the fault lies. However, we remind the parties and the WCJ that until an attorney has filed an official pleading with the WCAB to be relieved as counsel, it is expected that it is the attorney who is required to appear and/or to ensure that an appearance is otherwise made.

Accordingly, as our Decision After Reconsideration we rescind the Order of Sanctions.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the May 3, 2023 Order of Sanctions is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 4, 2026

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

**LUIS SEPULVEDA
OZUROVICH SCHWARTZ
LAW OFFICE OF TRACEY LAZARUS
MANNING, KASS, ELLROD, RAMIREZ, TRESTER LLP
4600BOEHM**

DC/pm

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