

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

MARTIN LOPEZ, *Applicant*

vs.

**CAMBLIN STEEL SERVICE INC.;
INSURANCE COMPANY OF THE WEST, *Defendants***

**Adjudication Number: ADJ11096892
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. 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 reconsideration.

I.

Former Labor Code section 5909¹ 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.

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

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 February 23, 2026 and 60 days from the date of transmission is Friday April 24, 2026. This decision is issued by or on April 24, 2026 so that we have timely acted on the petition as required by Section 5909(a).

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 12, 2026, and the case was transmitted to the Appeals Board on February 23, 2026. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under Labor Code section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on February 23, 2026

However, a notice of transmission was served by the district office on February 24, 2026. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1), and consequently they had actual notice as to the commencement of the 60-day period on February 23, 2026.

II.

The Appeals Board’s basic statutory command is that the fee awarded must be “reasonable.” (Lab. Code, §§ 4903, 4906(a) & (d).) Pursuant to Labor Code section 4906, “[t]he appeals board may determine what constitutes a reasonable amount” of attorney’s fees, and the Appeals Board “shall be the final arbiter of reasonableness in all cases.” (*Vierra v. Workers’ Comp. Appeals Bd. (Vierra)* (2007) 154 Cal.App.4th 1142, 1148 [72 Cal.Comp.Cases 1128].) An attorney may not receive a fee unless it has been approved by the Appeals Board. (Cal. Code Regs., tit. 8, § 10840; *Bentley v. Industrial Acc. Com.* (1946) 75 Cal.App.2d 547.)

Labor Code section 4906(d) provides that, in establishing a reasonable attorney’s fee, “consideration shall be given to the responsibility assumed by the attorney, the care exercised in representing the applicant, the time involved, and the results obtained.” (Lab. Code, § 4906(d); see also Lab. Code, § 4903; Cal. Code Regs., tit. 8, § 10844.) Once services are rendered, the WCJ

may approve, increase, or reduce the fees requested, taking into consideration the factors listed in Labor Code section 4906(d), as well as the corresponding Rules of Practice and Procedure and guidelines established by the Appeals Board. (*Vierra, supra*, 154 Cal.App.4th at p. 1150.) Based on our review of the record, and in assessing the factors outlined above, we find no reason to disturb the WCJ's findings.

Pursuant to section 5813(a), the Workers' Compensation Appeals Board has the discretionary power to order the payment of sanctions for "bad-faith actions or tactics which are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813(a).) Bad-faith actions or tactics are defined as "actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit" and include "[b]ringing a claim, conducting a defense or asserting a position: (A) That is: (i) Indisputably without merit; (ii) Done solely or primarily for the purpose of harassing or maliciously injuring any person; and/or (iii) Done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation...." (Cal. Code Regs., tit. 8, § 10421(b)(6).)

Under section 5813 and WCAB Rule 10421, sanctions are discretionary; under no circumstances is a WCJ required to order costs or sanctions. (Lab. Code, § 5813 (a) [the WCJ "may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs..." and a WCJ "in its sole discretion, may order additional sanctions..." (emphasis added)]; Cal. Code Regs., tit. 8, § 10421(a); *Runnion v. Workers' Comp. Appeals Bd.* (*Runnion*) (1997) 59 Cal.App.4th 277, 287 [62 Cal.Comp.Cases 1511] *Avance v. Workers' Compensation Appeals Bd.* (2004) 69 Cal.Comp.Cases 1, 5 ["The WCAB also reasonably exercised its discretion under section 5813 in choosing not to impose sanctions..."].) For the reasons stated in the Report, we are persuaded that the WCJ did not abuse her discretion in declining to impose sanctions and attorney fees in this matter. Therefore, we do not disturb the WCJ's decision.

Lastly, a petition for reconsideration must fairly state all of the material evidence relative to the point or points at issue. (Lab. Code, § 5902; Cal. Code Regs., tit. 8, § 10945(a).) The evidentiary statements in a petition for reconsideration must be supported by specific references to the record. (Cal. Code Regs., tit. 8, § 10945(b).) Applicant's attorney repeatedly alleges that the

resolution reached on September 17, 2020 indicated a full and final resolution of the lien. However, the evidence does not reflect any term that could be construed to indicate full and final satisfaction of the lien.

Joint Exhibit 101 is an email exchange between applicant's counsel and lien claimant. In the exchange, applicant's counsel notes that in light of an award of 16% for a total attorney fee of \$2414 he would offer lien claimant \$500. Lien claimant accepted. Neither party includes as a term of the contract a stipulation that the agreement resolves all future recovery nor did lien claimant agree to withdraw their lien. In fact, the offer is prefaced by reference to the amount of the permanent disability award only.² Further, no order issued disposing of the lien despite counsel's assertion that it was extinguished with the agreement. The only advisement to the Appeals Board of an agreement was a letter from applicant's counsel a resolution for \$500, "pursuant to the Findings and Award," which again only resolved permanent disability and did not dismiss the lien. There is no evidence to support applicant's counsel's assertion that the parties understood the agreement to extinguish all continuing rights, nor is there additional consideration included in the agreement to indicate an intention to resolve a future right.

We admonish applicant's counsel Nadeem Makada for failing to follow the applicable statutes and the Appeals Board's Rules of Practice and Procedure, including but not limited to WCAB Rule 10945. (Lab. Code, § 5902; Cal. Code Regs., tit. 8, § 10945.) Future compliance with the WCAB Rules is expected, and failure to do so will subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

² In the Findings and Award issued March 19, 2020, temporary disability was deferred and later resolved to include an attorney fee from which lien claimant it appears that lien claimant did not take a fee.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 24, 2026

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

**MARTIN LOPEZ
ARNS DAVIS LAW FIRM
LAW OFFICE OF NADEEM MAKADA**

TF/md

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

Report and Recommendation on
Petition for Reconsideration and Notice of Transmission to WCAB

Introduction

On January 6, 2026 applicant's counsel filed a Petition for Reconsideration of my December 16, 2025 Findings and Award, served on all parties on December 17, 2025.

Petitioner does not set out any of the enumerated grounds for reconsideration in Labor Code section 5903, but asserts that I abused by discretion in awarding attorneys fees to lien claimant. The petition was timely filed and accompanied by the verification required under Labor Code section 5902 and Regulation 10940(c). To date, I am not aware of an answer having been filed by lien claimant.

Facts

Martin Lopez, while employed on September 8, 2017, as an iron worker, at Rocklin, California, by Camblin Steel Service, Inc., sustained injury arising out of and in the course of employment to the left knee. At the time of injury, the employer was insured for workers' compensation purposes by Insurance Company of the West. An application for adjudication of claim was filed on his behalf by lien claimant, Arns Law Firm, on November 17, 2017. Petitioner Law Office of Nadeem Makada became the attorney of record on January 25, 2019.

The WCAB issued a Findings and Award on March 19, 2020, at which time an attorneys' fee in the amount of \$2,414.25 was awarded. Arns Davis was paid \$500 directly by defendant out of attorneys' fees held in trust by defendants based on an agreement between petitioner and lien claimant.

A Petition to Reopen was filed on June 25, 2021 by petitioner. In addition, an amended application was filed by petitioner on November 19, 2021 alleging applicant also injured his back and right leg as a result of the industrial injury. The case settled by Compromise and Release on January 16, 2023 which included an attorney's fee in the amount of \$6,585.75.

Lien claimant filed a declaration of readiness to proceed, requesting a lien conference, on April 9, 2025. There was no appearance for lien claimant at the time of the June 16, 2025 lien conference, so the matter was taken off calendar. A second DOR was filed by lien claimant, and petitioner filed a petition for penalties, sanctions and attorneys' fees for lien claimants failure to appear at the June 16, 2025 lien conference.

This matter proceeded to trial in front of the undersigned on November 4, 2025 on the issue of lien claimant Arns Davis' claim for attorney's fees as well as petitioner Law Office of Nadeem Makada's claim for sanctions against Arns Davis for their failure to appear at the June 16, 2025 hearing. On December 16, 2025, I issued my Findings, Award and Order in which I found lien claimant was entitled to 15% of the January 25, 2023 fee, and did not award sanctions. It is from this Findings and Award that petitioner seeks reconsideration.

Discussion

My awarding lien claimant a portion of the attorneys' fee was appropriate.

I found that lien claimant's interests were not extinguished at the time it accepted \$500 of the \$2,414.25 fee awarded in the 2020 Findings and Award. Instead, they reached an agreement to resolve the fee that was awarded *at that time*. The emails between Mr. Makada and lien claimant do not characterize the fee division agreement as a full and final settlement of the attorney fee lien. (Joint Exhibit 101.) There is no writing in evidence that purports to satisfy, withdraw, dismiss, or otherwise extinguish the lien. Lien claimant's work, in part, led to applicant's entitlement to an award of medical treatment. Therefore, they are entitled to a portion of the fee earned in resolving that right via a compromise and release.

The additional fee awarded from the compromise and release was earned after both a petition to reopen and the claim of injury to additional body parts were filed by applicant's current counsel. However, there was nothing in evidence to show that the compromise and release resolved anything other than applicant's right to receive medical care on an industrial basis. There were no medical reports that were submitted at the time of the compromise and release (or at the lien trial) indicating that the applicant's disability increased, nor any medical evidence of disability for the additional claimed body parts.

In determining whether lien claimant was entitled to a portion of the fee awarded in the compromise and release, I gave consideration to the responsibility assumed by the attorney, the care exercised, the time spent and the results. (Labor Code section 4906(d), *Rose & Leventhal v. Workers' Comp. Appeals Bd.* (1978) 43 Cal. Comp. Cases 135.) When looking at the time spent representing the applicant, lien claimant represented the applicant from November 17, 2017 through January 31, 2019, a period of 443 days, while applicant's current attorney represented him through the compromise and release of January 17, 2023, a period of 1488 days. When lien claimant agreed to accept \$500 from the initial fee award of

\$2,414.25, or approximately 20%, the fee was not based on the respective time spent in representing the applicant. I believe that there was some acknowledgment by lien claimant of the efforts by and results obtained by the current attorney. Based on the evidence submitted, the compromise and release was solely based on buying out the applicant's medical care (which included the additional claim of medical care to the back). I therefore adopted a similar percentage for the fee split and awarded 15% of the January 23, 2025 fee, or \$987.86, to lien claimant.

I exercised my discretion in denying petitioner's request for sanctions.

A judge may impose sanctions for "bad faith-actions or tactics which are frivolous or solely intended to cause unnecessary delay." (Labor Code section 5813.) The imposition of sanctions is not mandatory—rather it is in the discretion of the judge.

Petitioner's July 7, 2025 petition for penalties, sanctions and attorney's fees for "non appearance by defendant" at the June 16, 2025 lien conference. The petition alleged that applicant and his counsel appeared for the lien conference, although the minutes from the June 16, 2025 conference show the applicant was not present, but a representative for defendant was present. The petition seeks Labor Code section 5813 sanctions and attorneys' fees against *defendant* for lien claimant's failure to appear. I saw no basis to award any sanctions or attorneys' fees against defendant ICW.

Lien claimant did miss the June 16, 2025 lien conference, which was requested based on their declaration of readiness to proceed. However, it does appear that when they realized the error in not appearing for the hearing, they did attempt to appear on the date of the hearing. (Lien claimant's Exhibit 3.) No evidence of bad faith on behalf of lien claimant was introduced. I therefore exercised my discretion and did not sanction lien claimant for their failure to appear.

Recommendation

For the foregoing reasons, I recommend that applicant attorney's Petition for Reconsideration, filed herein on January 7, 2026, be denied. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

DATE: January 12, 2026

Elizabeth C. Dehn
WORKERS' COMPENSATION JUDGE
WORKERS COMPENSATION APPEALS BOSRD