

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

**VICENTE LOPEZ (deceased), *Applicant***

**vs.**

**RED COW, INC. DBA LOT MANAGEMENT; TRAVELERS PROPERTY  
CASUALTY COMPANY OF AMERICA, INC., *Defendants***

**Adjudication Number: ADJ16708894  
Van Nuys District Office**

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

Applicant seeks reconsideration of the Order reaffirming dismissal (January 12, 2026 Order) issued by the workers' compensation administrative law judge (WCJ) on January 12, 2026.

Applicant contends that the WCJ erred in dismissing the case because a timely objection was filed to the WCJ's November 12, 2025 notice of intention to dismiss the case. Applicant also contends that discovery is stalled because a request for a replacement panel in Internal Medicine was rejected by the Medical Unit. Applicant further requests that the WCJ issue an order for a replacement panel in Internal Medicine.

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

On February 19, 2026, applicant filed a Response to the WCJ's Report. Here, applicant did not seek permission to file supplemental pleadings as required by WCAB Rule 10964. While WCAB Rule 10964 does not require the Appeals Board to accept supplemental pleadings, the Appeals Board may exercise its discretion to accept a supplemental pleading and consider it. We accept applicant's Response to the WCJ's Report for filing as a supplemental pleading and consider it as part of the record. (Cal. Code Regs., tit. 8, § 10964.)

We have considered the allegations in the Petition, the supplemental pleading, and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons

discussed below, we will grant applicant's Petition, vacate the August 2, 2024 Order issued by WCJ Sommer and vacate January 12, 2026 Order issued by WCJ Sulprizio, and return the matter to the trial level for further proceedings consistent with this decision.

### **BACKGROUND**

We will briefly review the relevant facts and procedural history of the case.

On September 19, 2022, applicant filed an Application for Adjudication (Application), claiming that Vicente Lopez sustained injury to various body parts, which resulted in his death, while employed by defendant on April 16, 2022 as a landscaper.

On January 19, 2023, applicant filed an amended Application to correctly identify the insurance carrier.

On July 12, 2023, WCJ Sommer issued an Order appointing applicant as guardian ad litem and trustee.

On June 21, 2024, defendant served applicant with a notice of intent to file a petition to dismiss, as follows:

As it has been almost one (1) year since this matter was on the active hearing calendar and has not returned since, please allow this correspondence to serve as our notice of intent to seek dismissal under Title 8 of the California Code of Regulations §10550.

It is the intention of the person signing this letter to file a "Petition to Dismiss Inactive Case" thirty (30) days after the date of this letter, unless the applicant or applicant's attorney or non-attorney representative objects in writing, demonstrating good cause for not dismissing the case.

On August 1, 2024, defendant filed a Petition to dismiss.

On August 2, 2024, WCJ Sommer issued an Order dismissing the case, but stated that "Timely Objection within 20 days showing good cause will void this order."

On August 6, 2024, applicant's attorney filed an objection to the Order of dismissal. In relevant part, the objection states that:

Applicant's Attorney objects to said Order because he is in contact with the decedent's family, and they intend on moving forward with this claim for death benefits. . . . Additionally, Applicant's Attorney objects because discovery remains ongoing, as a PQME panel in the specialty of Internal Medicine dated April 8, 2024 was heretofore served to defense counsel. . . . Concurrent with the filing of this Objection, Applicant's Attorney will file a DOR for Status Conference to address the status of the claim and coordinate discovery.

On August 6, 2024, applicant's attorney filed a Declaration of Readiness (DOR) on the issue of discovery. The comments state:

AA has filed this DOR to address status of case and coordinate discovery with defendants, including the QME panel previously served on defendants.

On September 3, 2024, defendant filed an objection to the DOR.

On September 24, 2024, the matter was taken off calendar by WCJ Vistro. The checked boxes on the minutes state that it was at the joint request of the parties, however there are no notes on the minutes. The minutes indicate that service of the minutes was "waived." No other orders appear in the record.

On August 25, 2025, defendant served applicant with a notice of intent to file a petition to dismiss.

On October 7, 2025, defendant filed a petition to dismiss alleging that:

In the present case this matter was last on calendar for a **Status Conference on September 24, 2025, wherein Judge Vistro vacated the order of dismissal issued by Judge Sommer due to an objection filed by applicant's attorney regarding the order dismissing inactive case.** That matter went off calendar. Since then, the matter has not been reactivated to the hearing calendar and no further discovery efforts appear to have taken place by applicant's attorney.

(Petition to Dismiss, dated October 7, 2025, pp. 1-2, emphasis added.)

On October 22, 2025, applicant's attorney filed an objection to the petition to dismiss.

On November 12, 2025, WCJ Sulprizio issued a notice of intent to dismiss (NIT), as follows:

IT APPEARING THAT following receipt of Applicant Attorney's Objection to the Petition For Case Dismissal, nothing further has been received by Applicant's Counsel. Previously the case was on calendar on 9/24/2025 in response to a previous Petition For Dismissal and Objection. The matter was taken off calendar, then the current Petition For Dismissal was filed, followed by another Objection. Apparently Applicant Attorney indicates the Medical Unit has denied the parties a replacement panel. Applicant Attorney indicates there are unresolved issues pending; however, no explanation as to what the unresolved issues are or what plans there are for future action.

**NOTICE IS HEREBY GIVEN that an Order Dismissing the above-entitled case, without prejudice, shall issue twenty (20) days from the date of service hereof, unless good cause to the contrary is shown in writing within said time.**

(Notice of Intent, dated November 12, 2025, p. 1, emphasis added.)

On November 24, 2025, applicant’s attorney filed a written objection to the NIT.

On January 12, 2026, WCJ Sulprizio issued an Order “reaffirming dismissal,” without setting a status conference or holding a hearing.

## DISCUSSION

### I.

Former Labor Code section<sup>1</sup> 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 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 28, 2026, and 60 days from the date of transmission is Sunday, March 29, 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).)<sup>2</sup> 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).

---

<sup>1</sup> All statutory references are to the Labor Code unless otherwise stated.

<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.

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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on January 28, 2026, and the case was transmitted to the Appeals Board on January 28, 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 28, 2026.

## II.

Due process requires the issuance of an NIT to dismiss a petition as a condition precedent to dismissal, thereby affording the interested party or parties an opportunity to be heard. (*Fortich v. Workers' Comp. Appeals Bd. (Fortich)* (1991) 233 Cal.App.3d 1449, 1452-1453 [56 Cal.Comp.Cases 537]; Cal. Code Regs., tit. 8, § 10850; see Cal. Code Regs., tit. 8, § 10832.) WCAB Rule 10550 provides for administrative dismissal of inactive cases not activated for hearing within one year after the filing of the Application or the entry of an order taking off calendar, but requires notice and opportunity to be heard.

(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**. Such dismissals may be entered at the request of an interested party or upon the Workers' Compensation Appeals Board's own motion for lack of prosecution.

...

(f) A case may be dismissed after issuance of a 10-day notice of intention to dismiss **and an opportunity to be heard**, but **not by an order with a clause rendering the order null and void if an objection showing good cause is filed**.

(Cal. Code Regs., tit. 8, § 10550(a), (f), emphasis added.)

Both WCAB Rules 10550(f) and 10850(b) prohibit orders of dismissal that contain a clause rendering the order null and void if an objection showing good cause is filed. (Cal. Code Regs., tit. 8, §§ 10550(f), 10850(b).) These orders are commonly referred to as “self-destruct” orders. The August 2, 2024 Order of dismissal issued by WCJ Sommer contained the following clause: “Timely Objection within 20 days showing good cause will void this order.” Applicant timely filed an objection on August 6, 2024.

The circumstances here aptly illustrate why such “self-destruct” orders are generally disfavored. A self-destruct order is void when the objection showing good cause is filed. Nevertheless, as happened here, a very real problem is that the void order continues to “live” on in the record thus causing confusion as the case progresses. If the good cause objection is somehow misfiled or misplaced, a different existential crisis arises because the moment that the order became void may be nearly impossible to determine. If the face of the objection only shows marginal cause or no cause whatsoever, good cause must be determined at a hearing. If no hearing is held and no determination is ever made as to good cause when the objection does not present good cause on its face, is the order truly void or is it enforceable?

As evidenced by the January 12, 2026 Order, WCJ Sulprizio chose the path of least resistance and simply skipped the steps of reviewing the record and creating a record; she decided that no objection had been filed in response to the August 2, 2024 Order. We emphasize that even if no objection had ever been filed, the August 2, 2024 Order was void ab initio here because WCAB Rule 10550(f) prohibits self-destruct orders. In other words, the August 2, 2024 Order was invalid and never enforceable even at the time it issued.

The parties state in various pleadings that the August 2, 2024 Order was vacated at the September 24, 2024 status conference. However, there is no order vacating the dismissal in the record and the minutes are silent as to what occurred at the conference, other than that the matter was ordered off calendar. We note that the indication on the minutes that service of the minutes was “waived” is improper; the parties and the WCAB may not waive service. Any order of the WCAB, even an order taking off calendar, must be served pursuant to WCAB Rules 10628 or 10629 (Cal. Code Regs., tit. 8, §§ 10628, 10629). This is because the order is only effective when it is served, and if it is never served, it is not effective.

However, since applicant actually did file an objection to the August 2, 2024 Order on August 6, 2024, and to ensure that the record is clear, we consider the issue of whether applicant’s

timely objection demonstrated good cause. We conclude that applicant's objection was sufficient to show good cause on its face, and thus, even if the Order had been valid, it would have been void on August 6, 2024. Consequently, the case was never dismissed.

Thereafter, the WCJ issued the NIT to dismiss on November 12, 2025. Allowing five days for service, applicant had until November 27, 2025, to file a timely written objection to the NIT. Applicant's attorney filed a written objection to the NIT on November 24, 2025. Nonetheless, on January 12, 2026, WCJ Sulprizio issued an Order "reaffirming dismissal," without setting a status conference or holding a hearing. Because applicant did object on August 6, 2024 despite the WCJ's statement in her Order, and because the August 2, 2024 Order of dismissal is void, there was no basis for WCJ Sulprizio's Order "reaffirming dismissal." Even if the January 12, 2026 Order was not void on its face, we would have rescinded it as applicant was not afforded the opportunity to be heard despite a timely written objection to the NIT.

Although WCAB Rule 10550 authorizes dismissal of an inactive case upon demonstration of the conditions that allow dismissal under the rule, and after affording the applicant notice and an opportunity to be heard, 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.3d 324 [35 Cal.Comp.Cases 513]; *Marino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485 [67 Cal.Comp.Cases 1273].)

Also relevant to the case before us, WCAB Rule 10850(b) states:

(b) All other orders of dismissal of Applications for Adjudication of Claim shall issue only after service of a notice of intention allowing at least 10 days for any adverse party to show good cause to the contrary, and **not by an order with a clause rendering the order null and void if an objection showing good cause is filed.**

(Cal. Code Regs., tit. 8, § 10850, emphasis added.)

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].) 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. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, 82

Cal.App.4th at p. 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.4th 703, 710 [57 Cal.Comp.Cases 230].)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc).) “Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, § 5313; see *Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

“The WCJ is also required to prepare an opinion on decision, setting forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.) “For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record. (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.) The opinion enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].)

Accordingly, we grant applicant’s Petition, vacate the August 2, 2024 Order of dismissal issued by WCJ Sommer, vacate the January 12, 2026 Order issued by WCJ Sulprizio, and return the matter to the trial level for further proceedings consistent with this decision.

Upon return to the trial level, we recommend that the WCJ set a status conference to allow the parties to frame the current issues, including the issue of replacement panel in Internal Medicine.

For the foregoing reasons,

**IT IS ORDERED** that applicant’s Petition for Reconsideration is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers’ Compensation Appeals Board, that the Order of Dismissal issued by the WCJ on August 2, 2024 is **VACATED**.

**IT IS FURTHER ORDERED** that the Order of Dismissal issued by the WCJ on January 12, 2026 is **VACATED**.

**IT IS FURTHER ORDERED** that this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSÉ H. RAZO, 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.**

**ANTHONY SALAZAR  
DANIEL SALAZAR  
MARIA LOPEZ (guardian ad litem)  
LAW OFFICE OF SCOTT A. SCHWARTZ  
SIEGEL, MORENO & STETTLER**

***JB/pm***

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