

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

DAVID SCHNEIDER, *Applicant*

vs.

**CORA CONSTRUCTORS;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ1993931 (RIV 0076950)
Riverside District Office**

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

Lien claimant Superior Med Surgical, Inc. seeks reconsideration of the “Order of Dismissal Of Lien/ Lien Balance Superior Med Surgical, Inc. Pursuant to Rules 10880/10888” (Order) issued by a workers’ compensation administrative law judge (WCJ) on September 6, 2022. Lien claimant contends that it timely filed its objection to the WCJ’s Notice of Intent to Dismiss.

We have not received an Answer from any party. 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 and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Reconsideration, rescind the WCJ’s Order, and return this matter to the WCJ for further proceedings.

FACTS

The underlying case settled by a Compromise and Release (C&R), and the order approving the C&R (OACR) by the WCJ was issued on May 30, 2013. The OACR ordered that defendant pay, adjust or litigate all other liens. On June 17, 2009, lien claimant Superior Med Surgical, Inc.

filed a Notice and Request for Allowance of Lien for reasonable expenses incurred by or on behalf of the injured employee for \$3,325.65.

On November 15, 2021, the WCJ ordered that defendant State Compensation Insurance Fund (SCIF) release medical information to lien claimant. The WCJ then ordered the parties to appear at a lien conference on July 6, 2022. Both defendant and lien claimant appeared at the hearing, and the hearing was continued to August 17, 2022. (7/6/22 Minutes of Hearing (MOH), p. 1.)

Defendant appeared at the hearing on August 17, 2022, but lien claimant did not appear. (8/17/22 MOH, p. 2.) On that date, the WCJ issued a “Notice of Intention to Dismiss Lien of Superior Med Surgical, Inc.” (NOI), notifying the parties that the WCJ would dismiss the lien claim in 10 days unless the lien claimant objected based on good cause.

The Events section in the Electronic Adjudication Management System (EAMS), shows that an Objection to NOI to Dismiss (Objection) was filed on August 26, 2022, with a notation that it was filed in the wrong case; the Objection does not appear in the FileNet in EAMS.

The WCJ issued the Order dismissing the lien and lien balance on September 6, 2022, due to the lien claimant failing to object to the NOI.

DISCUSSION

I.

A petition is generally considered denied by operation of law if the Appeals Board does not grant the petition within 60 days after it is filed. (Lab. Code, § 5909.)¹ However, we believe that “it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice...” (*Shipley v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shipley*, the Appeals Board denied the applicant’s petition for reconsideration because it had not acted on the petition within the statutory time limits of Labor Code section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board’s decision, holding that the time to act on applicant’s petition was tolled during the period that the file was misplaced. (*Id.* at p. 1108.) Like the Court in *Shipley*, “we are not convinced that the burden of the system’s inadequacies should fall on [a party].” (*Id.*) In this case, lien claimant filed the petition on

¹ All further statutory references are to the Labor Code unless otherwise noted.

September 14, 2022. Thereafter, the Appeals Board failed to act on the petition within 60 days, through no fault of the parties. Therefore, considering that the Appeals Board's failure to act on that petition was in error, we find that our time to act on lien claimant's petition was tolled.

II.

The WCJ may issue a notice of intention for any proper purpose, including allowing, disallowing or dismissing a lien. (Cal. Code Regs., tit. 8, § 10832(a).) Therefore, the WCJ correctly issued the NOI in this instance after lien claimant failed to appear on August 17, 2022. However, our review of the record in EAMS shows that the lien claimant made a mistake and filed the Objection in the wrong case. Thus, as the Objection was incorrectly filed in EAMS and the WCJ therefore did not consider it when dismissing the lien claim, the issue that we face on reconsideration is that there is an insufficient record to evaluate the WCJ's Order.

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313. "The Labor Code and the Board's rules set forth what must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc) (*Hamilton*).) The WCJ's opinion on decision "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." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) "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 Appeals Board's record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10803.) The WCJ's decision "must be based on admitted evidence in the record." (*Hamilton, supra*, at p. 476.) In *Hamilton*, 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.”
(*Id.* at p. 477.)

Since the WCJ was unable to consider the lien claimant’s Objection as it was filed incorrectly, we do not have a sufficient record to consider the issue in the first instance. Accordingly, we grant the Petition, rescind the Order, and return the matter to the trial level for further proceedings consistent with this decision. When the WCJ issues a new decision, any aggrieved person can timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the September 6, 2022 Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the September 6, 2022 Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ NATALIE PALUGYAI, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 8, 2023

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

**SUPERIOR MED SURGICAL
STATE COMPENSATION INSURANCE FUND**

JMR/pc

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