

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

EFRAIN HERNANDEZ, *Applicant*

vs.

CJ BLUE, INC.; NATIONAL LIABILITY & FIRE INSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ11274250
Pomona District Office**

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

Lien claimant, Certified Interpreters of California, by and through its assigned representative, Collective Resources Long Beach (hereinafter "petitioner"), seeks reconsideration of an Order issued on November 1, 2023 by the workers' compensation administrative law judge (WCJ), whereby the WCJ dismissed petitioner's lien claim for failure to appear at a lien conference.

Petitioner contends that the Order Dismissing was issued in violation of its right to due process because it did not receive notice of the lien conference. Thus, petitioner asserts that there is good cause to vacate the Order Dismissing and set the matter for adjudication on the merits.

We did not receive an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that reconsideration be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the WCJ's Order Dismissing, and return this matter to the WCJ for further proceedings and decision.

DISCUSSION

The central issue in this case is whether the WCJ properly dismissed petitioner's lien claim. Petitioner asserts that the Order Dismissing was issued in violation of its right to due process based upon lack of notice.

Pursuant to WCAB Rule 10875, "If a lien claimant fails to appear at a lien conference, the worker's compensation judge may issue a notice of intention to dismiss consistent with rule 10888, or defer the lien." (Cal. Code Regs., tit. 8, § 10875(b).) WCAB Rule 10888 provides, in pertinent part:

(a) The Appeals Board or a workers' compensation judge may order a lien dismissed for...non-appearance by the lien claimant....

* * *

(d) A dismissal for failure to comply with the Labor Code or these rules shall only be issued if the lien claimant has failed to comply with a statute or rule that provides that a lien may be dismissed for non-compliance.

(e) Before issuing an Order dismissing a lien, the Workers' Compensation Appeals Board shall issue a Notice of Intention to Dismiss the lien claim consistent with rule 10832 that provides at least 10 days for the lien claimant to file and serve a response showing good cause why an Order dismissing the lien should not issue.

(Cal. Code Regs., tit. 8, § 10888.)

WCAB Rule 10832, in turn, provides:

(a) The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose, including but not limited to:

(1) Allowing, disallowing or dismissing a lien;

(Cal. Code Regs., tit. 8, § 10832.)

It is one of the most basic tenets of jurisprudence that a party must be provided notice and an opportunity to be heard before its case is dismissed. (See, e.g., *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986] [essence of due process is notice and opportunity to be heard]; *Molina v. Lopez* (December 4, 2017, ADJ7464285) 2017 Cal. Wrk. Comp. P.D. LEXIS 568, *19.) As noted above, prior to dismissing

a case, a notice of intention (NOI) to dismiss must be issued. (Cal. Code Regs., tit. 8, §§ 10832, 10875(b), 10888.) The NOI must clearly state the reason(s) for dismissal, so as to provide the parties with adequate notice and a meaningful opportunity to respond. The basis for the NOI must also be supported by the evidence. (See, e.g., *Terrazas v. S & S Foods, LLC* (March 27, 2023, ADJ14315608) 2023 Cal. Wrk. Comp. P.D. LEXIS 77, *6-8 [NOI contained language “too vague to constitute proper notice or to ensure due process.”].) If an NOI is issued in violation of due process, the corresponding order issued thereafter is invalid.

Here, the NOI to dismiss petitioner’s lien claim stated:

IT APPEARING that notice of conference/hearing having been properly and timely served on lien claimants...having failed to appear for said conference/hearing on 09/26/2023, and pursuant to motion of defendants;

NOTICE IS HEREBY given that the lien claim[] of...Certified Interpreters Ca Sherman Oaks [] will be Dismissed ten (10) days from the date of service hereof unless good cause to the contrary is shown in writing within said time.

(NOI, October 10, 2023, pp. 1-2.)

Our review of EAMS does not show that the Appeals Board served petitioner with a notice of the lien conference. Additionally, our inquiry does not cease with whether petitioner received notice of the lien conference itself, where, as discussed above, due process requires that the NOI to dismiss its case clearly stated the basis for the proposed dismissal, and that the basis was supported by the evidence.

The NOI stated that the basis for dismissal was petitioner’s “fail[ure] to appear for...conference/hearing on 09/26/2023”; however, upon review, there is nothing in the record to support this statement. The only evidence related to the September 26, 2023 lien conference consists of the Minutes of Hearing (MOH) issued that day; however, nowhere in the MOH did the WCJ note the alleged non-appearance by petitioner (or its representative). (Minutes of Hearing (MOH), September 26, 2023.) Absent an evidentiary basis for the NOI, the NOI was substantively defective and void ab initio, or from the start. Because the NOI was invalid, so was the resultant Order Dismissing.

Accordingly, we grant reconsideration, rescind the November 1, 2023 Order Dismissing, and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the November 1, 2023 Order Dismissing is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the November 1, 2023 Order Dismissing is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 12, 2024

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

**CERTIFIED INTERPRETERS OF CALIFORNIA
COLLECTIVE RESOURCES
HANNA, BROPHY, MacLEAN, McALEER & JENSEN**

AH/cs

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