

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

RUBEN MEZA, *Applicant*

vs.

**BRAND SCAFFOLD SERVICE INC.;
HARTFORD SACRAMENTO, *Defendants***

**Adjudication Number: ADJ12055096
Long Beach District Office**

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

Defendant's attorney, Connie McHugh, Esq., of Lewis, Brisbois, Bisgaard & Smith, LLP (Lewis Brisbois) seeks reconsideration of the Opinion on Decision and Order of Sanctions (Order of Sanctions) issued on May 31, 2023, wherein the workers' compensation administrative law judge (WCJ) ordered sanctions against Ms. McHugh, Lewis Brisbois, and Hartford Casualty Insurance Company, jointly and severally, for errors contained in a verified pleading filed by Ms. McHugh, reflecting incorrect filing dates and identifying the wrong WCJ and defendant. In the Order of Sanctions, the WCJ found that the errors constituted substantially false statements of fact for which Ms. McHugh had no reasonable excuse, and imposed sanctions in the amount of \$1,000.00.

In her Petition for Reconsideration (Petition), Ms. McHugh contends that the sanctions are not warranted because the errors in the pleading were clerical mistakes resulting from the use of a template that she inadvertently failed to change prior to submittal. Ms. McHugh states that she has practiced for 31 years and does not have a pattern of such conduct, and that her inadvertent use of a template was a reasonable excuse for the errors.

We did not receive an Answer from applicant.

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

We have considered the allegations of the Petition and the contents of the Report. Based upon our review of the record, and for the reasons discussed below, we will grant reconsideration and rescind the WCJ's Order of Sanctions.

FACTS

Applicant sustained injury to his left knee on October 4, 2018 while working for Brand Scaffold Service, Inc., insured by Hartford Casualty Insurance Company (The Hartford). On February 14, 2022, WCJ Michael Joy issued an Award based on Stipulations with Request for Award. On December 15, 2022, applicant's attorney filed a Petition to Reopen. On February 1, 2023, Ms. McHugh filed defendant's Answer to applicant's Petition to Reopen (Answer). On March 17, 2023, the WCJ issued a Notice of Intention to Sanction (NOI) Ms. McHugh, Lewis Brisbois, and The Hartford for the following errors identified in the Answer:

Page 1, Line 24, date of injury listed as "October 4, 1018" (the date of injury is October 4, 2018).

Page 1, Lines 25-26, "This case resolved via Stipulations with Request for Award on May 23, 2022 executed by Judge Doyle (the undersigned issued an Award on February 14, 2022).

Page 3, Lines 14-15, "summarily dismiss the November 15, 2022 Petition" (the Petition to Reopen is dated December 15, 2022).

Page 3, Lines 17-18, "summarily dismiss the September 7, 2022 Petition" (the Petition to Reopen is dated December 15, 2022).

Page 6, Verification, the verification states under penalty of perjury that Connie McHugh has read the foregoing petition and is an attorney for Chart House / Corvel (the employer is Brand Scaffold Services, insured by The Hartford).

(NOI, March 17, 2023, p. 1.)

Each error was assigned a value of \$250.00 for a total sanction amount of \$1,250.00. On April 3, 2023, Ms. McHugh filed an Objection to the NOI (Objection). In the Objection, Ms. McHugh stated that she had drafted the Answer using a template from a different case and had inadvertently failed to change various portions of the template prior to submittal. (Objection, p. 2.)

On May 31, 2023, the WCJ issued the disputed Order of Sanctions imposing a \$1,000.00 sanction as a result of the errors.

In the Report, the WCJ explains:

Sanctions are warranted when a pleading, petition, or legal document is filed without reasonable justification. (CCR 10421(b)(2).) Sanctions are also appropriate when a verified document is filed with the Workers' Compensation Appeals Board [WCAB] that contains false or substantially false statements of fact. (CCR 10421(b)(5)(A)(i).) Sanctions are appropriate where there is no reasonable excuse or the offending party has demonstrated a pattern of such conduct. (CCR 10421(b)(5)(B).) Petitioner's Objection simply indicated that a template was used from another case and that important information was not changed. The Recon asserts that these were simply clerical and inadvertent errors in using the template. (Recon, Page 6, Lines 21-23.) The undersigned does not find this argument persuasive, nor does the undersigned find it to be a reasonable excuse as contemplated by the regulation. The excuse is not reasonable because the Answer has a verification attached to it that says that the signatory has read the document and knows its contents. Furthermore, the verification goes on to indicate that the signatory is the attorney for an entirely different employer and third-party administrator. The verification then contains a recitation regarding the applicability of the penalty of perjury. Had the Answer been read before signing the verification, Petitioner would have noticed the multiple incorrect representations and also noticed that it was being verified on behalf of an entirely different Defendant. The regulation at issue herein appears to be appropriate to maintain the integrity of the proceedings. If not enforced, then verifications on any filed document before the Board are rendered meaningless, simply subject to modification and/or change upon substantial issues being pointed out.

(Report, pp. 5-6.)

DISCUSSION

Labor Code section 5813¹ authorizes the WCJ to impose sanctions for “bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.” (Lab. Code, § 5813(a).) Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include 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 WCAB proceedings, or filing a verified document with the WCAB that contains substantially misleading statements of fact for which a reasonable excuse is not offered. (Cal. Code Regs., tit. 8. § 10421(b).) Based on our

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

review of the record, we are unpersuaded that Ms. McHugh acted out of bad faith or used tactics that were frivolous or solely intended to cause unnecessary delay. (See Lab. Code, § 5813(a).) As a result, we disagree with the WCJ's decision to impose sanctions.

As an initial matter, we note that the first error identified by the WCJ, namely, Ms. McHugh's statement that applicant's injury occurred on "October 4, 1018," rather than "October 24, 2018," was so clearly a typographical error that it should not have been listed in the NOI at all, as no party could be so substantially misled as to believe that applicant was injured over a thousand years ago. Although the WCJ notes in his Report that he reduced the sanctions by \$250.00 in order to excuse this "likely typographical error," the fact remains that a such an obvious typo was not a bad faith act, but rather a simple clerical mistake that should not have been considered potentially sanctionable, let alone at such a high cost, given its trivial nature.

Next, we disagree with the WCJ's decision to impose sanctions for Ms. McHugh's statements that applicant's Petition to Reopen was filed on "November 15, 2022" and "September 15, 2022," rather than December 15, 2022. Upon review, we conclude that these statements, while incorrect, were not "substantially" false or misleading. These dates are each stated once within the Answer's Prayer for Relief, which seeks to dismiss "Applicant's Petition to Reopen." (Answer, p. 3.) Because applicant only filed one Petition to Reopen in this case, we do not believe that, in misstating the filing date, Ms. McHugh acted in bad faith or made substantially misleading statements designed to confuse the WCJ or the parties, or that said statements were otherwise sufficiently egregious to warrant sanctions. We also note that, in the Statement of Facts portion of the Answer, Ms. McHugh *did* provide the proper filing date for applicant's Petition to Reopen. (Answer, p. 2.) That said, we strongly admonish Ms. McHugh to ensure consistency and accuracy in her future pleadings prior to submittal to the WCAB, as such errors, if substantial, may be subject to sanctions. (Cal. Code Regs., tit. 8. § 10421(b)(5).)

We also disagree with the WCJ's decision to sanction Ms. McHugh for: 1) her statement that "[t]his case resolved via Stipulations with Request for Award on May 23, 2022 executed by Judge Doyle," when, in fact, the Award was issued on February 14, 2022 by Judge Joy, and 2) her verified statement that she represents "Chart House/Corvel," rather than defendant, The Hartford. (Answer, pp. 1, 5.) Again, it does not appear from the record that these statements were bad faith actions or tactics designed to mislead or cause delay, or that they constituted substantial misrepresentations of fact for which there was no reasonable excuse. If anything, these

misstatements support Ms. McHugh’s explanation for her errors, namely, that she was utilizing a template for another pleading that was filed in the case of *Matthew Schultz v. Chart House/Corvel* (ADJ11410423), which, according to Ms. McHugh, was tried before Judge Doyle. (Petition, p. 2.) The use of a template in this case thus appears to be a plausible and reasonable excuse for these errors. We do wish to remind Ms. McHugh, however, that language directed to Appeals Board officials, including WCJs, that is patently insulting or disrespectful is subject to sanctions, and that, in the future, she must be acutely aware of the identity of the WCJ presiding over each of her cases out of respect for the WCJ and the workers’ compensation system. (Cal. Code Regs., tit. 8, § 10421(b)(9)(A)(i)-(ii).) We also admonish Ms. McHugh that the submittal of verified documents containing substantial misrepresentations of fact may be deemed sanctionable conduct in the future. (Cal. Code Regs., tit. 8, § 10421(b)(5); Lab. Code, §§ 5902, 5813.)

Under sections 5300, 5301, 5309, 5310, and 5813(a), the Appeals Board ultimately has the “sole discretion” to determine if sanctions should be ordered. (Lab. Code, §§ 5300, 5301, 5309, 5310, 5813(a).) In this case, we exercise that discretion by rescinding the sanctions ordered by the WCJ, as we believe that Ms. McHugh’s errors were not sufficiently egregious to warrant the imposition of sanctions, and that Ms. McHugh offered a reasonable excuse for her actions.²

Accordingly, for the reasons stated herein, we will grant reconsideration and rescind the WCJ’s May 31, 2023 Order of Sanctions.

² We note that, in the Opinion on Decision, the WCJ discusses more recent behavior by Ms. McHugh forming the basis of a subsequent NOI to sanction, issued on May 31, 2023, for Ms. McHugh’s failure to appear at a Status Conference on May 25, 2023. (Opinion on Decision, p. 3; NOI, May 31, 2023.) However, as the WCJ points out in the Opinion on Decision, Ms. McHugh’s failure to appear is *not* the conduct at issue in this case, and, as a result, is not relevant to the WCJ’s or the Appeals Board’s consideration of whether sanctions are warranted here. (Opinion on Decision, p. 3, fn. 11.) The NOI for Ms. McHugh’s failure to appear must be adjudicated and decided by the WCJ in a subsequent opinion consistent with the mandates of due process. (See *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc) [decisions of the Appeals Board “must be based on admitted evidence in the record”]; Cal. Code Regs., tit. 8, §§ 10787, 10803, 10832, 10421.)

For the foregoing reasons,

IT IS ORDERED that Connie McHugh's Petition for Reconsideration of the WCJ's May 31, 2023 Order of Sanctions is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the WCJ's May 31, 2023 Order of Sanctions is **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 7, 2023

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

**RUBEN MEZA
LAW OFFICES OF SCOTT D. PERRY
LEWIS BRISBOIS BISGAARD & SMITH**

AH/cs

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