

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

TAMARA WOODS, *Applicant*

vs.

COUNTY OF SACRAMENTO, permissibly self-insured, *Defendant*

**Adjudication Number: ADJ14965765
Stockton District Office**

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

Applicant seeks reconsideration of the Order Dismissing Application for Adjudication of Claim (Order) without prejudice issued by the workers' compensation administrative law judge (WCJ) on December 21, 2023.

Applicant contends that her claim should not have been dismissed.

We did not receive an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Petition) recommending that we deny applicant's petition.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and as discussed below, we will grant the Petition for Reconsideration, rescind the order and return the matter to the trial level for further proceedings consistent with this opinion.

BACKGROUND

Applicant claims to have sustained a cumulative injury to her psyche from May 1, 2020 to June 1, 2021.

On July 13, 2021, applicant filed an application for adjudication dated June 27, 2021. According to the Application, S. Yvonne Bailey is listed as a non-attorney representative. However, Ms. S. Yvonne Bailey is not listed on the Official Address Record (OAR).

On September 3, 2021, defendant's attorney filed a Notice of Representation. A Proof of Service dated September 3, 2021, was filed on September 9, 2021, and includes Ms. S.Y. Bailey of Melo-Son Legal, Financial and Tax Services, P.O. Box 1957, Manteca, CA 95336.

On July 24, 2023, the matter proceeded to trial. Defendant's counsel appeared and informed the WCJ that she received an email from applicant's hearing representative on the morning of trial that applicant was not feeling well. The minutes of hearing state:

"The Applicant and the Non-Attorney hearing representative are ordered to appear at the next scheduled trial, to be set on notice. Failure to attend the next scheduled trial could cause a Notice of Intent for Sanctions and a Notice of Intent to Dismiss the Application for Adjudication of Claim to issue as per Title 8, California Code of Regulations sections 10751 and 10832." (emphasis added) (minutes of hearing, 7/24/2023, p.2.)

According to Communications in the Electronic Adjudication System (EAMS), the WCAB served a notice of hearing on July 26, 2023, on applicant, defendant and defendant's attorneys. Ms. Bailey was not served.

On August 7, 2023, defendant requested that the August 17, 2023, trial be continued due to the unavailability of a defense witness. According to the minutes, the WCJ granted defendant's continuance and the minutes state that trial will be set on Notice.

On August 11, 2023, defendant filed a Proof of Service dated August 8, 2023, for service of the minutes of hearing/request for continuance and Ms. Bailey, applicant's hearing representative was served. According to Communications in the Electronic Adjudication System (EAMS), the WCAB served a notice of hearing on August 11, 2023, on applicant, defendant and defendant's attorneys. Ms. Bailey was not served.

On October 9, 2023, neither applicant nor her hearing representative appeared at trial. Defendant's attorney's request for an Order Taking Off Calendar (OTOC) was granted, and the same day, all parties listed on the OAR were served with the minutes by the WCAB.

Additionally, on October 9, 2023, the WCJ issued a Notice of Intent To Dismiss Application For Adjudication of Claim For Non-Appearance Rules 10756 and 10832 (a)(5) (NIT). The Notice states:

This matter was set for trial on October 9, 2023. Applicant was served notice of the trial set for October 9, 2023. Applicant did not appear

GOOD CAUSE APPEARING,

NOTICE IS HEREBY GIVEN, pursuant to Title 8, California Code of Regulations, Sections 10756 and 10832(a)(5) that the Application for Adjudication of Claim will be dismissed absent a written objection filed and served within 30 (thirty) days of service of this notice plus the statutory time for mail, showing good cause as to why the Application for Adjudication of Claim should not be dismissed.

No Notice of Representation on behalf of the Applicant has been filed. As per the Official Address Record, the Applicant is not represented. The Applicant may contact the Information and Assistance Officer at the Stockton Workers' Compensation Appeals Board for any questions concerning this notice at 1-209-948-7980.

After the expiration of the time period referenced above, Defendant shall submit a proposed Order Dismissing Application for Adjudication of Claim. (Notice of Intent to Dismiss Application For Adjudication of Claim For Non-Appearance Rules 10756 and 10832 (a)(5), 10/9/2023.)

The Proof of Service lists applicant, but her hearing representative is not listed.

On November 14, 2023, the WCJ issued an Amended To Corect [*sic*] Case Number Notice of Intent To Dismiss Application For Adjudication of Claim For Non-Appearance Rules 10756 and 10832 (d). The Notice states:

This matter was set for trial on October 9, 2023. Applicant was served notice of trial set for October 9, 2023, Applicant did not appear.

GOOD CAUSE APPEARING,

NOTICE IS HEREBY GIVEN, pursuant to Title 8, California Code of Regulations, Sections 10756 and 10832(5) that the Application for Adjudication of Claim will be dismissed absent a written objection filed and served within 30 (thirty) days of service of this notice plus the statutory time for mail, showing good cause as to why the Application for Adjudication of Claim should not be dismissed.

No Notice of Representation on behalf of the Applicant has been filed. As per the Official Address Record, the Applicant is not represented. The Applicant may contact the Information and Assistance Officer at the Stockton Workers' Compensation Appeals Board for any questions concerning this notice at 1-209-948-7980.

After expiration of the time period referenced above, Defendant shall submit a proposed Order Dismissing Application for Adjudication of Claim. (Amended To Correct Case Number Notice of Intent to Dismiss Application For

Adjudication of Claim For Non-Appearance Rules 10756 and 10832 (d),
11/14/2023.)

The subsequent NIT contains the same information as the first NIT except that the 30 days runs from November 14, 2023. The Proof of Service lists applicant, but her representative is again not listed on the Proof of Service.

On December 21, 2023, the WCJ issued an Order Dismissing Application for Adjudication of Claim Cal. Code of Regs. Sections 10756 and 10832 (a)(5). The Order states:

GOOD CAUSE APPEARING,

There has been no objection to submitted to the Notice of Intent to Dismiss Application for Adjudication of Claim for Non-Appearance dated October 9, 2023 and November 14, 2023.

The Application for Adjudication of Claim is hereby dismissed without prejudice. (Order Dismissing Application for Adjudication of Claim Cal. Code of Regs. Sections 10756 and 10832 (a)(5), 12/21/2023.)

According to the proof of service, applicant, defendant and defendant's attorneys were served. Applicant's representative was not.

DISCUSSION

Labor Code¹ section 5700 provides in relevant part that: "Either party may be present at any hearing, by attorney, or by any other agent" A non-attorney representative shall file and serve a notice of representation before filing a document or appearing on behalf of a party unless the information required to be included in the notice of representation is set forth on an opening document. (Cal. Code Regs., tit. 8 § 10401(c).) Here, applicant's non-attorney hearing representative's name and mailing address are listed on the Application for Adjudication of Claim. (Application for Adjudication of Claim, dated 6/27/2021, filed 7/8/2021, p. 5.) Thus, applicant's hearing representative, Ms. Bailey, has complied with WCAB Rule 10401(c) and should have been placed on the Official Address Record (OAR) at the time that the Application was filed. (Cal. Code Regs., tit. 8 § 10205.5.)

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

The WCJ may issue a notice of intention (NIT) for any proper purpose. (Cal. Code Regs., tit. 8, § 10832 (a).) A proper purpose includes, but is not limited to, (1) Allowing, disallowing or dismissing a lien; (2) Granting, denying or dismissing a petition; (3) Sanctioning a party; (4) Submitting the matter on the record; or (5) Dismissing an application. (*Id.*) Pursuant to WCAB Rule 10832 (c), if an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may: (1) Sustain the objection; (2) Issue an order consistent with the notice of intention together with an opinion on decision; or set the matter for hearing. (Cal. Code Regs., tit. 8, § 10832 (c).) When the WCJ issues any final order, decision or award on a disputed issue after submission, the WCJ is required to serve all parties of record, including their representatives. (Cal. Code Regs., tit. 8, §§ 10625(a), 10628(a).)

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].) The "essence of due process is simply notice and the opportunity to be heard." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker*, supra, at 157-158.) Due process requires "a 'hearing appropriate to the nature of the case.'" (*In re James Q.* (2000) 81 Cal.App.4th 255, 265, quoting *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 313.)

Here, at trial on July 24, 2023, defendant informed the Court that it received an email on the morning of trial from the hearing representative stating that applicant was not feeling well and on the WCJ's motion, she continued the trial to be set on notice and ordered applicant and her hearing representative to appear. Yet, applicant's hearing representative is not listed on the Proof of Service issued by the WCAB for service of the minutes from the July 24, 2023, hearing; is not listed on the Proof of Service issued by the WCAB for service on July 26, 2023 of the notice of hearing; and is not listed on the Proof of Service issued by the WCAB for service on August 11, 2023 of the notice of hearing. In short, it is clear that the WCAB did not provide notice to Ms. Bailey of the trial on October 9, 2023.

Thus, because the basis for the NITs was invalid, the NITs were void, and therefore, the order is also void.

Accordingly, we rescind the Order dismissing and return the matter to the trial level.

For the foregoing reasons,

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

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Dismissing issued by the WCJ is **RESCINDED** and 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/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 25, 2024

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

**TAMARA WOODS
HANNA BROPHY
COUNTY OF SACRAMENTO WORK COMP
SACRAMENTO COUNTY
EDD SDI STOCKTON**

THE FOLLOWING PARTY IS NOT LISTED ON THE OFFICIAL ADDRESS RECORD:

**S. YVONNE BAILEY
MELO-SON LEGAL SERVICES
P.O. BOX 1957
MANTECA, CA 95336**

DLM/oo

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