

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

**VERONICA LUCATERO, *Applicant***

**vs.**

**FAIRWAY STAFFING SERVICES; TRAVELERS, *Defendants***

**Adjudication Numbers: ADJ9891503, ADJ9199311  
Long Beach District Office**

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

We have considered the allegations of lien claimant Precise Interpreting's Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

Labor Code section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within 60 days of filing. (Lab. Code, § 5909.) However, "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 applicant's petition for reconsideration because the Appeals Board had not acted on the petition within the statutory time limits of Labor Code section 5909. The Appeals Board did not act on applicant's petition because it 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].” (*Shipley, supra*, 7 Cal.App.4th at p. 1108.) Lien claimant’s Petition was timely filed on November 17, 2020. Our failure to act was due to a procedural error and our time to act on lien claimant’s Petition was tolled.

Therefore, we will grant reconsideration and rescind the Order Dismissing Lien.

For the foregoing reasons,

**IT IS ORDERED** that lien claimant's Petition for Reconsideration of the Order Dismissing Lien issued by the WCJ on November 9, 2020 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Dismissing Lien issued by the WCJ on November 9, 2020 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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**MAY 27, 2021**

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

**OD LEGAL  
PRECISE INTERPRETING  
ROBERT HARMAN  
TPC RECOVERY LLC  
TRAVELERS**

*AI/pc*

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

**REPORT & RECOMMENDATION ON  
PETITION FOR RECONSIDERATION**

**I.  
INTRODUCTION**

Lien Claimant Precise Interpreting has filed a timely and verified Petition for Reconsideration to the 11-3-2020 Order which Dismissed the lien.

Lien Claimant asserts that:

- (1) Defendant's Petition to Dismiss is defective per Rule 10582.5
- (2) The lien should not have been dismissed pursuant to the 3-18-2020 In Re: Covid 19 State of Emergency [MISC No. 260];
- (3) Lien Claimant should have the right to be heard and to have a hearing on the merits of the lien.

No Answer has been filed.

**II.  
BASIC FACTS**

In ADJ9199311, Applicant filed an Application on 11-25-2013 asserting a cumulative trauma from 11-2-2012 through 7-10-2013 to various body parts while employed by Fairway Staffing Services. The employer is uninsured. In ADJ9891503, Applicant filed an Application on 3-25-2015, also asserting a CT to various body parts during the period 11-1-2012 through 12-31-2013 while employed by HR Comp Staffing. The employer is uninsured.

By Petition dated 6-10-202 Defense attorney, Robert Harmon filed a Petition to Dismiss the lien of Precise Interpreting. Mr. Harmon asserted that a settlement was pending, that he had reached out to Precise Interpreting to try to resolve the lien and had no response. Therefore, Mr. Harmon requested that the liens be dismissed per Rule 10582.5 for failure to prosecute.

On 8-26-2020, a Notice of Intention to Dismiss the lien was issued to Precise Interpreting. Mr. Harmon also served the Notice of Intention to Lien Claimant on 9-2-2020. No objection to the Notice of Intention was filed.

On 11-3-2020, an Order issued dismissing the lien of Precise Interpreting with prejudice.

**III.  
ISSUES AND ARGUMENTS**

A. Application of Rule 10582.5:

Rule 10582.5 was repealed effective 1-1-2020. Therefore, the lien cannot be dismissed per this rule.

(B) Application of Rule 10888 regarding dismissal of lien claims. Rule 10888 provides for dismissal of liens for lack of prosecution, or non-appearance of the lien claimant or for failure to comply with the Labor Code or Rules.

The Board En Banc issued in Misc. No. 260 In re: Covid 19 State of Emergency on 3-18-2020, that Board Rule 10888 is suspended for failure to appear. I assume that lack of prosecution and failure to comply with the Labor Code and Rules was also suspended. Assuming that lack of prosecution and failure to follow the Labor Code and Rules was not suspended, there is not enough evidence to show how lien claimant has not prosecuted or not complied with the Labor Code or Rules.

(C) Should a hearing be held?

Lien claimant should be given the right to have a hearing on the issues, whatever they may be.

#### **IV. CONCLUSION**

It is respectfully requested that the Petition for Reconsideration be granted.

Respectfully submitted,  
DATE: 4/15/2021  
Mary Anne Thompson  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE