

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

ANTHONY THOMAS, *Applicant*

vs.

SOUTHERN REFRIGERATED TRANSPORT-SRT, *Defendants*

**Adjudication Number: ADJ9855080
Anaheim District Office**

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

Applicant seeks reconsideration of the Order Dismissing Case (Order) issued by the workers' compensation administrative law judge (WCJ) on December 8, 2020. As relevant herein, the WCJ found that no good cause or objection was filed to the Notice of Intention to Dismiss Case (NOI). Accordingly, the WCJ dismissed applicant's workers' compensation case without prejudice.

Applicant contends that he never received the NOI.

Defendant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

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

FACTUAL BACKGROUND

The factual background is taken from the Report:

As indicated above, an application for adjudication was filed on 2/24/2015 for a cumulative injury for the period of 1/1/2010 to 12/1/2014. On 11/7/2018, defendant filed a Petition to Compel Applicant's Deposition. Applicant failed to attend the original deposition on 8/15/2018. An Order Compelling Applicant's Attendance at Deposition was issued by Judge Nguyen on 11/7/2018.

On 2/25/2019, Defendant filed a Petition for Dismissal. In the petition, defendant alleged Applicant unilaterally canceled the first scheduled deposition. The deposition was rescheduled to 10/16/2018. Applicant failed to attend the deposition. The deposition was rescheduled again and Judge Nguyen issued his Order Compelling. Applicant failed to appear again.

Furthermore, Applicant had a medical evaluation scheduled with Panel QME, Dr. Halbridge, on 1/11/2019. Applicant failed to appear at the medical evaluation. On 1/17/2019, defendant sent Applicant, with a copy to Applicant's attorney, correspondence advising that it intended to file a Petition for Dismissal. The letter to Applicant was sent by certified mail. Defendant received a certified delivery receipt confirming Applicant received the letter. No response was received from the Applicant nor his attorney; therefore, Defendant filed its Petition for Dismissal. Petition for Dismissal, EAMS Doc. No.: 28581890. Judge Nguyen issued a Notice of Intention to Dismiss Case on 2/25/2019. An objection to the dismissal was filed on 3/6/2019. The objection stated Applicant did not attend the PQME evaluation because transportation was not provided; Applicant failed to attend the rescheduled deposition because he wrote down the wrong date; and Applicant wanted to continue with his case because he needed treatment. Objection to Petition for Dismissal, EAMS Doc. No.: 28672830. Judge Nguyen vacated the Notice of Intent to Dismiss on 3/11/2019.

On or about October 28, 2019, Defendant filed a Petition to Compel Applicant's attendance at a medical evaluation with a Panel QME, Dr. Choi. An Order Compelling Applicant's attendance at the medical evaluation was issued by Judge Nguyen on 10/31/2019.

On 8/10/2020, Defendant filed a Petition for Dismissal. Within the petition, Defendant claimed Applicant failed to attend the medical evaluation scheduled with Dr. Choi even though an Order Compelling had been issued. The undersigned judge denied the petition because defendant had failed to serve Applicant with the pre-dismissal letter at the address listed on the Official Address Record. Thereafter, Defendant filed an Amended Petition for Dismissal within which Defendant provided a copy of the pre-dismissal letter served on Applicant at the address listed on the official address record. Amended Petition for Dismissal, EAMS Doc. No.: 34317300. A Notice of Intention to Dismiss the Case was issued by the undersigned judge on 11/10/2020 and was served on Applicant at the address of record and on Applicant's attorney. On 12/8/2020, the undersigned judge issued an Order Dismissing Case when no objection showing good cause had been received by Applicant or Applicant's attorney. On 12/18/2020, Applicant's attorney filed the instant Petition. Petitioner contends that the undersigned WCJ erred in dismissing the case because Applicant was not served with the Notice of Intent to Dismiss nor the Order Dismissing Case. Defendant filed an Answer to the Petition for Reconsideration on 12/29/2020.

(Report, *supra*, at pp. 2-3, emphasis removed.)

DISCUSSION

A WCJ is required to “make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, § 5313; see also *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-22 [2010 Cal. Wrk. Comp. LEXIS 74] (Appeals Board en banc).) As required by section 5313 and explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Board en banc), “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” 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.” (Citation omitted.) (*Id.* at p. 476.)

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.” (*Ibid.*)

The issue that we face on reconsideration is that there is an insufficient record to evaluate applicant’s Petition for Reconsideration or the WCJ’s Order. In the Report, the WCJ cited to various documents to establish the factual background and procedural history. However, there is no record that the parties submitted any documents or exhibits as evidence, or that the WCJ admitted or denied any documents or exhibits as evidence. Additionally, there is no record of the issues submitted for decision and no record of any stipulations or admissions of the parties. Without a record, we are unable to evaluate the Petition or Order. Upon return to the trial level, we recommend that the WCJ hold a hearing on applicant’s due process contention and, if necessary, applicant’s objection to the NOI.

Accordingly, we grant reconsideration, rescind the Order, and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the December 8, 2020 Order Dismissing Case is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 8, 2020 Order Dismissing Case 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/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 12, 2021

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

**ANTHONY THOMAS
WILLIAM GREEN
FLOYD SKEREN MANUKIAN LANGEVIN
SOUTHERN REFRIGERATED
BOEHM & ASSOCIATES**

SS/abs

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