

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

PATRICIA GARCIA, *Applicant*

vs.

**HACIENDA LA PUENTE UNIFIED SCHOOL DISTRICT;
INTERCARE INSURANCE, *Defendants***

**Adjudication Numbers: ADJ2122511 (AHM2122511), ADJ7021104, ADJ7021103
Anaheim District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Lien claimant seeks reconsideration of the Order Dismissing Lien (Order) issued by the workers' compensation administrative law judge (WCJ) on February 10, 2020, in cases ADJ2122511, ADJ7021104, and ADJ7021103.

Lien claimant contends that the Order is premature and that his objections to dismissal should be considered after a hearing on the merits.

We have not received an Answer from any party.

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

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record, and as discussed herein, as our decision after reconsideration we will rescind the February 10, 2020 Order and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

Applicant filed multiple concurrent applications for adjudication, as follows:

In case ADJ7021104, applicant claimed injury to various body parts (back, spine, cardiovascular system, hypertension, sleep dysfunction, psyche, neck) while employed by defendant as an office clerk, during the period from January 1, 2000 to February 5, 2008.

In case ADJ7021103, applicant claimed injury to various body parts, including back, spine, cardiovascular system, hypertension, sleep, psyche, neck, teeth, jaw, and head while employed by defendant as an office assistant, on March 5, 2004.

In case ADJ2122511, applicant claimed injury to various body parts, including back, spine, cardiovascular system, hypertension, sleep, psyche, legs, and lower extremities while employed by defendant as a clerk, on October 19, 2007.

On February 3, 2010, parties entered into a Compromise and Release (C&R) in case numbers ADJ2122511, ADJ7021104, and ADJ7021103.

On August 26, 2010, a Joint Order Approving Compromise and Release (OACR) issued.

On July 11, 2019, lien claimant filed a declaration of readiness to proceed (DOR) to a status conference. The disputed issue was identified as: outstanding balance.

The matter proceeded to a lien trial on November 13, 2019. Lien claimant did not appear at the trial.

On November 14, 2019, lien claimant was served by way of mail with a notice of intention to dismiss lien for non-appearance at lien trial.

On December 2, 2019, lien claimant timely filed an objection to notice of intention to dismiss lien.¹

On February 10, 2020, the parties proceeded to trial. The matter was ordered taken off calendar and, without a hearing, the WCJ issued an Order dismissing the lien. The Order states as follows:

Notice of Intent to dismiss lien of YURY B GEYLIKMAN PC DBA DENTAL INJURY CENTER issued 11/13/2019 and served 11/14/2019. YURY B GEYLIKMAN PC DBA DENTAL INJURY CENTER, through its representative Patrick Petronella of Collective Resource Long Beach, has filed

¹ Although the Electronic Adjudication Management System (EAMS) shows a document entry date of December 3, 2019, the proof of service is dated December 2, 2019. (Cal. Code Regs., tit. 8, § 10625(c).)

an objection to the notice of intent to dismiss lien that is untimely and failed to show good cause, therefore;

GOOD CAUSE APPEARING;

IT IS ORDERED THAT the Lien of YURY B GEYLIKMAN PC DBA DENTAL INJURY CENTER be and hereby is dismissed pursuant to Cal. Code of Reg., section 10562.

(February 10, 2020 Order, p. 1.)

On March 5, 2020, lien claimant filed a Petition for Reconsideration.²

DISCUSSION

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313.³ 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, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761; see also *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).)

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*)). As required by section 5313 and explained in *Hamilton*, “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.” (Lab. Code, § 5313; *Hamilton, supra*, at 475.) 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.*)

² We note that the EAMS adjudication file does not contain a proof of service of lien claimant’s Petition, as required by the WCAB Rules. (Cal. Code Regs., tit. 8, § 10625.) WCAB Rule 10940(c) states that a failure to file a proof of service shall constitute valid grounds for dismissal. (Cal. Code Regs., tit. 8, § 10940(c).) Moreover, WCAB Rule 10510(b) states that a failure to concurrently file a proof of service with a petition or answer constitutes a valid ground for summarily dismissing or denying the petition. (Cal. Code Regs., tit. 8, § 10510(b).) However, because we are rescinding the Order on other grounds, we do not further consider the issue of defective service.

³ All further statutory references are to the Labor Code, unless otherwise noted.

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." (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

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].) A fair hearing includes, but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Here, the February 10, 2020 Order issued without a hearing, no minutes were filed, no testimony was taken. In addition, the WCJ does not provide a summary of the evidence relied on. In the absence of an evidentiary record, we are unable to evaluate the basis of the WCJ's Order. Therefore, we must return this matter to the trial level for further proceedings.

Upon return to the trial level, we recommend that the WCJ hold a hearing to allow the parties to frame the issues and any stipulations, submit exhibits as evidence, call witnesses, if necessary, lodge any objections, and make their legal arguments.

Accordingly, we rescind the February 10, 2020 Order and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the February 10, 2020 Order Dismissing Lien is **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 14, 2022

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

**PATRICK PETRNONELLA, HEARING REPRESENTATIVE
ROSENBERG YUDIN LAW FIRM
WILLIAM GREEN LAW FIRM
YURY B. GEYLIKMAN, dba DENTAL INJURY CENTER**

JB/abs

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