

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

GWENETTA THOMAS, *Applicant*

vs.

**FEDEX GROUND PACKAGE SYSTEM, INC
administered by SEDGWICK 94520, *Defendants***

**Adjudication Numbers: ADJ14759959, ADJ14759694, ADJ14759957
Long Beach District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant in pro per seeks reconsideration of the March 15, 2023 Joint Order Dismissing Applications dismissing her cases without prejudice issued by a workers' compensation administrative law judge (WCJ).

Applicant contends that her attorney "did not make efforts to communicate with [her], until [she] spoke with them verbally dismissing them from [her] case," that she lacked knowledge and understanding regarding the notice of intent, and that she petitions the court to reactivate her cases. (Petition for Reconsideration.)

We did not receive an Answer from defendant nor a Report and Recommendation on Petition for Reconsideration from the WCJ.

We have considered the allegations of the Petition for Reconsideration and the record in this matter. For the reasons discussed below, we will dismiss applicant's petition as one for reconsideration, return the matter to the trial level for consideration of the Petition as one to set aside the Order Dismissing applicant's cases in the first instance and/or a Petition to Reopen.

BACKGROUND

Applicants claims to have sustained a specific injury to her shoulders and upper extremities on June 19, 2019 (ADJ14759959), a specific injury to her shoulders on November 19, 2020

(ADJ14759957), and a cumulative injury to her back and foot ending on June 1, 2021 (ADJ14759694) while working as a package handler.

On February 23, 2022, applicant's attorney filed a Petition to be Relieved as Attorney of Record. The WCJ issued a Joint Notice of Intent to Grant Petition to be Relieved as Attorney of Record and Notice to Bar Attorney Fee Lien on August 3, 2022. On October 18, 2022, the WCJ issued a Joint Order Dismissing Applicant's Attorney.

On November 16, 2022, defendant filed Defendant's Petition for Dismissal of Inactive Case asserting that applicant failed to appear at a deposition and that the cases has not been on calendar since the applications were served on June 14, 2021.¹ The WCJ issued a Joint Notice of Intent to Dismiss Applications on January 4, 2023 stating:

TO: APPLICANT GWENETTA THOMAS PLEASE TAKE NOTICE that pursuant to Board Rule 10550, the Petition for Dismissal by Defendant dated November 16, 2022, and for good cause shown, the board will dismiss these applications unless, within twenty (20) days of service of this Notice, you file with the board, with proof of service on the parties, good cause why they should not be dismissed. If you wish to pursue these applications, you must file and serve your response timely to the Workers' Compensation Appeals Board, 1500 Hughes Way, Suite C203, Long Beach, CA 90810, with a signed proof of service indicating you have mailed a copy of your response to defendant, its attorneys, and other parties. The applicant may call the board's Information and Assistance Office at 424-450-2565 for information regarding legal rights governing workers' compensation claims.

(Joint Notice of Intent to Dismiss Applications, 1/4/23, emphasis in original.)

The WCJ issued a Joint Order Dismissing Applications on March 15, 2023 stating:

Pursuant to the Petition for Dismissal dated November 16, 2022, the Notice of Intent to Dismiss Applications issued on January 4, 2023, no opposition having been timely filed and served, and

GOOD CAUSE APPEARING:

IT IS HEREBY ORDERED that the above-referenced Applications are dismissed without prejudice, with the board to retain jurisdiction over medical-legal liens and self-procured medical-legal costs.

A Petition for Reconsideration from this order shall be filed only at the Long Beach district office of the Workers' Compensation Appeals Board.

¹ We note that the Applications for Adjudication of Claim were filed on June 11, 2021.

(Joint Order Dismissing Applications, 3/15/23, emphasis in original.)

Thereafter, on February 12, 2024, applicant filed the present Petition for Reconsideration.

DISCUSSION

I.

While applicant has filed a Petition for Reconsideration, it appears that in substance, applicant seeks to set aside the WCJ's Order dismissing her cases. WCAB Rule 10550 provides for administrative dismissal of inactive cases not activated for hearing within one year after the filing of the Application for Adjudication of Claim or the entry of an order taking off calendar, after notice and opportunity to be heard. Although WCAB Rule 10550 authorizes dismissal of an inactive case upon demonstration of the conditions that allow dismissal under the rule, and after affording the applicant notice and an opportunity to be heard, dismissal is discretionary, not mandatory. (*Roth v. Workers' Comp. Appeals Bd.* (1971) 20 Cal.App.3d 452 [36 Cal.Comp.Cases 604].) There is a strong public policy favoring disposition of cases on their merits rather than on procedural grounds. (*Bland v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 324 [35 Cal.Comp.Cases 513]; *Marino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485 [67 Cal.Comp.Cases 1273]; *Moore v. Waste Management* (2014) 2014 Cal.Wrk.Comp.P.D. LEXIS 621 (panel decision).) Moreover, in determining whether to dismiss a case for lack of prosecution, the WCJ may balance the equities of the respective parties. (*Gutierrez v. Ramirez AG Service* (2010) Cal. Wrk. Comp. P.D. LEXIS 410.)

Subject to the limitations of Labor Code² section 5804, "The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] . . . At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, *good cause* appearing therefor." [emphasis added] (Lab. Code, § 5803.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) 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

² All further statutory references are to the Labor Code, unless otherwise noted.

designating the evidence that forms the basis of the decision.” (*Id.* at p. 475.) Moreover, a WCJ’s decision must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza*, supra, 3 Cal.3d at p. 318; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

Therefore, given the authority above, we will dismiss applicant’s petition and return this matter to the trial level for the WCJ to consider it as a petition to set aside the order of dismissal or, alternative, a petition to reopen.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 12, 2024

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

**GWENETTA THOMAS (pro per)
WHEATLEY FIRM
SEDGWICK 94520**

PAG/pm

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