

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

DAYNA PERRY, *Applicant*

vs.

**INLAND PACIFIC PETROLEUM INC.;
SEQUOIA INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ19334270
San Bernardino District Office**

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

Applicant's attorney seeks reconsideration of the Order Re: Sanctions (Order) of March 17, 2026, wherein the workers' compensation judge (WCJ) imposed sanctions of \$500.00 each on both applicant's attorney's law firm and defendant insurance company for failure to appear at the status conference on February 9, 2026.

Applicant's attorney contends that the Order was issued without a meaningful opportunity to be heard; that applicant's attorney did initially appear for the hearing but did not remain connected to the call; and that applicant's attorney did not receive the Notice of Intention (NIT) that sanctions would issue.

We have received an Answer to Report and Recommendation on Petition for Reconsideration from applicant's attorney, which we do not accept or consider as a supplemental pleading. (Cal. Code Regs., tit. 8, § 10964.) The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the

Petition for Reconsideration, rescind the Order, and return this matter to the WCJ for further proceedings.

FACTS

Applicant claimed industrial injury to her back, neck, arm, leg, and other body parts while working as a clerk for defendant between November 8, 2021, through May 14, 2022. Applicant filed a Declaration of Readiness (DOR) on January 20, 2026, and a status conference was set for February 9, 2026.

On February 9, 2026, the WCJ prepared Minutes for the status conference. The Minutes state that:

Giuliano Bassallo logged in on the case but did not remain on the line when the case was called several times. Construed to be a NO SHOW. There was no appearance by or on behalf of defendant. Court will consider imposing sanctions against AA and defense for failure to appear for conference.

On February 10, 2026, the WCJ issued the NIT to Impose Sanctions for Failure to Appear for 2/9/2026 Status Conference. The NIT contained the following language:

On the court's own motion based on the failure of applicant's attorney and defendant to appear for Status Conference on 2/9/2026 at 8:30 a.m.,

GOOD CAUSE APPEARING pursuant to 8 CCR 10421 and Labor Code Section 5813,

NOTICE IS HEREBY GIVEN to *The Law Office of Robert Ozeran and to Sequoia Insurance Company* that they shall have ten (10) days within which to show good cause as to why sanctions should not be imposed in this matter. Absent a showing of good cause or reasonable excuse, sanctions in the amount of \$ 500.00 each shall be imposed.

It is specifically noted that although Giuliano Bassallo of the Law Office of Robert Ozeran initially logged on to CourtCall, he did not remain logged in and did not respond when the case was called. There was never any appearance or log-on to CourtCall by defendant. The court kept returning to the case to check to see if anyone would be making an appearance, but no one appeared. It is completely disrespectful of the court and sanctionable to fail to appear for hearings set.

A timely objection, filed within ten (10) days, will result in one of the following actions: an order sustaining the objection; an order consistent with the notice of intention (with opinion on decision), deferral of the issue until time of trial, or the setting of the matter for hearing on the issue, at which hearing any additional appropriate sanctions, fees and costs will be addressed and considered.

Any response shall be verified and E-filed in EAMS as “LEGAL DOCS” “OBJECTION-OTHER” or sent by mail to the attention of the undersigned WCALJ, marked “Personal and Confidential,” and must be appropriately served on all parties with attached proof of service.

The NIT was served on applicant, applicant’s attorney, defendant, and the insurance company by the WCAB on February 10, 2026.¹

The WCJ issued the Order on March 17, 2026, ordering both applicant’s attorney’s law firm and defendant insurance company to each pay sanctions in the amount of \$500.00. The Order was served on applicant, applicant’s attorney, defendant, and the insurance company by the WCAB on March 17, 2026.

On March 27, 2026, applicant’s attorney filed the Petition for Reconsideration of the Order.

DISCUSSION

I.

Former Labor Code² section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in

¹¹ While not in the evidentiary record as yet, we notice that the record in FileNet indicates that the NIT, the Order and the Report that were mailed to defendant insurance company, and the Order and the Report that were mailed to applicant were returned by the United States Post Office to the district office. Upon return, the WCJ should investigate the circumstances and as part of the evidentiary record she must create, she should admit the envelopes into evidence and other evidence with respect to these potentially failed mailings.

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

the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on April 9, 2026, and 60 days from the date of transmission is June 8, 2026. This decision is issued by or on June 8, 2026, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on April 9, 2026, and the case was transmitted to the Appeals Board on April 9, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 9, 2026.

II.

WCAB Rule 10305(c) defines “Appear” as “to act on behalf of any party.” Section 5700 clarifies that an appearance may be by the party or their agent. (See Cal. Code Regs., tit. 8, § 10752(a).)

Section 5813 authorizes the WCJ to impose sanctions, attorney’s fees, and costs for “bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.” (Lab. Code, § 5813(a).) The order of sanctions can be made “after written application by the party seeking sanctions or upon the appeal board’s own motion.” (Lab. Code, § 5813(b).) In order for the WCJ to impose sanctions and costs, the alleged offending party or attorney must be given notice and an opportunity to be heard. (Cal. Code Regs., tit. 8, § 10421(a); see also Cal. Code Regs., tit. 8, § 10832(a)(3).) Bad faith actions or tactics that are frivolous or solely intended to

cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit. (Cal. Code Regs., tit. 8, § 10421(b).) One example of such conduct includes: "Failure to appear or appearing late at a conference or trial where a reasonable excuse is not offered or the offending party has demonstrated a pattern of such conduct." (Cal. Code Regs., tit. 8, § 10421(b)(1).)

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with section 5313. "The Labor Code and the Board's rules set forth what must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc).) 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." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) "For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

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].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) 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. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 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].)

In the Petition for Reconsideration, applicant’s attorney alleges that their office logged onto the status conference initially but that what “occurred thereafter was, at worst, a technological disconnection, interruption, or similar failure—not a deliberate failure to appear.” (Petition, p. 2.) Applicant’s attorney also alleges that their office did not actually receive the NIT. (Petition, p. 2.)

As a matter of due process, applicant’s attorney should have been provided with a hearing, and a record should have been created. Initially, we observe that applicant may very well have “appeared” at the conference as defined in WCAB Rule 10305(c), but since the record is devoid of any evidence, we cannot make the determination as to whether applicant satisfied the requirement. While sanctions can be imposed for a “[f]ailure to appear or appearing late at a conference or trial where a reasonable excuse is not offered . . .” (Cal. Code Regs., tit. 8, § 10421(b)(1)), there is no evidence to determine if the excuse was reasonable, as no evidence has been admitted to the record. There is also no evidence regarding whether applicant’s attorney received the NIT. Further, we observe that the NIT and the Order present other structural problems, as the WCJ did not specifically identify the offending person by name and only identified the law firm. Additionally, as noted previously, as part of the record, the WCJ should admit evidence as to whether the NIT and the Order were properly served on *all* parties.

WCAB Rule 10803(a)(2) states that the record of proceedings consists of:

the pleadings, minutes of hearing, summaries of evidence, certified transcripts, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator's file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or electronic form. Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.

(Cal. Code Regs., tit. 8, § 10803(a)(2).)

Section 5703 lists “matters” that may taken into evidence “at or subsequent to an oral hearing” in addition to oral sworn testimony. (See also Lab. Code, §§ 5701, 5704.) Section 5708 states in relevant part that a WCJ “may make inquiry in the manner, through oral testimony and records” and specifies that “[a]ll oral testimony, objections, and rulings shall be taken down in shorthand by a competent phonographic reporter.”

WCAB Rule 10833 (Cal. Code Regs., tit. 8, § 10833) permits a WCJ to issue interim orders on the Minutes, and the order issued here by the WCJ was an order taking the matter off calendar.

WCAB Rule 10832 (Cal. Code Regs., tit. 8, § 10832) allows a WCJ to issue a notice of intention for sanctions as the WCJ did here. The Minutes and the NIT are properly part of the record of proceedings because they are official acts by the court.

We again emphasize that no matter how lengthy, clear, and descriptive the WCJ's recitations on the Minutes and in the NIT may be, in the absence of an evidentiary record or a stipulation by the parties, the statements simply memorialize the WCJ's own observations. They are not legally enforceable, they are not rulings, and they are not testimony, and unless the WCJ wishes to be sworn in as a witness and have another neutral jurist preside, ***they are not evidence.*** (See Cal. Code Regs., tit. 8 § 10787.)

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

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the March 17, 2026 Order Re: Sanctions is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the March 17, 2026 Order Re: Sanctions is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 5, 2026

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

**DAYNA PERRY
LAW OFFICE OF ROBERT OZERAN
SEQUOIA INSURANCE COMPANY**

JMR/pm

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