

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

STEVEN JIMENEZ, *Applicant*

vs.

COUNTY OF LOS ANGELES; SEDGWICK CMS, *Defendants*

**Adjudication Number: ADJ2503928 (MON 0358257)
Marina del Rey District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the 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 deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 16, 2022

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

**WHITTIER DRUGS
HARRISON, EICHENBERG AND MURPHY LLP
GORDON EDELSTEIN**

AS/ara

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

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

I.
INTRODUCTION

An Order Dismissing the Lien of Whittier Drugs was served on 7/12/22. On 8/6/22, Lien Claimant Whittier Drugs filed a timely and verified Petition for Reconsideration on the following grounds:

1. The Workers' Compensation Judge, by his Findings and Award, acted without or in excess of his power;
2. The evidence does not justify the Finding of Fact;
3. The Finding of Fact does not support the Order, Decision, or Award.

II.
FACTS

It appears Whittier Drugs has filed three liens. The first two show in EAMS that they are settled but a third lien was filed in 2017 for what appears to be services provided after the filing of the last lien in 2012.

The underlying case resolved by Stipulation with Request for Award approved on 6/24/13. There is an open medical award. It is thus unclear why Whittier Drugs would thereafter file a lien in 2017 stating under Labor Code 4903.05 that they have documentation that medical treatment has been neglected or unreasonably refused.

Whittier Drugs filed a Declaration of Readiness on 3/8/22, which is about five years after its last lien was filed. Defendant filed a DOR objection wondering why the DOR was filed without first making any attempt to contact defense attorney and without first serving defense counsel any medical bill before filing the DOR. Defendant raised laches.

Whittier Drugs then failed to timely appear at the Lien Conference held on 5/11/22. Defendant requested the judge issue a Notice of Intent to Dismiss the lien, which was prepared and then forwarded to Defendant for designated service. Defendant served the Notice of Intent the next day on 5/12/22. The Notice allowed ten days to file an objection. However, Whittier Drugs did not file an objection until 7/11/22.

The judge ultimately decided to dismiss the lien of Whittier Drugs and indicated on the Order of Dismissal that the objection was not timely, there were no verified statements, that an email by Ted Durden to MDR@DIR.CA.GOV was ex parte and the judge never received it, and that Whittier Drugs had been showing a pattern of conduct of late or non-appearance. (Citing the Mata case—ADJ181115)

Whittier Drugs responded by filing its Petition for Reconsideration.

III. DISCUSSION

WHITTIER DRUGS'S OBJECTION WAS NOT TIMELY

The Notice of Intent to Dismiss the lien of Whittier Drugs was signed by the judge on 5/11/22. Service was designated to Defendant who served the document on Whittier Drugs on 5/12/22. (EAMS DOC ID 41467148) Defendant also served the Minutes of Hearing on Whittier Drugs on the same date. Those Minutes of Hearing stated a Notice of Intent was to issue.

The Notice of Intent allowed for ten days to object. Whittier Drugs should have objected by 5/27/22 when you add five days for mailing. However, they did not file the objection until 7/11/22. The order dismissing the lien refers to the untimely objection and thus Petitioner should have discussed it in its Petition for Reconsideration. However they did not because there appears to be no excuse for its tardiness.

EMAIL TO MDR@DIR.CA.GOV

Petitioner claims they emailed MDR@DIR.CA.GOV about a half hour before the Hearing. However, the judge never received an email from that call center or entity forwarding this information to the judge. This email was not copied to Defendant who did not know about any non-appearance by the lien claimant representative.

Petitioner fails to discuss exactly why no one else on behalf of Whittier Drugs could have called up on the Lien Conference day or why Mr. Durden didn't have 15 minutes that day to call timely into the Lien Conference.

The affidavit signed by Mr. Durden, which is attached to the Petition for Reconsideration, refers to missing a Hearing on 5/29/22. However, the failed appearance on this case was 5/11/22.

Parties no longer have to actually drive to Marina Del Rey, pay to park, take the elevator upstairs, and wait in a crowded courtroom for hours for the case to be called. Instead, a party merely must telephone on time. It seems unclear based on the record why someone or anyone on behalf of Whittier Drugs did not timely do so.

PATTERN OF CONDUCT

Unfortunately, the judge's recollection of past hearings with Whittier Drugs involves several prior and at least one subsequent late or no show appearances by Mr. Durden. The one documented on the order dismissing lien in this case was the failed appearance he made in the case of Mata v Ink Systems (ADJ181115) and involved a failed appearance on 6/29/22. That lien was also dismissed and a Petition for Reconsideration was filed. The judge did not document the ADJ Case numbers of the prior hearings but there is recollection of lateness or non-appearance several times in the past.

CCP 473

Petitioner raised CCP 473 in both its untimely objection and the Petition for Reconsideration. The former did not contain the required affidavit from Ted Durden and the latter's affidavit refers to the wrong date. Giving relief under CCP 473 is discretionary with the judge and Petitioner gave no compelling reasons why they should be relieved of the dismissal order.

IV.
RECOMMENDATIONS

It is respectfully recommended that Whittier Drug's Petition for Reconsideration be denied.

AUGUST 16, 2022

Jeffrey Ward
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE