

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

**JOSE GUTIERREZ, *Applicant***

**vs.**

**GLASSWERKS LA INC CO AVALON GLASS AND MIRROR; insured by SAFETY  
NATIONAL INSURANCE COMPANY, administered by MATRIX ABSENCE  
MANAGEMENT, *Defendants***

**Adjudication Number: ADJ13614921  
Long Beach District Office**

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

Petitioner, Patrick Petronella, representative for lien claimant, United Services Plus, seeks reconsideration of the Order Denying Request for Hearing And Order Imposing Sanctions (Sanction Order) issued by a workers' compensation administrative law judge (WCJ) on June 27, 2023. In the Sanction Order, the WCJ denied Mr. Petronella's request for a hearing on the issue of sanctions and ordered Mr. Petronella to pay a sanction of \$1,000.00.

In his Petition for Reconsideration (Petition), Mr. Petronella contends that the sanctions were not justified, and that he was entitled to a hearing prior to the issuance of sanctions.

We did not receive an Answer from any party. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that reconsideration be denied.

We have considered the allegations of the Petition and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the WCJ's order, and return this matter to the WCJ for further proceedings. It is important to note that this is not a final decision on the merits of the issues raised in the Petition.

## FACTS

We will briefly review the relevant facts.

On April 17, 2023, the parties proceeded to a lien conference. Patrick Petronella is listed on the minutes as appearing for lien claimant United Services Plus. The “Other/Comments” section states that:

9:15 call back.

Rep for UNITED SERVICES PLUS is being signed in for the first time during 2nd call because he refused to participate properly in 1 st call. NOI to sanction Mr. Petronela (*sic*) to issue by separate NOI. PTCS not filed by close of hearing.

Prior to issuing the Sanction Order, the WCJ issued a Notice of Intent to sanction Mr. Petronella on April 20, 2023 that stated, in full:

On April 17, 2023, a lien conference was held before the undersigned WCJ. At that time, Mr. Patrick Petronella, the representative for lien claimant, United Services Plus, refused to participate properly in this Court’s conference procedures resulting in no appearance by lien claimant for the first call at that hearing. Mr. Petronella did not make his first appearance at that hearing until the second call of the case, some 45 minutes after the hearing had commenced. Mr. Petronella offered no reasonable explanation for his refusal to participate in this Court’s proceedings or his basis for ignoring those proceedings. This Court takes great steps to ensure the conference proceedings are orderly, complete, and expeditious. Mr. Petronella’s actions that day frustrated those steps by the Court resulting in an unnecessary delay in addressing the lien claim, a waste of this Court’s and Defendant’s time, and an unacceptable frustration of this Court’s processes.

This is not the first action by Mr. Petronella that has frustrated this Court’s procedures. Mr. Petronella has demonstrated a pattern of behavior of showing up late and not respecting this Court or its procedures. The most recent example includes, but is not limited to, failing to show up entirely for a lien trial scheduled on 4/11/2023 on Digna Lazaro v Souley Vegan, et al, ADJ14808797. This Court was informed that Mr. Petronella was representing multiple lien claimants that day. Mr. Petronella failed to appear for either the first call or the disposition on that matter without any explanation given to this Court.

Labor Code § 5813 permits the imposition of sanctions of up to \$2,500.00 against a party who engages in bad faith actions or tactics that are frivolous or solely intended to cause delay. Labor Code § 5813(b) provides that “[t]he determination of sanctions shall be made after written application by the party seeking sanctions or upon the appeals board’s own motion.”

In addition, pursuant to WCAB Rule 10421(b)(1), violations subject to the provisions of Labor Code § 5813 shall include, but are not limited to, the “[f]ailure

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.”

Mr. Petronella’s actions thus far have demonstrated a pattern of behavior showing a lack of respect to this Court, a lack of respect to this Court’s processes and proceedings, a disregard for this Court’s time, a disregard for Defendants’ time, and an unwillingness to engage in appropriate and expeditious resolution of the lien claims he represents.

Therefore, **WITH GOOD CAUSE APPEARING, NOTICE IS HEREBY GIVEN THAT**, absent written objection and demonstration of good cause to the contrary served and filed addressed to the undersigned WCJ within ten (10) days, plus five (5) days for mailing, of service of this Notice of Intent, the undersigned WCJ will impose sanctions of up to \$2,500.00 against Mr. Patrick Petronella, pursuant to the above.

On May 18, 2023, Mr. Petronella filed an objection to the Notice of Intent. Mr. Petronella stated that he did sign in for the first teleconference on April 17, 2023 and repeatedly stated his appearance, but that, for some reason, the WCJ could not hear him. Mr. Petronella requested that the WCJ not impose sanctions, or, alternatively, that the WCJ hold a hearing on the sanctions issue prior to any issuance thereof.

On June 27, 2023, the WCJ denied Mr. Petronella’s request for a hearing on the sanctions issue and imposed a \$1,000.00 sanction against him. (Sanction Order, June 27, 2023.)

### **DISCUSSION**

Labor Code<sup>1</sup> section 5813 authorizes the WCJ to impose sanctions of up to \$2,500.00 against a party or attorney who engages in bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. (Lab. Code, § 5813.) However, before the WCJ may order sanctions, the parties are entitled to notice and an opportunity to be heard. (Cal. Code Regs., tit. 8, § 10421(a).) “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” (*Fortich v. Workers’ Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1453 [56 Cal.Comp.Cases 537].) Nevertheless, “[t]he ‘opportunity to be heard,’ in the context of a hearing on the issue of sanctions, does not mean the opportunity to present oral testimony.” (*Seykora v. Superior Court* (1991) 232 Cal.App.3d 1075, 1082 (*Seykora*).) Rather,

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise noted.

“the scope of a hearing on an application for sanctions is within the trial court’s discretion, as with motions generally.” (*Lavine v. Hospital of the Good Samaritan* (1985) 169 Cal.App.3d 1019, 1028; accord *Seykora, supra*, at p. 1082.)

Here, in the Notice of Intent, the WCJ stated that Mr. Petronella engaged in a “pattern of behavior” of showing up late to lien trials, which demonstrated a lack of respect for the Court’s processes and resulted in unnecessary delays. In support of this determination, the WCJ cited two instances, whereby Mr. Petronella: 1) failed to appear for the first teleconference in this case on April 17, 2023, and 2) failed to appear for a separate lien trial scheduled for April 11, 2023 “without any explanation given to [the] Court.” The Notice of Intent stated that, absent a showing of good cause within 15 days of service, the WCJ would impose sanctions of up to \$2,500.00 against Mr. Petronella.

In his objection to the Notice of Intent, as well as his Petition for Reconsideration, Mr. Petronella states that he *did*, in fact, sign in for the first teleconference on April 17, 2023, and that defense counsel can confirm this fact. As for the separate lien trial scheduled for April 11, 2023, Mr. Petronella states that he failed to appear due to a medical emergency, and that defendant’s representative agreed to request that the matter be continued without Mr. Petronella’s appearance. (Petition, pp. 2-3.) Mr. Petronella states that a hearing on the sanctions issue is necessary because a discussion with defendant’s representative will support his objections and explain his actions.

Upon review, we conclude that the WCJ’s Sanction Order was not consistent with the mandates of due process. Although due process does not necessarily require oral testimony in the context of a sanctions hearing, we conclude that, in this instance, it was an abuse of the WCJ’s discretion not to permit the hearing requested in Mr. Petronella’s objection to the Notice of Intent. Absent a discussion with defendant’s representative, who could allegedly vouch for Mr. Petronella and potentially provide good cause not to impose sanctions, we conclude that Mr. Petronella lacked a fair opportunity to respond to the WCJ’s rationale for imposing sanctions and to be heard before the final decision was made. (See *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284 [66 Cal.Comp.Cases 584]; *Rucker v. Workers’ Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151 [65 Cal.Comp.Cases 805].)

Furthermore, the statutory and regulatory duties of a WCJ include the issuance of a decision that complies with section 5313. Specifically, the WCJ is required to prepare an opinion on decision setting forth clearly and concisely the reasons for the decision made on each issue, and

the evidence relied on. (Lab. Code, § 5313.) As we explained in *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473 (Appeals Board en banc), “[t]he opinion 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] For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.* at p. 476.)

Here, the Sanction Order is not supported by an adequate evidentiary record of Mr. Petronella’s behavior at any point, such that sanctions would be warranted at this time. First, the minutes issued during the April 17, 2023 lien conference state that Mr. Petronella did appear, and the WCJ’s conclusion as to the timing of Mr. Petronella’s appearance is only based on the WCJ’s recollection, which is not *evidence* of the point at which Mr. Petronella actually did so. Secondly, the Notice of Intent indicates that the WCJ was “informed” that Mr. Petronella failed to appear for an entirely separate lien trial, but fails to refer to what was said, with support from the record, or to provide any other basis (other than a case caption) for the WCJ’s decision that Mr. Petronella’s behavior in that instance was disrespectful to the Court.

Because the Sanction Order does not afford an adequate basis for review of the evidentiary or legal conclusions reached by the WCJ, the Order was also issued in violation of *Hamilton, supra*, and section 5313.

For the foregoing reasons, we must rescind the Sanction Order and return this matter to the trial level for further proceedings consistent with this decision. Although we are rescinding the Sanction Order, we note that, if a person has demonstrated a pattern of failing to comply with the WCAB’s Rules of Practice and Procedure, that pattern of behavior can be used to demonstrate that they are engaging in bad faith or frivolous actions. The WCJ may, at his discretion, issue a new Notice of Intent to Sanction that complies with the requirements of due process and is based on an evidentiary record as explained above.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the June 27, 2023 Sanction Order is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the June 27, 2023 Sanction Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

I CONCUR,

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**SEPTEMBER 12, 2023**

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

**COLLECTIVE RESOURCES  
QUINTAIROS, PRIETO, WOOD & BOYER  
UNITED SERVICES PLUS**

AH/cs

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