

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

**NORA GONZALES GARCIA, *Applicant***

**vs.**

**JACK IN THE BOX, INC.; ACE AMERICAN INSURANCE COMPANY,  
administered by GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ12629022  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Applicant's attorney, Andy Szeto, and Szeto's law firm, Shatford Law, seek reconsideration of an Order issued by a workers' compensation administrative law judge (WCJ) on January 16, 2023, wherein the WCJ disbursed \$960.00 in requested attorney's fees to applicant and dismissed a notice of intention to impose sanctions against Szeto for failure to appear at a hearing.

Szeto contends that the Order is not supported by the evidence and that it was issued in violation of his right to due process.

We received an Answer from defendants. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based upon our review, and for the reasons stated below, we will deny reconsideration.

**FACTUAL BACKGROUND**

Applicant claimed an injury arising out of and in the course of employment to her back, stomach, bilateral knees, and bilateral arms while employed on May 27, 2018 as a shift leader by defendant. A Compromise and Release Agreement (C&R) for \$24,000.00 was submitted to the

WCJ on August 2, 2022. In the C&R, Szeto and his law firm requested an attorney's fee of 16%. (C&R, August 2, 2022, p. 6.)

On August 17, 2022, the WCJ issued an Order Approving Compromise and Release (OACR), allowing a 12% attorney's fee. In the OACR, the WCJ ordered that the additional 4% attorney's fee requested by Szeto, totaling \$960.00, be held in trust by defendant pending further "proceedings/order."

According to the Communications section in the Electronic Adjudication Management System (EAMS), a notice of hearing was served on August 19, 2022, setting a hearing for December 15, 2022. The type of hearing set was a mandatory settlement conference, but there is no further information in the record, including in FileNet, as to the purpose of the hearing.

On December 15, 2022, a mandatory settlement conference (MSC) took place. There was no appearance by applicant or applicant's attorney. (Minutes, December 15, 2022.) During the MSC, the WCJ issued the following Notice of Intent (NOI) on the Minutes:

NOI TO DISBURSE 4% WITHHELD A/A FEES TO APPLICANT GIVEN. ORDER DISBURSING WILL ISSUE IN 20 DAYS UNLESS BONAFIDE WRITTEN OBJECTION IS FILED AND ALSO SERVED ON APPLICANT WITH NOTICE OF CONFLICTING INTEREST WITH THE APPLICANT. NOI TO IMPOSE SANCTIONS PER LC 5813 FOR FAILURE TO APPEAR IS GIVEN.

The WCJ did not issue a separate notice of intention.

On January 14, 2023, Szeto submitted an email response to the WCJ's NOI. (Report, p. 2.) Although untimely with respect to the NOI, the email response may be construed as Szeto's response to the NOI. (See Lab. Code, § 5708 [the Appeals Board is not bound by the rules of evidence and "may make inquiry in the manner, through...records, which is best calculated to ascertain the substantial rights of the parties[.]"]; § 5709 ["[n]o informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule[.]"].) In his email response, Szeto stated as follows:

I understand you issued NOI for 20 days, and it's now past 20 days. If your honor would reset the hearing, I would like the opportunity to be heard to justify our attorney fees. If you are not inclined to do so, I will accept the reduced attorney fees. I request the issue of sanctions be dismissed, as I did not receive actual notice of the MSC. I did not intentionally just not show up.

(Report, p. 2.)

On January 16, 2023, the WCJ issued the Order disbursing the 4% withheld fees to applicant. The Order states:

IT APPEARING that applicant's claim herein was resolved by approved settlement, and that a portion of the settlement proceeds were withheld pending resolution of attorney fee request in excess of 12%, and applicant's counsel having failed to appear at a prior hearing on the fee issue and the Court having given notice of intention to impose sanctions, and pursuant to subsequent correspondence from applicant's counsel, and Good Cause Appearing;

\* \* \*

IT IS ORDERED that withheld attorney fees in the amount of \$960.00 be paid by defendant to applicant and that the Court's NOI to impose sanctions is hereby dismissed.

(Order, January 16, 2023.)

It is from this Order that Szeto seeks reconsideration.

#### **DISCUSSION**

In his Petition for Reconsideration, Szeto contends that the January 16, 2023 Order is not supported by the evidence and that it was issued in violation of his right to due process. Specifically, Szeto asserts that he did not appear at the December 15, 2022 MSC because he did not receive notice of its scheduling, and that there is no evidence of the date that his office received actual notice of the NOI issued during the MSC, such that a timely objection could have been lodged. (Petition, pp. 2-3.) Szeto thus asserts that, absent proper notice and opportunity to object to the NOI, there is good cause to rescind the Order and reset the matter for a hearing to provide him an opportunity to justify his request for the additional 4% in attorney's fees. (Petition, p. 2.)

In response to this argument, the WCJ points out in his Report that Szeto agreed to accept the 12% attorney fee in his January 14, 2023 email in exchange for the dismissal of any sanctions for non-appearance. (Report, p. 2.) The WCJ explains that it was based upon the concessions made in Szeto's email, and for good cause, that he issued the January 16, 2023 Order distributing the 4% withheld fees to applicant, rather than Szeto. (Report, p. 2.)

Upon review, while we do not go so far as to find that Szeto has acted frivolously or in bad faith in seeking reconsideration of the Order, we do believe that, by agreeing to, and, indeed,

*requesting* the precise terms of the Order, Szeto waived, or invited, any alleged error contained therein, such that reconsideration is not warranted.

The doctrines of waiver and invited error are explained in *Telles Transport, Inc. v. Workers' Comp. Appeals Bd. (Telles Transport)* (2001) 92 Cal.App.4th 1159 [66 Cal.Comp.Cases 1290] as follows:

[U]nder general civil litigation principles, “where a deliberate trial strategy results in an outcome disappointing to the advocate, the lawyer may not use that tactical decision as the basis to claim prejudicial error.” (*Mesecher v. County of San Diego* (1992) 9 Cal.App.4th 1677 [12 Cal.Rptr.2d 279]; see also Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2000) para. 8: 244, p. 8-118.)

Under the doctrine of waiver, a party loses the right to appeal an issue caused by affirmative conduct or by failing to take the proper steps at trial to avoid or correct the error. (Citation omitted.) Similarly, under the doctrine of invited error, a party is estopped from asserting prejudicial error where his own conduct caused or induced the commission of the wrong. (Citations omitted.)

(*Telles Transport, supra*, 66 Cal.Comp.Cases at p. 1295.)

Under the particular circumstances of this case, given that Szeto agreed to accept the reduced attorney’s fee, the WCJ could have reasonably concluded that Szeto waived his objections to the lack of a proper notice of intention and to the reduced fee. Thus, we do not disturb the WCJ’s decision.

Accordingly, we deny Szeto’s Petition for Reconsideration of the January 16, 2023 Order.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration Order issued by a workers' compensation administrative law judge on January 16, 2023 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**APRIL 14, 2023**

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

**NORA GONZALES GARCIA  
SHATFORD LAW  
LAW OFFICES OF MARCIE DONALD**

**AH/cs**

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