

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

**JULIETTE BONENFANT, *Applicant***

**vs.**

**BARON S MARKET PLACE; PREFERRED EMPLOYERS INSURANCE COMPANY,  
*Defendants***

**Adjudication Number: ADJ11230497  
San Diego District Office**

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

Attorney Jacob Emrani seeks reconsideration of the “Order to Pay Sanctions Under LC § 5813 and Rule 10421” (Order) issued on October 4, 2023, wherein the workers' compensation administrative law judge (WCJ) imposed sanctions of \$1,001.00 against him and his firm.

Mr. Emrani contends that the Order was in excess of the WCJ's authority.

We did not receive an Answer.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition and the contents of the Report. Based upon our review of the record and as discussed below, we will grant reconsideration, and as our Decision After Reconsideration, we will rescind the Order.

**FACTUAL BACKGROUND**

On March 12, 2018, applicant filed an application for adjudication, naming Hugh Bavaro as her attorney of record. (Application for Adjudication, March 12, 2018, p. 11.)

On July 5, 2018, Mr. Emrani's office filed a substitution and dismissal of Mr. Bavaro as applicant's attorney. (Substitution of Attorney, July 5, 2018.) The substitution designates Mr. Emrani as the attorney to be substituted in for Mr. Bavaro and appears to contain applicant's signature. (*Id.*, p. 3.)

On July 21, 2023, the parties entered into a proposed compromise and release (C&R) whereby applicant through attorney Bavaro agreed to settle her claim. (Compromise and Release, July 21, 2023, p. 7.)

On July 28, 2023, the WCJ issued an order suspending action on the C&R, stating:

On May 24, 2018, applicant signed a NOTICE OF DISMISSAL OF ATTORNEY of Mr. Bavaro. On the same day, applicant signed a Substitution of Attorneys with Law Offices of Jacob Emrani. However, it now appears that applicant is still with the Law Offices of Hugh Bavaro as Mr, Bavaro executed the settlement documents with the applicant. All parties shall be present at the status conference to discuss what, if ANY work, the Law Offices of Jacob Emrani performed, which applicant attorney law firm is the correct firm and what applicant's intentions were regarding representation during the course of this claim.  
(Order Suspending Action, July 28, 2023, p. 1.)

On August 2, 2023, Mr. Bavaro filed a petition to strike the substitution and dismissal of attorney and for sanctions, including a declaration by applicant that alleges that applicant had never communicated with Mr. Ermani and had not retained him or his firm as her attorneys.

Also on August 2, 2023, Mr. Bavaro filed a copy of correspondence from himself to Mr. Emrani dated July 18, 2018, that alleged in pertinent part that the signature purporting to be applicant's signature on the Substitution of Attorney was not actually her signature.

On August 29, 2023, Mr. Ermani filed a petition to withdraw the substitution and dismissal contending that he understood that applicant did not want to retain him and he was withdrawing the Substitution and that would not be seeking an attorney fee.

On September 6, 2023, the WCJ issued an order granting Mr. Emrani's petition to withdraw. (Order Granting Petition to Withdraw, September 6, 2023.)

Also on September 6, 2023, the WCJ issued a notice of intention to impose sanctions, costs, and to appear at hearing (NOI), stating:

Emrani is ORDERED to appear . . . on October 2, 2023 . . . and demonstrate good cause why sanctions should not issue pursuant to Labor Code §5813 in the sum of \$1,500.00 for filing a substitution of attorney's form in this matter without the direction of the applicant to do so as indicated in her Declaration under penalty of perjury. Furthermore, Mr. Emrani will need to demonstrate why attorney's fees and costs to Mr. Bavaro (\$500) and Ms. Bonenfant (\$100) are not indicated for having to prepare documentation on the applicant's behalf as well as the delay in approval of the settlement.  
(NOI, September 6, 2023, p. 1.)

On October 4, 2023, the WCJ ordered that Mr. Emrani pay sanctions for the following conduct:

After a review of the file in EAMS, it was noted that there was a substitution of attorney form filed by Law Offices of Jacob Emrani on November 26, 2018 (EAMS DOC ID 68712516). Based on this representation to the Court, the undersigned served an Order Suspending Action asking the parties to address the substitution of

attorney filed by Law Offices of Jacob Emrani as it appeared that the applicant should have had the settlement executed with Law Offices of Jacob Emrani. After the Order Suspending Action issued, to make matters worse, Law Offices of Jacob Emrani filed what appears to be a petition to withdraw the substitution of attorney, but filed it as a "WRIT" in EAMS which triggered the RECON UNIT to get involved when they had no need to be involved.

The proper applicant's attorney, Law Offices of Hugh Bavaro, in response to the Order Suspending had to go above and beyond to get his applicant to understand that any actions denying the Compromise and Release was not due to his actions, engage in further investigation as to why Law Offices of Jacob Emrani were involved in this case at all, and file further petitions to clarify with this Court that at NO TIME was the Law Offices of Jacob Emrani involved in this matter at the bequest of the applicant. The applicant, through her proper attorney, filed a Petition to Strike the Sub of Attorney, a declaration from the Applicant and requested sanctions due to the actions of the Law Offices of Jacob Emrani. It was noted that after the original substitution was improperly filed by the Law Offices of Jacob Emrani back in 2018, Mr. Bavaro informed their office that the filings were incorrect and that their office take immediate action to correct this. Mr. Bavaro wrote a letter to the Law Offices of Jacob Emrani clearly stating that the applicant did not sign the documents and stated that the Law Offices of Jacob Emrani need to withdraw their petition and make an immediate retraction. Again, this letter is from July of 2018.

At the time of the submission of the Compromise and Release, it became apparent that the Law Offices of Jacob Emrani had taken no corrective action in their previous filing and the Order Suspending Action issued due to the prior substitution of attorney being filed which would have made it appear the appropriate attorney was Law Offices of Jacob Emrani. Immediately, Mr. Bavaro had to spend more time explaining the scenario to the applicant and execute further legal documentation showing that the applicant's only attorney throughout the tenure of this case was Law Offices of Hugh Bavaro. Mr. Bavaro had his client execute a declaration under penalty of perjury that the signature on the substitution of attorney filed by the Law Offices of Jacob Emrani is not her signature, she made no efforts to ever change attorneys, she never communicated in any form with the Law Office of Jacob Emrani including any of their representatives, nor has she ever met Mr. Emrani himself.

The matter was set for Hearing to Show Cause on October 2, 2023 at 1:30 pm, with the Notice indicating the matter is be heard in the undersigned's department. At the time of the hearing, no one from Jacob Emrani's office appeared in person in such courtroom. Out of an abundance of caution, the undersigned checked the AT&T line wherein, a hearing representative, Mr. Evan Escalante, appeared on the line with no explanation why Mr. Emrani did not appear either in person or on the phone despite such Order to do so. Without further explanation, by 1:46 pm, Mr. Escalante hung up the line and never came back. As of 3:45 pm, on October 2, 2023, no one

from the Law Offices of Jacob Emrani have appeared in the proper department. Such conduct, over a five year period, may have been bad faith actions or tactics that were frivolous or solely intended to cause unnecessary delay that resulted from willful failures to comply with a statutory or regulatory obligation, that resulted from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that were done for an improper motive or were indisputably without merit. (Order, October 4, 2023, pp. 1-3.)

On February 12, 2024, Mr. Emrani filed the Petition.

### DISCUSSION

A petition for reconsideration must be filed and received by the Appeals Board within twenty days of the service of the final order (plus an additional five days if service of the decision is by any method other than personal service, including by mail, upon an address in California). (Lab. Code § 5903; Cal. Code Regs., tit. 8, § 10605; *Oliver v. Structural Services* (1978) 43 Cal.Comp.Cases 596.) This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely Petition for Reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650, 656]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008, 1011]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73, 75-76].)

In this case, as we explain below, the pleadings record fails to show that Mr. Emrani appeared before the court, provided it with his official address of record, or otherwise made himself subject to its jurisdiction at any time before issuance of the NOI or the Order. In the absence of a pleadings record giving rise to court jurisdiction over Mr. Emrani, the court's mailing of the NOI was ineffective and the Order insufficient to effect service upon him. Therefore, service of the Order was defective. Accordingly, we will treat the Petition as timely.

Turning to Mr. Emrani's contention that the Order was in excess of the WCJ's authority, we observe that the Appeals Board may institute its own motion to impose sanctions against a "party's attorney", and may order a "party's attorney . . . to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Lab. Code § 5813(a)-(b).)

To be deemed a "party's attorney", an attorney must file and serve a notice of representation before filing a document or appearing on behalf of that party unless the information required to be included in the notice of representation is set forth on an opening document. (Cal.

Code Regs., tit. 8, § 10400(a).) When a pleading or other statement of appearance is filed by an attorney on behalf of a party, the attorney's name and address is entered on the Official Address Record of the WCAB, and, thereafter, the attorney remains attorney of record for that party. (See Cal. Code Regs., tit. 8, § 10402; *In re White & Bunch* (1981) 46 Cal.Comp.Cases 810 (Appeals Board en banc).)

Here, although the record shows that Mr. Emrani's office filed a substitution and dismissal apparently on behalf of applicant, he never filed an opening pleading or notice of representation—and never represented applicant. (Application for Adjudication, March 12, 2018, p. 11; Order Granting Petition to Withdraw, September 6, 2023; Report, pp. 2-4.)

It follows that Mr. Emrani did not make himself subject to the court's jurisdiction; and, moreover, was not a "party's attorney" within the meaning of Labor Code section 5813. Consequently, the WCJ was without jurisdiction over and without statutory authority to impose sanctions against Mr. Emrani when it issued the Order. Accordingly, we will rescind the Order.

In addition, we discern separate and independent grounds for rescission of the Order.

WCAB Rule 10421(a) provides:

On its own motion or upon the filing of a petition pursuant to rule 10510, the Workers' Compensation Appeals Board may order payment of reasonable expenses, including attorney's fees and costs and, in addition, sanctions as provided in Labor Code section 5813. Before issuing such an order, **the alleged offending party or attorney must be given notice and an opportunity to be heard.** In no event shall the Workers' Compensation Appeals Board impose a monetary sanction pursuant to Labor Code section 5813 where the one subject to the sanction acted with reasonable justification or **other circumstances make imposition of the sanction unjust.**

(Cal. Code Regs., tit. 8, § 10421 [Emphasis added].)

Here, the record shows that on September 6, 2023, the WCJ mailed the NOI to Mr. Emrani, indicating that sanctions would be imposed for "filing a substitution of attorney's form . . . without the direction of the applicant to do so as indicated in her Declaration under penalty of perjury" and for causing "delay in approval of the settlement" at a hearing to be held on October 2, 2023 unless good cause was shown otherwise. (NOI, September 6, 2023, p. 1.)

In doing so—and as shown by the reference to applicant's declaration—the WCJ erroneously set trial on applicant's petition for sanctions without obtaining a pretrial conference statement on the issues surrounding the petition, holding a pretrial conference at which the issues

and stipulations on the petition for sanctions could be framed, and holding a hearing as to those issues as framed by the parties.

Further, to the extent that the NOI alleged grounds for sanctions independent of applicant's petition for sanctions, it alleges nothing more than that Mr. Emrani caused delay in approval of the settlement and does not allege the various additional grounds for sanctions on which the Order relies; namely, that Mr. Emrani mislabeled the petition to withdraw the substitution and dismissal as a "WRIT", caused Mr. Bavaro to have to explain to applicant that he was not the cause the settlement delay, and failed to timely respond to Mr. Bavaro's letter seeking withdrawal of the substitution and dismissal. (Order, October 4, 2023, pp. 1-3.)

Further, although the Order and the Report state that the WCJ held a hearing on October 2, 2023 on the issue of sanctions, the record before us lacks any hearing minutes or summary of evidence from which we may discern what, if any, evidence was admitted and relied upon by the WCJ.

As the Court of Appeal stated in *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 704 [57 Cal.Comp.Cases 230]:

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. [Citation.] (*Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1453 [56 Cal.Comp.Cases 537].) Due process requires that all parties 'must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. [Citations.]' (*Fidelity & Cas. Co. of New York v. Workers' Comp. Appeals Bd. (Harris)* (1980) 103 Cal.App.3d 1001, 1015 [45 Cal.Comp.Cases 381].) (*Katzin, supra*, at 711-712.)

Hence, because the NOI failed to provide notice of various additional grounds for sanctions on which the Order relies, and because the WCJ failed to prepare hearing minutes or a summary of evidence surrounding the determination of the sanctions issue, we conclude that in addition to the jurisdictional flaw at the time the Order issued, the Order violated Mr. Emrani's right of due process. (See also *Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473 (Appeals Board en banc) (*Hamilton*) (stating that consideration of an issue consistent with due process requires the WCJ to receive evidence, objections and arguments on the record).)

Accordingly, we will grant reconsideration, and, as our Decision After Reconsideration, we will rescind the Order.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration of the Order to Pay Sanctions Under LC § 5813 and Rule 10421 issued on October 4, 2023 by the WCJ is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order to Pay Sanctions Under LC § 5813 and Rule 10421 issued on October 4, 2023 by the WCJ is **RESCINDED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

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

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

**JULIETTE BONENFANT  
HUGH BAVARO  
MICHAEL SULLIVAN & ASSOCIATES  
LAW OFFICES OF JACOB EMRANI**

**SRO/es**

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