

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

GERSON RAMOS ALONZO, *Applicant*

vs.

LUNA FARM LABOR, INC., *Defendant*

**Adjudication Number: ADJ11138323
Marina Del Rey District Office**

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

Applicant seeks reconsideration of the workers' compensation administrative law judge's (WCJ) June 17, 2021 Order Dismissing Case (Order). Applicant contends that the Order violates his due process rights.

We received an answer from defendant. The WCJ issued a Report and Recommendation on applicant's petition 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 on our review of the record, we will grant the Petition for Reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings.

FACTUAL BACKGROUND

Applicant claimed injury to his back while employed by the defendant as a field laborer on August 1, 2017.

Defendant filed a Petition for Order Dismissing Case on March 3, 2021. In its petition, defendant alleges that applicant failed to prosecute his case for over one year. Attached to defendant's Petition is a letter from defendant's attorney to applicant dated January 4, 2021 stating it intends to petition the court to dismiss applicant's case absent good cause shown in writing within thirty days pursuant to WCAB Rule 10582.

Applicant filed an objection to defendant’s petition to dismiss on March 15, 2021. In its objection, applicant’s counsel stated he had lost contact with the applicant and was attempting to reestablish communication.

A Status Conference was held on May 7, 2021. The Minutes of Hearing state “Applicant is not found [;] Notice of Intent to issue”. No evidence was admitted and no testimony was taken on the matter at the May 7, 2021 hearing.

The WCJ issued the Notice of Intent (NIT) on May 12, 2021 stating in relevant part:

[A]n Order Dismissing the above entitled case, without prejudice, shall issue ten (10) days from the date of service hereof, unless good cause to the contrary is shown in writing within said time.

(May 12, 2021 NIT, p. 1)

On June 17, 2021, the WCJ issued the Order of Dismissal, which states in relevant part:

[S]ince no good cause nor any objection was filed in response to the Court’s May 12, 2021 Notice of Intention to Dismiss case, this case is now Ordered Dismissed without prejudice.

...

Pursuant to CCR 10629, you are designated to service this document on all parties shown on the Office Address Record.

(June 17, 2021 Order, p.1)

In its Petition for Reconsideration, applicant states that he did not receive the May 12, 2021 NIT, and, if he had, he promptly would have objected thereto.

DISCUSSION

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313.¹ An adequate and complete record is necessary to understand the basis for the WCJ’s decision and the WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Bd. en banc)²

¹ All statutory references not otherwise identified are to the Labor Code.

² En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8 § 10325(a); *City of Long Beach v. Workers’ Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

(*Hamilton*).) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at 475.) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*Hamilton, supra*, at 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

The Appeals Board’s record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator’s file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10544.)

Here, no documents or testimony were admitted into evidence at the May 7, 2021 hearing. In the absence of an evidentiary record, we are unable to evaluate the basis for the WCJ’s Order. Therefore, we must return this matter to the trial level for further proceedings.

The WCAB Rules provide in relevant part that “The Workers’ Compensation Appeals Board may issue a notice of intention for any proper purpose . . . ; [i]f an objection is filed within the time provided, the Workers’ Compensation Appeals Board, in its discretion may . . . [i]ssue an order consistent with the notice of intention together with an opinion on decision; or . . . [s]et the matter for hearing.” (Cal. Code Regs., tit. 8, § 10349.) Here, the issue in defendant’s petition to dismiss the case was due to applicant’s inactivity for longer than a year pursuant to WCAB Rule 10582. Defendant contends dismissal is proper since the matter had remained off calendar for over one year after the Application for Adjudication of Claim had been filed. However, once the parties appeared before the WCJ at the May 7, 2021, inactivity was no longer an issue. The WCJ then issued the NIT on May 12, 2021 without having held another hearing. The only plausible grounds for the WCJ to issue an NIT would be due to applicant’s failure to appear at the May 7, 2021 hearing. Had the WCJ issued an NIT on those grounds, the aggrieved party could have objected and requested a hearing. If no party objected, then the Order would become final.

Next, we turn to the issue of whether the WCJ violated the applicant’s right to due process by issuing the Order without a hearing. All parties in workers’ compensation proceedings retain their 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].) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572,

[The] commission, . . . must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law. (*Id.* at 577.)

Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Rucker, supra*, at 157-158.) 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 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].)

The lack of a hearing prevented either party from exercising their right to call witnesses, cross-examine witnesses and/or introduce evidence in support of their positions or in rebuttal of the opposing parties' evidence. "The improper restriction on the right to present evidence in rebuttal is a deprivation of the constitutional guaranty of due process of law." (*Rucker, supra*, at 157 citing *Pence v. Industrial Acc. Com.* (1965) 63 Cal.2d 48, 50-51.) Therefore, the WCJ denied both parties their fundamental right to due process with respect to the NIT, and we must rescind the Order and return the matter to the WCJ on due process grounds as well.

Finally, we note that the Order of Dismissal included an order of delegated service. WCAB Rule 10628(a) states that:

The Workers' Compensation Appeals Board shall serve the injured employee or any dependent(s) of a deceased employee, whether or not the employee or dependent is represented, and all parties of record with any final order, decision or award issued by it on a disputed issue after submission. The Workers' Compensation Appeals Board shall not designate a party, or their attorney or agent of record, to serve any final order, decision or award relating to a submitted issue.

Therefore, service of the Order was defective.

Accordingly, we grant applicant's petition, rescind the June 17, 2021 Order, and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the June 17, 2021 Order of Dismissal is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the WCJ's June 17, 2021 Order of Dismissal is **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 8, 2021

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

**GERSON RAMOS ALONZO
LAW OFFICES OF JACOBSON & ASSOCIATES
LAW OFFICE OF DIANE L. BERLIN**

HAV/ara

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