

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

JUAN AYALA, *Applicant*

vs.

**LCF SHEA APARTMENTS LLC;
LIBERTY MUTUAL, *Defendants***

**Adjudication Number: ADJ15597591
Pomona District Office**

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

Applicant seeks reconsideration of the June 22, 2022, Order of Dismissal (Order), wherein the workers' compensation administrative law judge (WCJ), dismissed the matter.

Applicant contends that his prior attorney did not keep him informed of the case or that the matter had been set for trial.

Defendant filed an Answer on August 2, 2022. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for Reconsideration, rescind the WCJ's Order, and return this matter to the WCJ for further proceedings.

FACTS

Applicant claimed that, while employed as a security guard, he sustained an industrial injury to his back and hips when he slipped and fell on December 11, 2021. Applicant's attorney was Michael de la Garza at that time.

On April 22, 2022, the parties jointly requested that the trial on May 25, 2022, occur virtually. On April 25, 2002, the WCJ ordered that the defendant's counsel could appear virtually but that the other parties were to appear in person, absent a showing of good cause. Applicant failed to appear at the hearing on May 25, 2022, but he was represented at the hearing by hearing representative Juan Leal. (5/25/22 Minutes of Hearing (MOH), p. 1.)

On May 26, 2022, the WCJ issued a Notice of Intention to Issue Order Dismissing Case (NIT). The NIT stated that it was the intention of the WCJ that an order dismissing the case without prejudice would issue 20 days from the service of the notice based on applicant's failure to appear at trial on May 25, 2022. None of the parties objected. On June 7, 2022, applicant filed a Notice of Dismissal of Attorney, dismissing the Law Offices of Michael de la Garza as his attorney, and also filed a Substitution of Attorney, indicating that he was represented by Diefer Law Riverside. On June 22, 2022, the WCJ ordered the case dismissed.

DISCUSSION

The WCJ may issue a notice of intention for any proper purpose. (Cal. Code Regs., tit. 8, § 10832 (a).) A proper purpose includes, but is not limited to, (1) Allowing, disallowing or dismissing a lien; (2) Granting, denying or dismissing a petition; (3) Sanctioning a party; (4) Submitting the matter on the record; or (5) Dismissing an application. (*Id.*)

“Either party may be present at any hearing, in person, *by attorney, or by any other agent*, and may present testimony pertinent under the pleadings.” (Lab. Code, § 5700, italics added.) Each applicant and defendant shall appear *or have an attorney or non-attorney representative appear* at all hearings pertaining to the case in chief. (Cal. Code Regs., tit. 8, § 10752(a), italics added.) Appearance means a party *or their representative's presence* at any hearing. (Cal. Code Regs., tit. 8, § 10305(c), italics added.) Therefore, the appearance of applicant's representative at the hearing satisfied the appearance requirement.

As applicant met the requirement for appearing at the hearing by having his representative attend, the NIT was not issued for a proper purpose. Therefore, the NIT was invalid. Accordingly, we grant applicant's Petition, rescind the June 22, 2022, 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 22, 2022 Order of Dismissal is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the June 22, 2022, Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 12, 2022

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

**JUAN AYALA
DIEFER LAW
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

JMR/pc

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