

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

**MARGARITO MORENO, *Applicant***

**vs.**

**ADOHR FARMS; NATIONAL FIRE INSURANCE CO. OF HARTFORD THIRD  
PARTY as administered by CNA, *Defendants***

**Adjudication Numbers: ADJ1120351 (POM 0286941); ADJ2816419 (POM 0286943);  
ADJ1665754 (POM 0286942); ADJ1026599<sup>1</sup>  
Los Angeles District Office**

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

Applicant in pro per seeks reconsideration of the Order of Dismissal (Order) issued by the workers' compensation administrative law judge (WCJ) on August 9, 2023.

Applicant filed an Objection to the Order (Objection) on August 15, 2023, contending that he objected to the dismissal of his cases and that he intended to pursue the cases and would notify defendant's counsel. (Objection, August 15, 2023, p. 1.) After applicant filed his Objection, he filed a Petition for Reconsideration (Petition) on September 26, 2023. In his Petition, applicant states that: "I Margarito Moreno object to the dismissal of my case. I still intent [*sic*] on pursuing this case. Due to health issues I was unable to keep an update on case status." (Petition, September 26, 2023, p.1.)

We did not receive an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny the Petition.

We have considered the allegations of the Objection and Petition and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based

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<sup>1</sup> Case Number ADJ1026599 is assigned to a different injured worker, but defendant's Petition for Dismissal, Proposed Order, Exhibit A, and Proof of Service are the only documents uploaded in the Electronic Adjudication Management System (EAMS) under Case Number ADJ1026599. The four referenced documents are also uploaded in EAMS under Margarito Moreno's Case Numbers: ADJ1120351; ADJ2816419; and ADJ1665754.

on our review of the record, and for the reasons discussed below, we will treat the Objection as a timely filed Petition for Reconsideration, will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings consistent with this decision.

## **BACKGROUND**

Applicant filed multiple concurrent applications which were assigned Case Number ADJ1120351 (an injury on July 5, 1999), Case Number ADJ2816419 (an injury on June 6, 2005), Case Number ADJ1665754 (a continuous injury from June 2005 to April 20, 2006), and Case Number ADJ1026599 (a continuous trauma from May 15, 2010, to October 17, 2011) for adjudication of injuries to multiple body parts arising out of and in the course of his employment.

On April 18, 2023, defendant filed a Petition for Dismissal for Inactivity alleging that: "There has been no activity on this matter for over a year despite attempts to have the applicant undergo an updated evaluation and providing MPN information." (Petition for Dismissal for Inactivity, April 18, 2023, 2:1-2:2.) The Petition references a February 28, 2023, letter from defendant to applicant which discusses defendant's intention to seek dismissal pursuant to WCAB Rule 10550 and the letter is identified as Exhibit A<sup>2</sup> in defendant's Petition.

On May 11, 2023, the WCJ issued a Notice of Intention to Dismiss Case For Failure to Prosecute (NIT) dated May 5, 2023.<sup>3</sup> The NIT states that the case would be dismissed without prejudice for failure to prosecute absent receipt of a timely objection demonstrating good cause within twenty days of service of the NIT. The WCJ then designated service of the NIT to defendant pursuant to WCAB Rule 10629. (Cal. Code Regs., tit. 8, § 10629.)

On August 3, 2023, without holding a hearing, the WCJ issued an Order of Dismissal of applicant's cases. The Order states as follows:

Notice of Intention to Dismiss having issued on May 5, 2023, with proof of service dated 5-11-23 and no timely objection with good cause having been shown within the time allowed,

IT IS ORDERED that the above-entitled case be and it is hereby DISMISSED without prejudice.

(August 3, 2023, Order, p. 1.)

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<sup>2</sup> A review of the adjudication file in the Electronic Adjudication Management System (EAMS) reflects that on April 18, 2023, a copy of the letter defendant's mailed applicant has been labeled by defendant as Exhibit A. Exhibit A has not been admitted into evidence.

<sup>3</sup> The proof of service states that defendant's served the NIT on applicant among others on May 11, 2023.

The Proof of Service on the Order states that the Order of Dismissal was served on August 9, 2023.

Applicant filed an Objection to the Order dismissing his cases, date stamped August 15, 2023. Thus, applicant's Objection was timely filed within 20 days from the date of service of the Order on August 9, 2023. In his Objection, applicant states the following: "I Margarito Moreno object to the dismissal of my Case No.: ADJ1120351; ADJ2816419; ADJ1665754. I still intent [sic] on pursuing this case. I will be notifying the Counsel of Defendants with a copy of this letter. (Objection, date stamped August 15, 2023, and filed September 8, 2023, p. 1.)

Subsequently, applicant filed a Petition for Reconsideration dated September 21, 2023, and date stamped September 26, 2023. In his Petition, applicant reiterated what he stated in his objection: "I Margarito Moreno object [sic] to the dismissal of my case. I still intent [sic] on pursuing this case." Additionally, he added the following: "Due to health issues I was unable to keep an update on case status." (Petition for Reconsideration (Petition), September 26, 2023, p.1.) Applicant's Petition for Reconsideration will be treated as an amendment to his Objection which we treat as his timely Petition for Reconsideration.

## DISCUSSION

### I.

Preliminarily, with respect to the timeliness of the petition having been filed more than 25 days after service of the Order Dismissing Case, we observe that there are 20 days allowed within which to file a petition for reconsideration from a "final" decision plus 5 calendar days if a party has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) In addition, if a party to be served is outside of California but within the United States, the time in which to act is 10 calendar days from the date of service, or 30 days total. (Cal. Code Regs., tit. 8, § 10605(a)(2).)

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].)

Here, the Order Dismissing Case was served on all interested parties including defendants, Adohr Farms and National Fire Insurance Co. of Hartford administered by CNA and their counsel Testan Law on August 9, 2023. Defendant CNA's mailing address is in Chicago, Illinois.

Applicant Objected to the Order Dismissing his cases and his objection is date stamped August 15, 2023 (See, Cal. Code of Regs., tit. 8 § 10615(c).) Thus, we will treat applicant's Objection to the Order Dismissing his cases as a timely filed Petition for Reconsideration, as it is filed well within 30 days from the service of the Order on August 9, 2023.

## II.

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313. A WCJ is required to "make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties. The endorsement to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761; see also *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc).)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*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." (Lab. Code, § 5313; *Hamilton, supra*, at 475.) In *Hamilton*, we held that the record of proceeding must contain, at a minimum, "the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Ibid.*)

The WCJ's opinion on decision "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." (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Moreover, all parties to a workers' compensation proceeding retain the 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].) A fair hearing is". . . one of 'the rudiments of fair play' assured to every litigant. . ." (*Id.*, at p.

158.) The “essence of due process is simply notice and the opportunity to be heard.” (*San Bernardino Community Hospital v. Workers. Comp. Appeals Bd. (McKernan)* 74 Cal.App.4th 928, 936 (64 Cal. Comp. Cases 986) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties’ rights to due process. (*Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker, supra*, at pp. 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, supra*, at p .1295; *Rucker, supra*, at pp. 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 appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] . . . At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.” (Lab. Code, § 5803.)

Here, the Order dismissing applicant’s cases issued without a hearing, no minutes were filed, and no testimony was taken. In addition, the WCJ did not provide a summary of the evidence relied on in making the decision to dismiss applicant’s cases. In the absence of an evidentiary record, we are unable to evaluate the basis of the WCJ’s Order. Therefore, we must return this matter to the trial level for further proceedings.

Upon return to the trial level, we recommend that the WCJ hold a hearing to allow the parties to frame the issues and any stipulations, submit exhibits as evidence, call witnesses, if necessary, lodge any objections, and make their legal arguments. Also, should this matter proceed to trial, the WCJ should go on the record at that time to clarify applicant’s injuries and the date applicant sustained each injury.

Accordingly, we rescind the August 9, 2023, Order and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration. The WCJ and parties should also determine the correct ADJ numbers at issue here.

For the foregoing reasons,

**IT IS ORDERED** that applicant’s Petition For Reconsideration of the Order of August 9, 2023, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the order of August 9, 2023, is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALWESKI, CHAIR

**I CONCUR,**

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



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

**November 27, 2023**

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

**MARGARITO MORENO  
TESTAN LAW**

**DLM/oo**

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