

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

BRENDA RODRIGUEZ, *Applicant*

vs.

ULTRA PERSONNEL, LLC., *Defendant*

**Adjudication Number: ADJ16431629
Los Angeles District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND GRANTING REMOVAL
ON MOTION OF THE
APPEALS BOARD**

On January 2, 2024, applicant filed a Petition for Reconsideration contending, in essence, that the December 5, 2023 Order Imposing Sanctions and Costs issued by the workers' compensation administrative law judge (WCJ). We have considered the allegations of the Petitions and the contents of the Report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record and for the reasons stated below, we will grant the petition for reconsideration and issue an order that applicant refile the petition as the current petition on file appears incomplete in EAMS. Furthermore, we will grant removal on motion of the Workers' Compensation Appeals Board (Appeals Board) pursuant to Labor Code section 5310.

FACTS

On July 8, 2022, Susan Garrett filed an application for adjudication alleging that applicant sustained a cumulative injury to the head, hand, fingers, back, right shoulder, and in the form of stress. (Application for Adjudication, ADJ16431629, July 8, 2022.) On August 2, 2022, applicant filed a claim for benefits pursuant to Labor Code, section 132a.

On September 12, 2023, defendant filed a "Petition to Dismiss Case and 132a Claim; 8 CCR 10550". Defendant alleged that applicant was not prosecuting her claims, had not activated the matter for hearing, and that both applicant and her attorney failed to attend a scheduled

deposition. (Petition to Dismiss Case and 132a Claim; 8 CCR 10550, September 12, 2023 at p. 2.)

The matter proceeded to a hearing on September 14, 2023, which was set upon applicant's Declaration of Readiness to Proceed ("DOR"). The hearing was taken off calendar with the following notation in the minutes:

PARTIES APPEARED AND DEFENDANT (HEATHER ANTONIE) INDICATED AN EMAIL FROM LANCE GARRETT WAS RECEIVED, INDICATING AN EMERGENCY EXISTS AND AA REQUESTS A CONTINUANCE. MATTER IS TAKEN OFF CALENDAR AS DOR WAS FILED BY AA, AND A NEW DOR CAN BE FILED WHEN APPROPRIATE.

(Minutes of Hearing, September 14, 2023.)

On September 19, 2023, the WCJ issued a "Notice of Intention to Impose Sanctions for Failure to Appear on 9/14/2023". The WCJ notice intent to sanction Susan Garrett \$2,500.00.

On October 5, 2023, Susan Garrett filed an objection and response to the notice of intent. Ms. Garrett explained that a hearing representative, Lance Garrett, was sick on the day of the hearing. (Response to Notice of Intent to Sanction, October 5, 2023.) Ms. Garrett did not explain why she was unable to attend. (See generally, *id.*)

The matter was reset for hearing on November 13, 2023. (Minutes of Hearing, November 13, 2023.) The WCJ set the matter over for trial on the issue of sanctions. (*Ibid.*) The WCJ deferred defendant's petition to dismiss. (*Ibid.*) The WCJ ordered both Susan Garrett and Lance Garrett to appear at trial in person and set the matter for virtual hearing on the representation of Lance Garrett that both he and Susan Garrett had approved ADA accommodations for virtual hearings. (*Ibid.*) Trial was set for January 18, 2024. (*Ibid.*)

On November 15, 2023, the WCJ issued a "Notice of Intention to Impose Sanctions for Misrepresentation on November 13, 2023", wherein the WCJ asserted that upon investigation no ADA accommodations had been granted for virtual hearings. ("Notice of Intention to Impose Sanctions for Misrepresentation on November 13, 2023", November 15, 2023.) The WCJ issued a notice to sanction Susan Garrett, Garret Law Group, and Lance Garrett, jointly and severally, \$2,500.00. (*Ibid.*) No objection was filed in response to this second notice of intent.

On December 5, 2023, the WCJ issued an order imposing sanctions of \$2,500.00.

On January 2, 2024, Susan Garrett filed a petition for reconsideration of the order of sanctions.

DISCUSSION

The Appeals Board is authorized under Labor Code section 5310 to remove to itself, as it deems necessary in any workers' compensation matter, "the proceedings in any claim." This power of removal is discretionary and is generally employed only as an extraordinary remedy. (Cal. Code Regs., tit. 8, § 10843, subd. (a); *Castro v. Workers' Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 1460 (writ den.); *Swedlow, Inc. v. Workers' Comp. Appeals Bd. (Smith)* (1985) 48 Cal.Comp.Cases 476 (writ den.).)

Pursuant to Labor Code¹, section 5813:

- (a) The workers' compensation referee or appeals board may order a party, the party's attorney, or both, 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. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars (\$2,500) to be transmitted to the General Fund.
- (b) The determination of sanctions shall be made after written application by the party seeking sanctions or upon the appeal board's own motion.

(§ 5813.)

The grounds for sanctions is described in Rule 10421, in pertinent part, as follows:

(b) Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit. Violations subject to the provisions of Labor Code section 5813 shall include but are not limited to the following:

- (1) Failure to appear or appearing late at a conference or trial where a reasonable excuse is not offered or the offending party has demonstrated a pattern of such conduct.

¹ All future references are to the Labor Code unless noted.

(2) Filing a pleading, petition or legal document unless there is some reasonable justification for filing the document.

* * *

(6) Bringing a claim, conducting a defense or asserting a position:

(A) That is:

(i) Indisputably without merit;

* * *

(iii) Done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation; and

(B) Where a reasonable excuse is not offered **or where the offending party has demonstrated a pattern of such conduct.**

(7) Presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law -- unless it can be supported by a non-frivolous argument for an extension, modification or reversal of the existing law or for the establishment of new law -- and where a reasonable excuse is not offered or where the offending party **has demonstrated a pattern of such conduct.** In determining whether a claim, defense, issue or argument is warranted under existing law, or if there is a reasonable excuse for it, consideration shall be given to:

(A) Whether there are reasonable ambiguities or conflicts in the existing statutory, regulatory or case law, taking into consideration the extent to which a litigant has researched the issues and found some support for its theories; and

(B) Whether the claim, defense, issue or argument is reasonably being asserted to preserve it for reconsideration or appellate review.

This subdivision is specifically intended not to have a “chilling effect” on a party's ability to raise and pursue legal arguments that reasonably can be regarded as not settled.

(Cal. Code Regs., tit. 8, § 10421 (emphasis added).)

The apparent conduct in this case appears to be part of a pattern of conduct by Ms. Garrett. However, it is impossible to tell whether a pattern of conduct has occurred in examination of a singular case. To fully examine the facts of whether sanctions are warranted, we must also examine the facts of other similar cases. Accordingly, we will grant reconsideration, and on our own motion, we will also grant removal of this case to study it alongside others and take further action as appropriate.

We observe that under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com.* (1958) 50 Cal.2d 360, 364.) “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied.”; see generally Lab. Code, § 5803 [“The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an 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.”].)

“The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect.” (*Azadigian v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen’s Comp. App. Bd.* (1967) 67 Cal.2d 483, 491 [62 Cal.Rptr. 757, 432 P.2d 365]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)*

(1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final'"]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Labor Code section 5901 states in relevant part that:

"No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. ..."

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

Accordingly,

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that **REMOVAL** of this case to the Appeals Board is also **GRANTED** on the motion of the Appeals Board.

IT IS FURTHER ORDERED that decisions after reconsideration and removal are **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

IT IS FURTHER ORDERED that pending the issuance of a Decision after Reconsideration and a Decision after Removal in the above case, all further correspondence, objections, motions, requests and communications relating to the petition(s) shall be filed only with the Office of the Commissioners of the Workers' Compensation Appeals Board at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102), or its e-mail address (WCABgrantforstudy@dir.ca.gov). It is within the discretion of the Workers' Compensation Appeals Board to determine whether any document submitted for filing is accepted for filing (Cal. Code Regs., tit. 8, § 10615(c) [eff. January 1, 2022]).

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

JOSEPH V. CAPURRO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 4, 2024

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

**BRENDA RODRIGUEZ
GARRETT LAW GROUP
BERNAL & ROBBINS
MICHAEL SULLIVAN & ASSOCIATES**

EDL/abs

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