

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

**JONATHAN ROLLINS (deceased), *Applicant***

**vs.**

**GXO LOGISTICS;  
EVEREST PREMIER INSURANCE COMPANY, Administered by CORVEL, *Defendants***

**Adjudication Number: ADJ18250757  
Van Nuys District Office**

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

Defendant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on September 11, 2024, wherein the WCJ found, in pertinent part, that the actions of defense counsel caused unreasonable delay of the claim and resulted in additional costs of litigation; and, that defense counsel acted intentionally to exclude a party from a witness deposition; and ordered defense counsel David Na to pay sanctions in the amount of \$999.00.

Defendant contends that the WCJ erred in ordering that defense counsel David Na (Na) pay sanctions in the amount of \$999.

We have not received an Answer from applicant.

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

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based upon our review of the record, we will grant defendant's Petition for Reconsideration and amend the F&A to defer the issue of applicant's

request for reasonable expenses, including attorney's fees and costs, and otherwise affirm the F&A.<sup>1</sup>

### **BACKGROUND**

Decedent died in a workplace accident on August 29, 2023. Separate Applications for decedent's benefits were filed by his brother, and by decedent's fiancée. The Applications were both filed in Case Number ADJ18250757, consistent with Labor Code section 4702 because each claim for benefits arose out of the same industrial incident.

Defendant's counsel Na scheduled depositions of the two applicants for decedents' benefits in March 2024, but did not allow decedent's fiancée or her counsel to attend the deposition of decedent's brother, claiming that she was not a party to the case.

On June 4, 2024, counsel for decedent's fiancée filed a "Petition for Sanctions, Costs and Attorney Fees pursuant to Labor Code §5813 and WCAB rule §10421," seeking an order granting applicant's request for sanctions, costs, and attorney's fees. She argued that Na should be sanctioned and should pay costs and attorney's fees, for his deliberate and willful actions including, but not limited to, failing to provide counsel with notice or access to decedent's brother's deposition despite multiple requests; intentionally interfering with decedent's fiancée discovery rights; causing unnecessary delay in the resolution of decedent's fiancée's claim; cancelling decedent's fiancée's deposition in order to further delay her claim; and failing to timely serve counsel with required documents. (Applicant's Petition for Sanctions, Costs and Attorney Fees, at pp. 2-10.)

The matter was set for trial on July 22, 2024, and continued to August 26, 2024.

On August 26, 2024, the matter was heard and submitted. The parties stipulated that decedent, while employed on August 29, 2023, as a forklift operator by GXO Logistics, suffered injury arising out of and in the course of employment (AOE/COE) to his head, chest, and internal organs, resulting in death; and defendant stipulated that the WCJ should take judicial notice of all pleadings filed in the case (Case Number ADJ18250757). (Minutes of Hearing, Summary of Evidence (MOH) 8/26/24, at p. 2.) The issues listed for trial were whether decedent's fiancée is a party; whether decedent's fiancée is entitled to be present at a witness deposition; if defense can be sanctioned for excluding decedent's fiancée from a witness deposition; whether the decedent's

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<sup>1</sup> We will also correct the clerical errors as to the date of March 24, 2024 deposition, WCAB Rule 10421, and the WCAB's address.

brother's deposition should be excluded from evidence; if the deposition is excluded, whether decedent's fiancée is entitled to a copy; whether defense counsel's actions caused unreasonable delay of the claim; and, whether the actions of defense were malicious and intentional. (MOH 8/26/24, at pp. 2-3.) The WCJ admitted Applicant's exhibits 1 through 10 and the Court's exhibits X, Y and Z, and indicated that "the Court will review the Petition for Sanctions, and each of the pleadings that have been listed in EAMS in their consideration of the issues." (MOH 8/26/24, at pp. 3-4.) Notably, defendant's attorney Na did not appear and sent a different attorney in his stead. Defendant submitted no exhibits and presented no witness testimony.

In the September 11, 2024 F&A, the WCJ found that decedent's fiancée is considered a party to the claim for benefits; she and her counsel would be entitled to attend the deposition of witnesses, including decedent's brother; the actions of defendant's counsel caused unreasonable delay of the claim; defendant's counsel's actions resulted in additional costs of litigation as to Applicant Aurora Alvarez; and defendant's counsel acted intentionally to exclude a party from a witness deposition. The WCJ ordered that the deposition was excluded from evidence; that defendant must provide decedent's fiancée's counsel with an un-redacted certified copy of the deposition forthwith; and pursuant to Labor Code section 5813 and WCAB Rule 10421 defendant's attorney is ordered to pay sanctions in the amount of \$999.00 to the WCAB. There is no finding as to applicant's attorney's requests for reasonable expenses, including costs and attorney's fees.

In the Opinion on Decision (OOD), issued with the September 11, 2024 F&A, the WCJ summarized some of applicant's counsel's arguments in the June 4, 2024 Petition for Sanctions, Costs and Attorney Fees, and thus acknowledged receipt of that Petition. (OOD, at p. 4.) The WCJ explained the basis for the sanctions order. (OOD, at pp. 6-7.) The WCJ did not, however, address applicant's attorney's request for costs and attorney's fees and made no order regarding those requests. Instead, the WCJ noted, inaccurately, that,

Has this resulted in time and cost to Applicant Alvarez and her counsel? Alvarez Counsel did not file a Petition for Costs and Sanctions. However, she did not set forth the costs in a timely fashion. Still, she was required to file a Petition. Alvarez Counsel spent time at MSC and Trial.

(OOD, at p. 7.)

## DISCUSSION

### I.

Former Labor Code<sup>2</sup> section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on October 10, 2024, and 60 days from the date of transmission is December 9, 2024. This decision is issued by or on December 9, 2024, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on October 10, 2024, and the case

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<sup>2</sup> All further statutory references are to the Labor Code unless otherwise noted.

was transmitted to the Appeals Board on October 10, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 10, 2024.

## II.

The Appeals Board is authorized to impose sanctions, costs and attorney's fees under section 5813, which states, in pertinent part, that:

- (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(a) and (b).)

Sanctions under section 5813 are designed to punish litigation abuses and to provide the court with a tool for curbing improper legal tactics and controlling their calendars. (*Duncan v. Workers' Comp. Appeals Bd.* (2008) 166 Cal.App.4th 294, 302.) Accordingly, sanctions are similar to penalties under section 5814, in that they are designed to have both remedial and penal aspects. (See *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324 (Appeals Board En Banc).)

Orders for sanctions, costs and attorney's fees can be based upon the WCJ's own motion or on a petition filed pursuant to WCAB Rule 10510. (Cal. Code Regs., tit. 8, §§ 10421(a), 10510.) Before issuing such an order, "the alleged offending party or attorney must be given notice and an opportunity to be heard." (Cal. Code Regs., tit. 8, §§ 10421(a).) WCAB Rule 10421, subdivision (b), authorizes sanctions for a party who has committed "[b]ad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay including actions or tactics that result from 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." (Cal. Code Regs., tit. 8, § 10421(b).) Subdivision (b) provides a comprehensive but non-exclusive list of actions that could be subject to sanctions. As applicable here, violations subject to sanctions, pursuant to WCAB Rule 10421(b), include:

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

(A) That is:

- (i) Indisputably without merit;
- (ii) Done solely or primarily for the purpose of harassing or maliciously injuring any person; and/or
- (iii) Done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation; and

(B) Where 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 . . .

(8) Asserting a position that misstates or substantially misstates the law, and where a reasonable excuse is not offered or whether the offending party has demonstrated a pattern of such conduct.

(9) Using any language...in any pleading or other document:

(A) Where the language or gesture:

- (i) Is directed ...to any party (or the attorney or non-attorney representative for a party); and
- (ii) Is patently insulting, offensive, insolent, intemperate, foul, vulgar, obscene, abusive or disrespectful...

(Cal. Code Regs., tit. 8, § 10421(b).)

Here, the WCJ explained that Na's actions fell within the description of a sanctionable conduct under WCAB rule 10421, subdivision (b), including "caus[ing] unreasonable delay of the claim;" causing additional costs for the carrier and for applicants; and "show[ing] disdain and disrespect for the proceedings." (OOD at pp. 6-7; Report at pp. 5-7.) We agree. We conclude that sanctions pursuant to section 5813 and WCAB Rule 10421(b) (6), (7), (8) and (9) were warranted.

As noted by the WCJ, the order here complied with due process, because Na was provided with notice and an opportunity to be heard prior to sanctions being ordered. (OOD, at p. 7; Cal.

Code Regs., tit. 8, § 10421(a).) Na received written notice that sanctions could be ordered, in Applicant's June 4, 2024, Petition for Sanctions, Costs and Attorney Fees and in the Pretrial Conference Statement issued on July 22, 2024. Section 5813 provided Na with notice that the sanctions amount could be up to \$2500. (Lab. Code § 5813(a).) Moreover, Na was given an opportunity to be heard on the issue of sanctions at the August 26, 2024, trial. He did not take advantage of that opportunity; instead, he chose not to appear at the trial and not to submit exhibits or call any witnesses to explain his actions. (OOD, at p. 7; MOH 8/26/24.) Na used a further opportunity to be heard when he filed his Petition for Reconsideration in this matter.

Finally, we address Na's mistaken assertion, in his Petition, that the WCJ indicated "that the appeals Board would notify the State Bar" regarding the sanctions ordered against Na. (Petition, at p. 5.) In fact, the order here, for sanctions in the amount of \$999, does not reach the threshold amount for State Bar reporting. (Bus. & Prof. Code, § 6086.7(a)(3).) In the Opinion on Decision, the WCJ cited the general rule that orders for sanctions must be reported to the California Bar when the amount ordered is \$1000 or above; he did not indicate that such reporting would occur in this case. (OOD, at p. 9.)

Accordingly, we find no error in the order that defense counsel Na pay sanctions in the amount of \$999.

### III.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, former § 10566, now § 10787 (eff. Jan. 1, 2020).) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board

if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Id.*, at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].)

Here, applicant’s June 4, 2024, Petition requested costs and attorney’s fees, in addition to sanctions. (Applicant’s Petition for Sanctions, Costs and Attorney Fees, at pp. 1, 10.) This Petition was listed on applicant’s exhibit list for trial in the Pre-Trial Conference Statement. (PTCS 7/22/24, at p. 5.) Although without legal import since the WCJ has the right to do so, defendant stipulated that the WCJ could take judicial notice of all pleadings, so that defendant made clear that it had no objection to the WCJ doing so. Even though these requests for costs and attorney’s fees were not explicitly included in the issues list for trial, the WCJ nevertheless indicated “Let the minutes further reflect that the Court will review the Petition for Sanctions, and each of the pleadings that have been listed in EAMS in their consideration of the issues.” (MOH 8/26/24, at p. 4.) The evidence at trial demonstrated that Applicant’s Counsel spent a significant amount of time corresponding with defense counsel regarding defense’s sanctionable conduct. (Applicant’s Exhibits 3-5, 6-9; Court’s Exhibits X, Y, Z.) However, no evidence was put on at trial regarding the hourly or dollar amounts requested for attorney’s fees or costs for applicant’s attorney. In the F&O, the WCJ addressed only the request for sanctions, and made no findings or orders regarding the requests for costs and attorney’s fees. (F&O, at pp 1-2.) The WCJ mistakenly concluded that no request for attorney’s fees and costs had been filed. (OOD, at p. 7.) Since a valid Petition for sanctions, costs and attorney’s fees was filed by applicant’s counsel, but the requests for costs and attorney’s fees were not addressed at trial, we will defer the issue. We strongly suggest that the parties adjust the issue of reasonable expenses, including costs and attorney’s fee. If the parties are unable to resolve the issue, applicant’s attorney can file a Declaration of Readiness for further proceedings.

Accordingly, we grant defendant’s Petition for Reconsideration, amend the F&A to defer the issue of applicant’s request for reasonable expenses, including attorney’s fees and costs, correct the clerical errors as to the date of the deposition, WCAB Rule 10421, and the address of the Appeals Board, and otherwise affirm the F&O.



For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the Findings and Award and Sanctions of September 11, 2024, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of September 11, 2024, is **AFFIRMED** except that it is **AMENDED** as follows:

**FINDINGS OF FACT**

4. The nature of the actions of defendant resulted in additional costs of litigation as to applicant Aurora Alvarez. The issue of applicant's entitlement to reasonable expenses, including attorney's fees and costs, is deferred.

**ORDER**

The deposition of Daniel Rollins, dated March 24, 2024, is hereby excluded from evidence.

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Pursuant to Labor Code section 5813 and WCAB Rule 10421, defense counsel David Na is ordered to pay sanctions in the amount of \$999.00 within 20 days to:

**THE WORKERS' COMPENSATION APPEALS BOARD**  
tax ID No. is 94-3160882

The check is to be mailed to:

The Workers' Compensation Appeals Board  
455 Golden Gate Avenue, Ste. 9328  
San Francisco, CA 94102,  
Attn: Julie Podbereski

*The case name and case number must be included on the memo portion of the check.*

**WORKERS' COMPENSATION APPEALS BOARD**

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

I CONCUR,

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

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



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

**December 9, 2024**

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

**AURORA ALVAREZ  
DANIEL ROLLINS  
IV LAW GROUP, APC  
DAVID JANE & ASSOCIATES  
ROBERT OZERAN**

**MB/ara**

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