

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

LETICIA HERRERA CASTELAN, *Applicant*

vs.

**MINISTERIOS CRISTIANOS FORO DE LUZ; ZURICH INSURANCE BY
GALLAGHER BASSETT, *Defendants***

**Adjudication Numbers: ADJ15800852; ADJ15800853
Van Nuys District Office**

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

Lien claimant United Certified Interpreting seeks reconsideration of the May 15, 2024 Joint Order [of] Dismissal of Lien, wherein the workers' compensation administrative law judge (WCJ) found that lien claimant "United Cert Interpreting" failed to appear at the lien conference of April 10, 2024, and failed to object to the Notice of Intent to Dismiss Lien served on April 12, 2024. Consequently, the WCJ ordered the lien dismissed with prejudice.

United Certified Interpreting contends that the designated hearing representative was ill on the date of the lien conference, and that lien claimant inadvertently failed to respond to the Notice of Intent due to clerical error. Lien claimant requests that we rescind the dismissal of its lien and return the matter to the trial level for adjudication on the merits.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration 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 discussed below, we will grant lien

claimant's Petition, rescind the May 15, 2024 Joint Order Dismissing Lien, and return this matter to the trial level.

FACTS

Lien claimant United Certified Interpreting filed a lien for interpreting services on March 7, 2024. The Notice and Request for Allowance of Lien lists Collective Resources Long Beach as lien claimant's non-attorney representative. The accompanying proof of service lists defendant's third-party administrator, the employer, and applicant's counsel.

On March 8, 2024, defendant served notice of a lien conference scheduled for April 10, 2024. The accompanying proof of service establishes service on parties on March 8, 2024. The notice was served on United Certified Interpreting as well as on its non-attorney representatives.

On April 10, 2024, the WCJ conducted a lien conference. United Certified Interpreting made no appearance. The WCJ issued a "Joint Notice of Intent to Order Dismissal of Lien," on the same day, indicating that despite having been provided with notice of hearing, United Certified Interpreting failed to appear at lien conference. The notice provided lien claimant with 20 days in which to object. Service was delegated to defendant who filed a proof of service dated April 12, 2024. The proof of service lists both lien claimant and its representative.

On May 15, 2024, the WCJ issued an Order noting that no timely objection had been received in response to the April 10, 2024 Notice of Intent, and dismissed the lien of "United Cert Interpreting Valley Village," with prejudice. The Order was served on parties, including defendant's third-party administrator in Clinton, Iowa.

On June 12, 2024, lien claimant filed the instant Petition. Lien claimant avers it failed to attend the April 10, 2024 lien conference due to illness of its lien representative, and that it failed to respond to the Notice of Intent to dismiss its lien through inadvertence and clerical error. (Petition, at p. 2:7.) Lien claimant contends that these errors amount to "excusable neglect" pursuant to Code of Civil Procedure section 473, and that longstanding public policy supports hearing and adjudication on the underlying merits of the lien claim. (*Id.* at p. 2:16.)

The WCJ's Report observes that the Petition was filed 29 days after the service of the order dismissing the lien of United Certified Interpreters and was therefore not filed within twenty days plus five days for mailing as provided by Labor Code section 5903 and WCAB Rule 10605. (Cal. Code Regs., tit. 8, § 10605.) The WCJ's Report also states the record contains no notice of

representation filed or signed by or on behalf of United Certified Interpreting that would indicate that it had knowledge of its representative, or that the representative is a non-attorney, as required by Workers' Compensation Appeals Board (WCAB) Rule 10868 (Cal. Code Regs., tit. 8, § 10868.) The Report also points out that lien claimant failed to appear at the noticed lien conference, provided no notice that its representative was ill, and did not respond to the notice of intent to dismiss. Accordingly, the WCJ recommends we deny the Petition.

DISCUSSION

We note at the outset that lien claimant's petition was timely filed. There are 20 days allowed within which to file a petition for reconsideration from a "final" decision. (Lab. Code, §§ 5900(a), 5903.) This time is extended by 10 calendar days if service is made to an address outside of California but within the United States. (Cal. Code Regs., tit. 8, § 10605(a)(1).) While lien claimant and its non-attorney representative received service of the decision within California, defendant was served at an address outside of California. Accordingly, and to observe due process for all parties, we interpret Rule 10605 as extending the time to file for all parties being served. (See also *Mayfield v. Walmart* (April 29, 2022, ADJ12158478, ADJ14880350) [2022 Cal. Wrk. Comp. P.D. LEXIS 120]; *Thomas v. Volt Information Sciences* (April 18, 2022, ADJ10713815) [2022 Cal. Wrk. Comp. P.D. LEXIS 104]; *Rascon v. Bay Cities Paving & Grading* (July 17, 2023, ADJ9553015) [2023 Cal. Wrk. Comp. P.D. LEXIS 222].)

We also observe that the Notice and Request for Allowance of Lien filed by United Certified Interpreting on March 7, 2024 lists Collective Resources Long Beach as its non-attorney representative. Thus, lien claimant designated its representative, and was aware that its representative was not an attorney.

We also note that the original Declaration of Readiness to Proceed (DOR) to lien conference in this matter was filed on September 22, 2023 by another lien claimant. Pursuant to the Electronic Adjudication Management System (EAMS), notice of the lien conference was served on September 25, 2023. Both the filing of the DOR and the notice of hearing issued by the WCAB antedated the filing of the lien by United Certified Interpreters on March 7, 2024. Thus, lien claimant was not served with the initial DOR or WCAB notice of the hearing. Defendant issued its own Notice of Hearing on March 8, 2024, one day after the filing of the lien by United Certified Interpreting. Thus, the only notice of the lien conference effectuated on lien claimant

herein was served one day after the filing of its lien and provided notice of a lien conference scheduled for approximately 33 days later. WCAB Rule 10873(a)(4) (Cal. Code Regs., tit. 8, § 10873(a)(4)) provides that following the filing of a DOR for lien conference, and to the extent feasible, the date of the lien conference “shall be no sooner than 60 days after the date the notice of hearing for it is served.” The delay between the filing of a DOR and the lien conference reflects the need for the parties, including lien claimants and defendants, to gather billing, filing information, declarations, invoices and other information necessary to a productive settlement discussion at the lien conference. Here, the timing of the preexisting lien conference allowed only for minimal time for the parties to prepare to resolve the lien filed on March 7, 2024.

In addition, lien claimant’s Petition seeks relief under section 473(b), which permits the trial court to relieve a party from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect. A motion seeking relief under section 473 is addressed to the sound discretion of the trial court; its decision will not be overturned on appeal absent a clear showing of abuse of discretion. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478 [243 Cal. Rptr. 902, 749 P.2d 339]; *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233 [211 Cal. Rptr. 416, 695 P.2d 713].) “That discretion, however, is not a capricious or arbitrary discretion, but an impartial discretion, guided and controlled in its exercise by fixed legal principles. It is not a mental discretion, to be exercised ex gratia, but a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.” (*Rivercourt Co. Ltd. v. Dyna-Tel, Inc.* (1996) 41 Cal.App.4th 1477, 1480 [49 Cal. Rptr. 2d 279].)

The court of appeal has confirmed that Code of Civil Procedure section 473(b) may afford relief in workers’ compensation proceedings. In *Fox v. Workers’ Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196 [6 Cal. Rptr. 2d 252, 57 Cal. Comp. Cases 149] (*Fox*), J. Dewitt Fox, M.D., a physician and lien claimant, sought relief from an order dismissing his lien claim for failure to appear at a WCAB hearing. (*Fox, supra*, at p. 1199.) After issuing a notice of intent to dismiss the lien (it is unclear whether Dr. Fox objected to the NIT), the WCJ dismissed the lien. Lien claimant sought reconsideration 43 days later, which the WCAB denied as untimely, noting that even were the petition timely, it would have denied the petition on the merits. (*Id.* at 1200.) Thereafter, Dr. Fox sought to set aside the dismissal of the lien citing, inter alia, Code of Civ. Proc., section

473. In support of the section 473 assertion, Dr. Fox stated that his nonappearance was the result of intractable back pain, a herniated disc, and the departure of a key member of his staff. (*Ibid.*)

The court of appeal held:

Dr. Fox chose an appropriate and timely method for seeking relief from the dismissal for his failure to appear. We note also that the California Supreme Court, in *Shamblin v. Brattain* (1988) 44 Cal. 3d 474, 478 [243 Cal. Rptr. 902, 749 P.2d 339], has reaffirmed some basic principles relating to relief from default. “It is the policy of the law to favor, whenever possible, a hearing on the merits. Appellate courts are much more disposed to affirm an order when the result is to compel a trial on the merits than when the default judgment is allowed to stand. [Citation.] Therefore, when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.”

(*Fox, supra*, at pp. 1205–1206.)

Here, as in *Fox, supra*, lien claimant’s failure to appear at a hearing where its presence was mandated resulted in the dismissal of the underlying lien claim. And here, as in *Fox*, lien claimant seeks relief under Code Civ. Proc., section 473(b), averring mistake and excusable neglect in its failure respond to a Notice of Intent to dismiss. (Petition, at p. 2:24.)

Based on the above, we believe that the brief interval between the filing of the lien and the ensuing lien conference, coupled with the lien claimant’s verified averment of illness on the date of the lien conference, are sufficient to justify the requested relief, both on grounds of due process, and on the grounds of mistake and excusable neglect in failing to respond to the Notice of Intent. Accordingly, we will rescind the May 15, 2024 Joint Order dismissing the lien of United Certified Interpreting, and return this matter to the trial level for further proceedings and decision by the WCJ.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of May 15, 2024 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 15, 2024 Joint Order [of] Dismissal of Lien is **RESCINDED** and that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 12, 2024

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

**UNITED CERTIFIED INTERPRETING VALLEY VILLAGE
COLLECTIVE RESOURCES
WORK COMP RESOLUTIONS**

SAR/abs

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