

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

**MARIA RUIZ RAMIREZ, *Applicant***

**vs.**

**KIRSCHENMAN ENTERPRISES, INC.;  
LIBERTY MUTUAL PLEASANTON, *Defendants***

**Adjudication Number: ADJ12590679  
Bakersfield District Office**

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

Applicant seeks reconsideration of the Order Dismissing Case (Order) without prejudice issued by the workers' compensation administrative law judge (WCJ) on February 23, 2024.

Applicant contends that her case should not have been dismissed.

We did not receive an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny applicant's petition.

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 as discussed below, we will grant the Petition for Reconsideration, rescind the Order Dismissing Case as void ab initio, and return this matter to the WCJ for further proceedings consistent with this opinion.

**BACKGROUND**

Applicant claims to have sustained a cumulative injury to multiple body parts while employed by defendant as a sorter from July 14, 2017 to July 14, 2018<sup>1</sup>.

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<sup>1</sup>On March 16, 2020, applicant amended the date of her cumulative injury from July 16, 2018 to July 16, 2019 to July 14, 2017 to July 14, 2018.

On December 26, 2023, applicant's attorney filed a Declaration of Readiness to Proceed (DOR) to a Mandatory Settlement Conference (MSC) requesting an afternoon hearing on January 25, 2024 on the basis that applicant was found permanent and stationary (P&S) by her primary treating physician finding causation of her injury to be industrial, and despite good faith settlement efforts the matter could not be resolved.

Thereafter, on January 2, 2024, defendant filed and served a Petition to Dismiss Inactive Case dated December 22, 2023, attaching a copy of the 30-day letter dated November 2, 2023, advising applicant of the intent to do so as required by Rule 10550(b). (Cal. Code Regs. § 10550(b).)

On the date of the MSC, applicant filed a Report by PTP Paul Aubin, M.D., dated September 22, 2021, indicating that applicant was P&S.

At the hearing of January 25, 2024, the matter was continued upon request of applicant to another MSC as defendant did not appear. The new date was set for February 29, 2024 at 8:30 a.m. The minutes of hearing were served on January 31, 2024.

On January 30, 2024, defendant filed a verified objection to the applicant's December 26, 2023 DOR on numerous grounds, including defective service of the DOR and that discovery was not ready to be closed.

On February 1, 2024, the WCJ issued a Notice of Intention To Dismiss Case (NIT), based on defendant's December 22, 2023 Petition to Dismiss For Lack of Prosecution. On February 8, 2024, defendant served the NIT on all parties.

On February 23, 2024, the WCJ issued an Order Dismissing Case (Order) without prejudice.

## **DISCUSSION**

A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) 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. (*Maranian v.*

*Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Id.* at p. 1075 ["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"].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

Here, the WCJ's February 23, 2024, Order Dismissing Case is a final Order.

The WCJ may issue a Notice of Intention (NIT) 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.*) Pursuant to WCAB Rule 10832 (c), if an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may: (1) Sustain the objection; (2) Issue an order consistent with the notice of intention together with an opinion on decision; or set the matter for hearing. (Cal. Code Regs., tit. 8, § 10832 (c).)

Unless a case is activated for hearing within one year after filing of the Application for Adjudication of Claim or the entry of an order taking off calendar, the case may be dismissed after notice and opportunity to be heard. Such dismissals may be entered at the request of an interested party or upon the Workers' Compensation Appeals Board's own motion for lack of prosecution. (Cal. Code Regs. tit. 8, § 10550 (a).)

Here, on February 1, 2024, the WCJ issued a NIT to dismiss the case apparently in response to defendant's petition to dismiss filed and served on January 2, 2024. In the instant matter, the WCJ had no authority to issue the NIT. Applicant activated her case for hearing when her attorney filed the DOR on December 26, 2023. Thus, the WCJ improperly issued a NIT to dismiss for inactivity after the case had been activated for hearing. The Petition to Dismiss was served after the DOR was filed, and thus no NIT should have issued in the first instance. As such, the Order of Dismissal is void ab initio.

The matter had been continued to February 29, 2024 by the WCJ after applicant's counsel requested same at the January 25, 2024 hearing, however, in lieu of holding that hearing, the WCJ

incorrectly issued a NIT to dismiss for inactivity. The hearing, had it taken place, may have afforded the parties an opportunity to be heard and proceed on disputed issues, or perhaps reach another resolution. Accordingly, we grant applicant's petition for reconsideration. It is our decision after reconsideration to rescind the Order Dismissing Case and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration of the Order Dismissing Case issued by a workers' compensation administrative law judge on February 23, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Dismissing Case issued on February 23, 2024 by a workers' compensation administrative law judge is **RESCINDED** as void ab initio and that this matter is **RETURNED** to the WCJ for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**May 6, 2024**

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

**MARIA RUIZ RAMIREZ  
THE NIELSEN FIRM  
LAW OFFICES OF KIRK & MYERS**

**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*