

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

TERRI ZGURO, *Applicant*

vs.

**ARDIAN TRUCKING;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ1993155 (AHM 0117322);
ADJ984342 (AHM 0107881); ADJ3628933 (AHM 0106754)
Anaheim District Office**

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

Applicant, acting in pro per,¹ seeks reconsideration of the Order denying petition to set aside dismissal, issued by the workers' compensation administrative law judge (WCJ) on September 12, 2024, in case numbers ADJ1993155 and ADJ984342, where the WCJ concluded that the WCAB does not have jurisdiction to reopen the cases.

Applicant contends that she was not served with the petition to dismiss, as it was sent to an address at which she no longer resides, and thus she was denied due process.

We have not received an Answer from defendant. On November 1, 2024, applicant filed a supplemental Petition. WCAB Rule 10964 requires that supplemental pleadings or responses other than the Answer shall be considered only when specifically requested or approved by the Appeals Board. (Cal. Code Regs., tit. 8, § 10964(a).) Our Rules further require that a party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading. (Cal. Code Regs., tit. 8, § 10964(b).) Applicant did not seek the permission of the WCAB to file supplemental pleadings, or set forth good cause for doing so. Accordingly, we have not considered applicant's supplemental Petition.

¹ Applicant filed a Notice of Dismissal of Attorney on December 16, 2016.

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

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record, and for the reasons discussed below, we will grant applicant's Petition, vacate the Order dismissing case numbers ADJ1993155 and ADJ984342, issued by the WCJ on July 30, 2019, as void ab initio, we will rescind the Order denying applicant's Petition to set aside the dismissals issued by the WCJ on September 12, 2024, and we will return the matter to the WCJ for further proceedings consistent with this decision.

BACKGROUND

We will briefly review the relevant facts.

Applicant filed three separate claims (case numbers ADJ1993155, ADJ984342, and ADJ3628933), claiming industrial injury to various body parts, with various dates of injury in 2002 and 2003.

On December 16, 2016, applicant filed a dismissal of attorney in ADJ1993155 and ADJ3628933.

On December 16, 2016, applicant filed a change of address in ADJ1993155 and ADJ3628933. The new address was 201 S Walnut Avenue G2, Cookeville TN 38501.

On June 10, 2019, SCIF filed a petition for dismissal in cases ADJ1993155, ADJ984342, and ADJ3628933. SCIF served applicant at 201 S Walnut Avenue G2, Cookeville TN 38501.

On July 30, 2019, the WCJ issued an Order dismissing cases ADJ1993155 and ADJ984342. As to case number ADJ3628933, the WCJ denied dismissal. The WCJ served applicant at 201 S Walnut Avenue G2, Cookeville TN 38501, listing applicant's name as "TERRI ZGURO INVALID." We note that applicant's name also contains "INVALID" on the caption of the Order of dismissal.

On June 24, 2019, the WCJ issued a notice of intention to dismiss cases ADJ1993155 and ADJ984342, stating that dismissal of ADJ3628933 would be denied, as SCIF only made a special appearance in the matter. The WCJ again served applicant at 201 S Walnut Avenue G2, Cookeville TN 38501, listing applicant's name as "TERRI ZGURO INVALID." Applicant's name on the caption also includes "INVALID".

On October 19, 2024, applicant filed a petition to set aside the dismissal in cases ADJ1993155 and ADJ984342. Applicant stated:

I had moved out of TN in Aug of 2017. I been residing in California since Oct of 2017. In 2016, I had talke (sic) to the insurance company because I got a letter at my sisters address requesting to hear from someone, that's when I found out my attorneys number is not in service. The insurance company told me they denied my case at a deposition, that I was not aware of, so I ask them to send paper work which I have. So since I was not notified because I have moved and reside back in Calif I am requesting my cases be reopened.

On September 12, 2024, the WCJ issued an Order, denying applicant's petition to set aside the dismissal in cases ADJ1993155 and ADJ984342.

DISCUSSION

I.

Former Labor Code section² 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 8, 2024, and 60 days from the date of transmission is Sunday, December 8, 2024. The next business

² All statutory references are to the Labor Code unless otherwise stated.

day that is 60 days from the date of transmission is Monday, December 9, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)³ This decision is issued by or on Monday, 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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on October 8, 2024, and the case was transmitted to the Appeals Board on October 8, 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 8, 2024.

II.

Article XIV, section 4 of the California Constitution mandates that the workers' compensation law shall be carried out "...to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character..." Based on the constitutional mandate to accomplish substantial justice, the Board has a duty to develop an adequate record. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal. Comp. Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1120 [63 Cal.Comp.Cases 261].)

We remind the WCJ that judgments on the pleadings are not permitted in Workers' Compensation. (Cal. Code Regs., tit. 8, 10515.) Additionally, "[t]he Board 'is bound by the due process clause of the Fourteenth Amendment to the United States Constitution to give the parties before it a fair and open hearing...[a]ll parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents

³ WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

and to offer evidence in explanation or rebuttal. (*Rucker v. Workers' Comp Appeals Bd.* (2000) 85 Cal.App.4th 151 [65 Cal.Comp.Cases 805].)

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.” (*Hamilton, supra*, at 475.) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].)

The WCJ must prepare a Minutes of Hearing and Summary of Evidence (MOH/SOE) at the conclusion of each hearing. (Cal. Code Regs., tit. 8, § 10787(c).) Even if the disposition is an order taking the matter off calendar, the MOH/SOE must include the issues and matters in controversy, a descriptive listing of exhibits received in evidence, if any, and the disposition of the matter. (Cal. Code Regs., tit. 8, § 10787(c)(3)-(4).)

The Appeals Board's record of proceedings is maintained in the adjudication file and includes: the pleadings, minutes of hearing, summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits identified but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. “Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings.” (Cal. Code Regs., tit. 8, § 10803.) According to the WCJ's Report, applicant spoke with personnel at the district office about the dismissals and, on October 5, 2020, an Information and Assistance Officer updated her address in EAMS. However, no evidence was admitted to the record. Also, to the extent that the WCJ refers to confidential notes in EAMS, a declaration prepared by an Information and Assistance Officer, based on confidential notes, is not evidence.

Here, the adjudication file in EAMS does not contain a Minutes of Hearing and Summary of Evidence as to applicant's Petition, there are no stipulations and/or issues identified, and there is no evidence admitted into the record. The absence of an evidentiary record bars meaningful review of whether the WCJ's Order is supported by substantial evidence admitted in the record and whether the Order is in accordance with the applicable statutory and regulatory authority.

In verified pleadings, applicant stated - in essence - that she did not receive the notice of intent to dismiss the cases, which raises procedural due process concerns as to whether the required notice was received by applicant. It is one of the basic tenets of jurisprudence that a party must be provided notice and an opportunity to be heard before their case is dismissed. (See, e.g., *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].) Thus, the failure to serve applicant with the notice of intent is not only a violation of WCAB Rules; it constitutes a fundamental violation of applicant's due process rights, rendering the resulting July 30, 2019, Order dismissing cases ADJ1993155 and ADJ984342 void on its face.

WCAB Rule 10205.5(c) states that every party shall advise the district office and all parties of any change of mailing address and telephone numbers by furnishing the current information within five business days of any change. (Cal. Code Regs., tit. 8, § 10205.5(c).) This duty to maintain an accurate mailing address is, in part, to effectuate service of documents. Although we are sympathetic to the WCJ's apparent frustration that applicant did not timely update her address with the WCAB, all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing.

Accordingly, we grant applicant's Petition for reconsideration, vacate the Order dismissing case numbers ADJ1993155 and ADJ984342, issued by the WCJ on July 30, 2019, rescind the Order denying applicant's Petition to set aside the dismissals issued by the WCJ on September 12, 2024, and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order dismissing case numbers ADJ1993155 and ADJ984342, issued by the WCJ on July 30, 2019, is **VACATED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order denying applicant's Petition to set aside the dismissal of case numbers ADJ1993155 and ADJ984342, issued by the WCJ on September 12, 2024, is **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, 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.

**TERRI ZGURO
ROSE KLEIN
SCIF LAW FIRM**

JB/pm

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