

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

**CITLALLI VAZQUEZ, *Applicant***

**vs.**

**PETRA PROPERTY INC., DBA SUPER COIN LAUNDRY; SEQUOIA INSURANCE  
COMPANY, administered by AMTRUST NORTH AMERICA, *Defendants***

**Adjudication Number: ADJ12320904  
Van Nuys District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Applicant seeks reconsideration of the Order of Dismissal (Order) issued by the workers' compensation administrative law judge (WCJ) on May 22, 2023, wherein applicant's claim was dismissed without prejudice for failure to prosecute, pursuant to WCAB Rule 10550. (Cal. Code Regs., tit. 8, § 10500.)

Applicant contends in the Petition that due to personal circumstances, including experiencing domestic violence, being hospitalized, and becoming homeless, she "did not receive any notices regarding a petition for dismissal of her injuries." She contends, further, that upon learning of her attorney's disbarment in June 2024, applicant substituted in her current attorney, Mr. Gettleston, who filed the Petition on her behalf.

We did not receive an Answer from defendant.

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

We have considered the allegations of the Petition for Reconsideration (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 dismiss the Petition and return this matter to the trial level for consideration of the Petition as one to set aside the dismissal order.

## BACKGROUND

On June 27, 2019, applicant filed an Application for Adjudication (Application), in which she alleged that on June 17, 2019, while employed by defendant as a janitor, she injured various body parts when she slipped and fell. Applicant's attorney at this time was Antony Gluck.

On January 15, 2020, applicant was ordered to attend a PQME evaluation. She completed this evaluation on May 14, 2021. (Defendant's 11/29/21 Petition to Compel MRI, at p. 2.)

On March 5, 2020, applicant dismissed her first attorney, Gluck, and substituted in attorney Vincent Quigg.

Defendant filed a petition to compel applicant to undergo an MRI and a declaration of readiness (DOR) on November 29, 2021, requesting an order that applicant participate in an MRI as recommended by the PQME, and requesting a settlement conference regarding discovery issues. In the DOR, defendant noted that applicant's attorney, Quigg, "has been unresponsive" to defendant's requests.

The WCJ ordered applicant to participate in the MRI, on January 26, 2022.

On February 17, 2022, the parties made a joint request for the matter to be taken off calendar, which was granted. Hearing representative "Jamie Gomez" appeared on applicant's behalf.<sup>1</sup>

On April 14, 2023, defendant filed a petition to dismiss inactive case, pursuant to WCAB Rule 10550(d). In it, defendant argued:

"Applicant last treated in 2019. There was a hearing on February 17, 2022, and Applicant's Attorney confirmed that they lost track of the Applicant. A Notice of Intent to seek Dismissal for lack of prosecution was sent to Applicant's Attorney and the Applicant at all last known addresses on March 3, 2023. No response has been received from Applicant's Attorney or Applicant. As such this case should be dismissed for lack of prosecution pursuant to Title 8, CCR § 10550."

(Petition to Dismiss, at p. 3.)

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<sup>1</sup> On January 4, 2022, State Bar Court proceedings were initiated against applicant's attorney, Quigg, when his criminal conviction was forwarded to the State Bar Court. (See State Bar Court case number SBC-22-C-30002.) WCAB Rule 10445 states that,

"[a]n attorney who has been disbarred or suspended by the Supreme Court for reasons other than nonpayment of State Bar fees, or who has been placed on involuntary inactive enrollment status by the State Bar or who has resigned while disciplinary action is pending shall be deemed unfit to appear as a non-attorney representative of any party before the Workers' Compensation Appeals Board during the time that the attorney is precluded from practicing law in this state." (Cal. Code Regs., tit. 8, § 10445.)

On April 26, 2023, the WCJ issued a Notice of Intention to dismiss (NIT), indicating that the matter would be dismissed ten days after the date of service, unless applicant made a good cause showing that she has not failed to prosecute the matter. Service of the NIT was delegated to defendant's attorneys. The proof of service for the NIT reflects that it was served May 2, 2023 on applicant at "7828 Crocker St Los Angeles, CA 90003" and "3733 West 64th St., Los Angeles, CA 90043." The record does not contain any objection to the NIT by any person.

On May 22, 2023, the WCJ issued the Order dismissing applicant's claim without prejudice. According to the proof of service, it was served on applicant at "7828 Crocker St Los Angeles, CA 90003."

On October 13, 2023, Quigg filed an amended Application for applicant. The amended Application listed "4200 West Century Blvd No 149, Inglewood 90304" as applicant's address. Under Section 2, which asks for a description of how the injury occurred, it alleged that: "Applicant did not receive notice as she was out of the country due to death in the family and wishes the have the matter heard on its merits [*sic*]."

Quigg remained applicant's attorney of record until November 18, 2024, when applicant filed a Notice of Dismissal of Attorney form and a substitution of counsel form indicating that she was now represented by Mr. Gettleson. On the same date, applicant filed a change of address form, and her Petition.

Applicant contends in the Petition that shortly after her PQME evaluation in 2021, she was hospitalized due to domestic violence perpetrated by her boyfriend at that time, and she subsequently became homeless and lost contact with her attorney. She did not receive any notice of the request for dismissal. In June 2024, after a social worker gave her the WCAB phone number, applicant was able to call the WCAB, which provided her with information to contact Quigg. When she called his office, she was notified of his disbarment.

## **DISCUSSION**

### **I.**

Former Labor Code section 5909<sup>2</sup> 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:

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<sup>2</sup> All section references are to the Labor Code, unless otherwise indicated.

(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 November 27, 2024 and 60 days from the date of transmission is Sunday, January 26, 2025. The next business day that is 60 days from the date of transmission is Monday, January 27, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>3</sup> This decision is issued by or on Monday, January 27, 2025, 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 November 27, 2024, and the case was transmitted to the Appeals Board on November 27, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that

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<sup>3</sup> 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.

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 November 27, 2024.

## II.

WCAB Rule 10550 provides for administrative dismissal of a case not activated for hearing within one year after the filing of the Application for Adjudication of Claim or the entry of an order taking off calendar, after notice and opportunity to be heard. (Cal. Code Regs., tit. 8, § 10550(a).) A letter must be sent to applicant and applicant's attorney, at least 30 days prior to the filing of the petition to dismiss, letting applicant know that a petition will be filed unless applicant objects in writing. (Cal. Code Regs., tit. 8, § 10550(b).) The petition must be filed with a copy of the letter and served on all parties. (Cal. Code Regs., tit. 8, § 10550(c), (e).) The case may be dismissed after issuance of a 10-day notice of intention (NIT) to dismiss and an opportunity to be heard. (Cal. Code Regs., tit. 8, §§ 10550(f), 10832.) Under WCAB Rule 10550, dismissal is discretionary, not mandatory. (*Roth v. Workers' Comp. Appeals Bd.* (1971) 20 Cal.App.3d 452, 458 [36 Cal.Comp.Cases 604].) There is a strong public policy favoring disposition of cases on their merits rather than on procedural grounds. (*Bland v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 324 [35 Cal.Comp.Cases 513]; *Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485 [67 Cal.Comp.Cases 1273]; *Moore v. Waste Mgmt.* (2014) 2014 Cal.Wrk.Comp.P.D. LEXIS 621 (panel decision).)

All parties in workers' compensation proceedings retain their fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157–158, [65 Cal.Comp.Cases 805].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses, introduce and inspect exhibits, and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at p. 157–158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4 703, 710 [57 Cal.Comp.Cases 230].) The California Supreme Court, in *Carstens v. Pillsbury* (1916) 172 Cal. 572, 577, explained that the “commission, ... must find facts and declare and enforce rights and liabilities,—in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law.”

Code of Civil Procedure section 473 provides in pertinent part, “[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (Cal. Code Civ. Proc., § 473(b).) Section 5506 allows the Appeals Board to grant relief under Code of Civil Procedure section 473. (Lab. Code, § 5506; See *Fox v. Workers’ Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149].)

Here, the Petition to Dismiss was filed on March 14, 2023, and the NIT and Order of Dismissal were served on May 2 and May 24, 2023, respectively. Despite the Proofs of Service which indicate that defendant timely served these documents on applicant at her address listed on the Official Address Record (OAR) it is unclear if the applicant ever received these documents. Applicant contends in her Petition that she was hospitalized due to abuse perpetrated by her boyfriend and then became homeless, shortly after the May 2021 PQME evaluation. Thus, it appears that through no fault of her own, applicant no longer lived at the address on the OAR, at the time these documents were served in 2023, and did not receive these notices. Pursuant to WCAB Rule 10550, applicant had a due process right to notice and an opportunity to be heard, prior to her case being dismissed. (Cal. Code Regs., tit. 8, § 10550(a).) Here, it appears that she had neither notice nor an opportunity to be heard.

Applicant’s Petition requests “reconsideration of the dismissal.” In substance, applicant’s request is one to set aside the WCJ’s order dismissing her case, on the grounds that she did not receive any of the documents or notices pertaining to the May 22, 2023 dismissal order. The fact that applicant appears to have filed her request shortly after she learned of the dismissal supports that conclusion that the Petition should be treated as one to set aside the dismissal order. (*Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1474, 1477-1478, citing *Iott v. Franklin* (1988) 206 Cal.App.3d 521, 526-527 [“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. [Citations.] 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.”].) Thus, applicant’s Petition should be treated as motion to set aside.

Code of Civil Procedure section 452 requires that, “[i]n the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.” (Cal. Code Civ. Proc., § 452.) The workers’ compensation

system “was intended to afford a simple and nontechnical path to relief.” (*Elkins v. Derby* (1974) 12 Cal.3d 410, 419 [39 Cal.Comp.Cases 624].) “[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee’s entitlement to rehabilitation benefits.” (*Martino, supra*, 103 Cal.App.4th at p. 490.) Informality of pleadings in workers’ compensation proceedings before the Appeals Board has long been recognized, and courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*Rubio v. Workers’ Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200 [50 Cal.Comp.Cases 160]; *Liberty Mutual Ins. Co. v. Workers’ Comp. Appeals Bd.* (1980) 109 Cal.App.3d 148, 152–153 [45 Cal.Comp.Cases 866]; *Zurich Ins. Co. v. Workers’ Comp. Appeals Bd.* (1973) 9 Cal.3d 848, 852 [38 Cal.Comp.Cases 500]; *Bland, supra*, 3 Cal.3d at pp. 328–334.) Moreover, section 5709 states that “[n]o informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division ...” (Lab. Code, § 5709.) “Necessarily, failure to comply with the rules as to details is not jurisdictional.” (*Rubio, supra*, at p. 201.) WCAB Rule 10517 specifies that pleadings may be amended by the Appeals Board to conform to proof. (Cal. Code Regs., tit. 8, § 10517.) In particular, courts have recognized that petitions to reopen under section 5804 may be informal so long as the pleading provides an indication that an applicant wishes to pursue their case. In *Beaida v. Workers’ Comp. Appeals Bd.* (1968) 263 Cal.App.2d 204, 207–210 [33 Cal.Comp.Cases 345], the court explained that:

“Labor Code section 5410 permits an injured employee to institute proceedings for additional compensation upon the ground that the original injury has caused ‘new and further disability.’ It vests WCAB with jurisdiction to make the award if the injured employee institutes proceedings within five years of the injury date. (*Sutton v. Industrial Acc. Com.*, 46 Cal.2d 791, 794 [298 P.2d 857].) A broader proceeding is available under sections 5803 and 5804, which authorize WCAB to amend an award upon a good cause where the disability has recurred or increased.”

(See also *Sarabi v. Workers’ Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, 925–926 [72 Cal.Comp.Cases 778].)

On October 13, 2023, applicant’s attorney filed an amended Application claiming injury on June 17, 2019, and alleging that applicant wished to pursue her case. Applicant’s amended Application was filed less than five years from the date of injury. Thus, pursuant to section 5804, it appears that the Appeals Board has jurisdiction to rescind, alter or amend the May 22, 2023 order dismissing. (Lab. Code, §§ 5804, 5410; *Bland, supra*, 3 Cal.3d at pp. 328–329; see also *General*

*Foundry Serv. v. Workers' Comp. Appeals Bd. (Jackson)* (1986) 42 Cal.3d 331, 337 [51 Cal.Comp.Cases 375] ["The Board clearly has the power to continue its jurisdiction beyond the five-year period when an application is made within that period"].)

Additionally, we are guided by the overarching constitutional mandate to provide "substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character. . ." (Cal. Const., Art. XIV, § 4.) Based on the facts of this case, and applicant's evident willingness to prosecute her claim, we believe that substantial justice is best served in this matter by adjudication on the merits, rather than by administrative dismissal.

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 a decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) While we believe that applicant's allegations may be sufficient to prove that she did not receive notice and did not have an opportunity to be heard, that relief may be appropriate under section 5506 due to the actions of her prior attorney, and that her amended Application may be sufficient to prove timely filing as a petition to reopen, we do not have a sufficient record to determine those issues.

Thus, we will return this matter to the trial level for further proceedings. Upon return to the trial level, applicant's Petition should be treated as a petition to set aside, and a hearing should be set to allow applicant to put on evidence, including but not limited to evidence in support of her assertions that she was hospitalized, and then became homeless, and did not receive any of the 2023 notices regarding the pending dismissal, and evidence of whether section 5506 applies to grant applicant relief. As explained above, the WCJ should also consider the amended Application as a timely filed petition to reopen.

Accordingly, we dismiss the Petition and return the matter to the WCJ for further proceedings consistent with this opinion.



For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**January 27, 2025**

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

**CITLALLI VAZQUEZ  
LAW OFFICES OF DEAN GETTLESON  
TIMBOL & KAPLAN**

**MB/ara**

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