WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DIANE MINISH, ***Applicant***

vs.

HANUMAN FELLOWSHIP;

STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Number: ADJ1703796
San Jose District Office

OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION

On September 5, 2025, we issued our Opinion and Decision After Reconsideration (Decision). In that Decision, we rescinded the Findings and Order (F&O) issued on January 22, 2021, by a workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant did not rebut the presumption of receipt of the notice of intention (NIT) or the Order Dismissing and did not show good cause to vacate the September 6, 2016 Order Dismissing. We substituted a new F&O, which found that applicant rebutted the presumption of receipt and that applicant demonstrated good cause to vacate the Order Dismissing her case and ordered that the Petition to Vacate was granted and that the Order Dismissing was rescinded.

Defendant seeks reconsideration of our Decision and appears to contend that the WCJ found that applicant had actual notice of the NIT and the Order so that the WCJ correctly found that applicant did not rebut the presumption of mailing.

We received an Answer from applicant.

We have considered the allegations of the Petition for Reconsideration and the Answer. Based on our review of the record, for the reasons discussed in our Decision, which we adopt and incorporate, and for the reasons discussed below, we will deny the Petition for Reconsideration.

DISCUSSION

I.

Former Labor Code section 5909[1] 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 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 September 19, 2025, and 60 days from the date of transmission is Tuesday, November 18, 2025. This decision is issued by or on Tuesday, November 18, 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.

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[1] All section references are to the Labor Code, unless otherwise indicated.

Here, according to the proof of service for the Notice of Transmission by the WCJ, the Notice was served on September 19, 2025, and the case was transmitted to the Appeals Board on September 19, 2025. Service of the Notice and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with actual notice as to the commencement of the 60-day period on September 19, 2025.

II.

As we noted in our Decision, in her Opinion on Decision, the WCJ stated that:

> Based on evidence presented, this WCJ finds that applicant did provide sufficient evidence showing non-receipt of NOI to Dismiss or Order Dismissing her case. This WCJ finds no good cause to vacate the 2016 Order Dismissing.

(Opinion on Decision, January 22, 2021, p. 3.)

In its Petition, defendant admits that the WCJ found applicant to be credible and admits that the WCJ concluded that applicant provided evidence that she did not receive the NIT or the Order. However, it contends that this conclusion was contradicted when the WCJ later stated that:

> Review of EAMS did not reveal any notes of return mail of PJ Tuan's Order Denying Petition dated 5/24/2016, NOI to Dismiss dated 8/10/2016, nor Order Dismissing dated 9/6/2016.
>
> Applicant also testified at trial that during the time she lived in Canada, she did not update her address with the WCAB as she intended to move back to North Carolina. She also confirmed that her mail from NC was being forwarded to her in Canada. Applicant's testimony supports applicant's temporary address change where Board's mail would have been forwarded to her in Canada.
>
> Based on lack of documentation in EAMS of return mail and based on applicant's testimony supporting temporary address change, applicant did not show sufficient evidence showing non-receipt of NOI or Order Dismissing.
>
> For the above stated reason, it is found that applicant received properly served NOI and Order Dismissing her case in 2016.

(Opinion on Decision, January 22, 2021, p. 4.)

In deciphering the WCJ's Opinion, we are indeed left with contradictory statements by the WCJ. As discussed in our Decision, in *Suon v. California Dairies*, we explained that, although a "letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail," that presumption is rebuttable. (*Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1817 (Appeals Bd. en banc), citations omitted.) "If the sending party thus produces evidence that a document was mailed, the burden shifts to the recipient to produce 'believable contrary evidence' that it was not received. [Citations.] Once the recipient produces sufficient evidence showing non-receipt of the mailed item, "the presumption disappears" and the "trier of fact must then weigh the denial of receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received. [citation.]" (*Ibid.*) We also explained that in *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500], the Supreme Court noted the general dearth of evidence offered in that case to rebut applicant's claim of injury, and reiterated that: "As a general rule, the board "must accept as true the intended meaning of [evidence] both uncontradicted and unimpeached." (*Id.* at p. 318.) Accordingly, the *Garza* court concluded that the Appeals Board failed to accord the appropriate weight to the referee's findings, that the evidence used to reject the WCJ's finding of industrial causation was conjectural and speculative, and that "the denial of compensation benefits cannot rest upon the board's mere suspicion or surmise, in view of the policy of the law to resolve all reasonable doubts in the employee's favor." (*Id.* at p. 319.)

In her Opinion, the WCJ appears to focus on applicant's admission that "mail" was forwarded to applicant. Without any other evidence, she then assumes that because other mail was forwarded to applicant, and because post office regulations require that mail be forwarded, the NIT and the Order must also have been forwarded to applicant. Then, again without any evidence, she supports this conclusion by speculating that if the NIT and the Order were not forwarded, they would have been returned to the WCAB, and clerical staff would have documented the returned mail in EAMS. The WCJ's conclusion appears to be premised on proof of a negative, and in the face of applicant's affirmative testimony that she did not receive the NIT and the Order, we do not see any basis to alter our finding that applicant rebutted the presumption of mailing.

Turning to the issue of whether there was good cause to set aside the Order dismissing, defendant confuses the discussion by conflating the basis for an order finding good cause to reopen a case.

Pursuant to section 5410, an injured worker who has previously received workers' compensation benefits either voluntarily paid by the employer or pursuant to an award is entitled to claim benefits for "new and further disability" within five years of the date of injury. (*Sarabi v. Workers' Comp. Appeals Bd*. (2007) 151 Cal.App.4th 920, 925 [72 Cal.Comp.Cases 778].) If a petition to reopen is filed within the five-year period, the Board has jurisdiction to decide the matter beyond the five-year period. (*Ibid*.) To recover additional benefits, the injured worker must not only file a timely petition to reopen but must also have suffered a "new and further disability" within that five-year period, unless there is otherwise "good cause" to reopen the prior award. (*Applied Materials v. Workers' Comp. Appeals Bd*. (2021) 64 Cal.App.5th 1042, 1080 [86 Cal.Comp.Cases 331], citing *Sarabi*, *supra*, 151 Cal.App.4th at p. 926.)

Here, whether the case can be reopened is not at issue. The issue is whether the Order dismissing was invalid or void so that it should be set aside. Our finding of good cause to set it aside is based on due process. If a party does not receive the required notice, then there is no opportunity to be heard, and due process requires that the order dismissing the case be set aside. (Cal. Code Regs., tit. 8, § 10582, emphasis added [repealed and replaced by Cal. Code Regs., tit. 8, § 10550].)

As set forth in our Decision, "[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…All 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 and to offer evidence in explanation or rebuttal.' " (*Rucker v. Workers' Comp Appeals Bd*. (2000) Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805], citing *Kaiser Co. v. Industrial Acc. Com.* (1952) 109 Cal.App.2d 54, 58.) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker, supra*, at pp. 157-158.) Due process requires "a 'hearing appropriate to the nature of the case.'" (*In re James Q*. (2000) 81 Cal.App.4th 255, 265, citing *Mullane v. Cent. Hanover Bank & Trust Co*. (1950) 339 U.S. 306, 313.)

As we stated in our Decision,

> Here, applicant credibly testified that she did not receive the NIT. Thus, she was not provided with adequate notice and an opportunity to be heard, and as a practical matter, if she did not receive the NIT, she could not object to it. Since the Order Dismissing is premised upon the notice and opportunity to be heard provided by the NIT, the Order is void. Moreover, if applicant did not receive the Order Dismissing, she was not provided with notice and an opportunity to challenge the Order. We also observe that the failure to provide applicant with the requisite due process is in itself good cause to set aside the Order Dismissing.

(Decision, p. 6.)

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Decision After Reconsideration issued by the Workers' Compensation Appeals Board on September 5, 2025 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 18, 2025

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

DIANE MINISH
BUTTS & JOHNSON
STATE COMPENSATION INSURANCE FUND, LEGAL
LITTLER MENDELSON, PC

AS/mc

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