

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

JAIME LOPEZ, *Applicant*

vs.

**ALANS LAWNMOWER GARDEN;
OAK RIVER INSURANCE COMPANY c/o BERKSHIRE HATHAWAY, *Defendants***

**Adjudication Number: ADJ11008738; ADJ12214890
Long Beach District Office**

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

Defendant seeks reconsideration of the Joint Opinion on Decision and Order of Sanctions (Sanctions Order) that was issued by the workers' compensation administrative law judge (WCJ) on July 31, 2025. The WCJ ordered Berkshire Hathaway and Hefley Law, jointly and severally, to pay a sanction of \$250.00 for failure to timely serve and file the proof of service for the Minutes of Hearing (MOH) from the April 28, 2025 lien conference.

Defendant contends, in pertinent part, that since its failure to comply with WCAB Rule 10629(d) (Cal. Code Regs., tit. 8, § 10629(d)) was an inadvertent oversight, monetary sanctions may not be imposed under WCAB Rule 10421 (Cal. Code Regs., tit. 8, § 10421) and Labor Code section 5813.

We have not received an Answer.

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

We have considered the allegations of the Petition and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons stated below, we will grant reconsideration and rescind the Sanctions Order.

FACTS

We will briefly review the relevant facts.

On September 6, 2017, applicant filed an Application for Adjudication (Application) claiming injury on June 2, 2017 to multiple body parts while employed by defendant as a machine technician (ADJ11008738). On May 21, 2019, applicant filed a second Application, claiming a cumulative injury from June 2, 2016 to June 2, 2017 to multiple body parts while employed by defendant as a machine technician (ADJ12214890).

The matter was resolved by Compromise and Release and the WCJ issued an Order Approving the C&R on April 20, 2021.

On July 13, 2021, Moussa Moshfegh (lien claimant), filed a “Notice and Request for Allowance of Lien” in ADJ12214890 for medical treatment that was provided to the applicant.

The cases were set on calendar multiple times to address the outstanding liens for a period of almost four years, from September 20, 2021 until August 11, 2025.

At the April 28, 2025 lien conference, a representative for lien claimant appeared. The WCJ continued the lien conference to July 7, 2025 and designated defense counsel to serve the MOH pursuant to WCAB Rule 10629. According to the MOH, service was designated to defendant by e-mail on May 5, 2025.

According to Communications in the Electronic Adjudication Management System (EAMS), a notice of hearing of the July 7, 2025 lien conference was served through EAMS on May 6, 2025.

At the July 7, 2025 lien conference, the only parties present were defense counsel and a representative for Santa Ana Health Group. As such, defendant requested a Notice of Intent (NOI) to dismiss the lien of Moussa Moshfegh for his failure to appear. However, on the MOH, the WCJ noted that defense attorney failed to file the proof of service for the MOH dated April 28, 2025 and that consequently, she would be issuing a NOI to sanction defendant for failure to comply with WCAB Rule 10629.

On July 8, 2025, the WCJ issued a Joint NOI to Sanction defense counsel for failure to comply with WCAB Rule 10629(d) as a proof of service for the MOH from the April 28, 2025 lien conference was not filed.

On July 11, 2025, defense counsel filed an Objection to the Joint NOI to Sanction on the grounds that the failure to file the proof of service was an inadvertent error. On the same day,

defense counsel served and filed the proof of service for the MOH from the April 28, 2025 lien conference.

On July 31, 2025, the WCJ issued a Joint Opinion on Decision and Order of Sanctions.

DISCUSSION

I.

Former Labor Code section 5909¹ 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 August 21, 2025, and 60 days from the date of transmission is Monday, October 20, 2025. This decision is issued by or on Monday, October 20, 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.

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

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on August 21, 2025, and the case was transmitted to the Appeals Board on August 21, 2025. 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 August 21, 2025.

II.

We now turn to the merits of the case.

WCAB Rule 10750 states in relevant part,

(a) Notice shall be served on all parties and their attorneys or non-attorney representative of record of the time and location, including whether the hearing will be conducted electronically, of each hearing scheduled, whether or not the hearing affects all parties, as provided in rule 10625.

(b) The Workers' Compensation Appeals Board may, in its discretion, designate a party or their attorney or agent of record to serve a notice of hearing as provided in rule 10629. Notice shall include the time and location, including whether the hearing will be conducted electronically and how to access any electronic hearing.

(Cal. Code Regs., tit. 8, § 10750.)

The WCJ explained in her Report that lien claimant was deprived of due process when defendant requested the WCJ issue a NOI to dismiss the lien claimant despite defendant's failure to serve lien claimant with a notice of hearing. (Report, at p. 7.) However, per WCAB Rule 10750, unless the WCJ specifically delegates a party to serve a notice of hearing, service of notice of hearing must be by the WCAB. In determining whether a party received notice of the hearing, the WCJ must inquire as to whether they received the official communication from the WCAB.

Here, the MOH from the April 28, 2025 lien conference does not show that the WCJ specifically delegated defense counsel to serve all parties with a notice of hearing for the July 7, 2025 lien conference. According to EAMS, the WCAB did serve parties, including lien claimant, a notice of hearing of the July lien conference on May 6, 2025. As the WCJ improperly relied on defendant to serve the Notice of Hearing, we do not agree with the WCJ that there is evidence of "willfulness, prejudice to a party or litigation gamesmanship" by defendant to warrant sanctions. (Report, at p. 7.)

The Appeals Board is authorized to impose sanctions, costs and attorney's fees under section 5813, against a person who engages in "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813.) Sanctions under section 5813 are designed to punish litigation abuses and to provide the court with a tool for curbing improper legal tactics and controlling their calendars. (*Duncan v. Workers' Comp. Appeals Bd.* (2008) 166 Cal.App.4th 294, 302.) Accordingly, sanctions are similar to penalties under section 5814, in that they are designed to have both remedial and penal aspects. (See *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324 (Appeals Board En Banc).)

WCAB Rule 10421, subdivision (b), authorizes sanctions for a party who has committed "[b]ad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay including actions or tactics that result from willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit." (Cal. Code Regs., tit. 8, § 10421(b).) Subdivision (b) provides a comprehensive but non-exclusive list of actions that could be subject to sanctions. As applicable here, violations subject to sanctions, pursuant to WCAB Rule 10421(b), include:

(3) Failure to timely serve documents (including but not limited to medical reports and medical-legal reports) as required by the rules of the Workers' Compensation Appeals Board, or the Administrative Director, where the documents are within the party's possession or control, unless that failure resulted from mistake, inadvertence or excusable neglect.

(4) Failing to comply with...any award or order of the Workers' Compensation Appeals Board, including an order of discovery, which is not pending on reconsideration, removal or appellate review and which is not subject to a timely petition for reconsideration, removal or appellate review, unless that failure results from mistake, inadvertence, surprise or excusable neglect.

(Cal. Code Regs., tit. 8, § 10421(b).)

Here, while it is true that defendant failed to timely serve and file the proof of service for the MOH from the April 28, 2025 lien conference until July 11, 2025, a review of the record does not show defendant's conduct rose to the level of bad faith that is needed to impose sanctions under section 5813. Specifically, defendant contends "on May 5, 2025, the day the Minutes were received via email, the inbox experienced a high volume of message over 250 emails. The relevant

message was inadvertently overlooked resulting in a clerical oversight.” (Petition for Reconsideration, at p. 3:9-12.) Three days after the WCJ issued the Joint NOI to Sanction, defendant served the MOH and filed the proof of service. Defense counsel apologized for the failure to timely serve and file the proof of service. (*Id.* at p. 5:20-21.) We conclude defendant’s conduct did not arise out of bad faith actions or tactics in violation of section 5813 and WCAB Rule 10421.

We note a review of the record shows defense counsel did not serve and file the proof of service for the MOH from a January 9, 2024 lien conference until February 1, 2025 in violation of WCAB Rule 10629(d). Although we do not find defendant’s conduct rose to the level of bad faith needed to impose sanctions this time, we want to emphasize and remind defendant that recurring failure to timely serve documents and filing a proof of service for those documents pursuant to WCAB Rule 10629(d) may be the basis of sanctions in the future.

For the foregoing reasons,

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

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order of Sanctions issued by a workers' compensation administrative law judge on July 31, 2025 is **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 20, 2025

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

**MOUSSA MOSHFEGH
HEFLEY LAW**

JL/abs

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