

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

**JOSE LUIS GARCIA CARVENTE, *Applicant***

**vs.**

**KC LANDSCAPE DEVELOPMENT;  
COMPWEST NEWPORT BEACH, *Defendants***

**Adjudication Number: ADJ15469893  
Anaheim District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Lien Claimant Cal State Interpreting ("lien claimant"), through its hearing representative Collective Resources Long Beach, seeks reconsideration of the "Order Dismissing the Lien of Cal State Interpreting for Nonappearance at Lien Conference," (Order) issued by the workers' compensation administrative law judge (WCJ) on February 7, 2025.

Lien claimant contends that it did not receive notice of the lien conference nor did it receive the Notice of Intention to Dismiss Lien Claim (NIT); that there was no proper service by the defendant; and that the dismissal order should be vacated.

We received a Report and Recommendation (Report) from the WCJ, wherein she recommends that the Petition for Reconsideration be denied.

We did not receive an Answer from any party.

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 February 7, 2025 Order.

**BACKGROUND**

Applicant filed an Application for Adjudication (Application) on November 24, 2021, claiming that he injured his back on April 13, 2021, while employed by defendant KC Landscape Development.

The matter was resolved by Compromise and Release (C&R), and the WCJ issued an Order Approving the C&R on August 15, 2023.

On June 4, 2024, lien claimant Cal State Interpreting and their non-attorney representative Collective Resources Long Beach filed a “Notice of Request for Allowance of Lien” for interpreting services provided during applicant’s medical appointments.

On October 14, 2024, a Declaration of Readiness (DOR) was filed by another lien claimant, Harbor Chiropractic. (10/14/24 DOR.) The proof of service, executed on October 16, 2024, indicates that the DOR was served on defendant, but was not served on lien claimant nor on its representative. (10/16/24 POS.)

A lien conference took place on December 19, 2024. According to Communications in the Electronic Adjudication Management System (EAMS), a notice of hearing through EAMS was sent on October 15, 2024, which indicates service by mail on lien claimant’s representative and by email on lien claimant. No other notice of hearing nor proof of service for this lien conference appears in the record.

The lien conference was attended by defendant’s attorney, as well as Harbor Chiropractic. The minutes indicate that:

“Lien of Harbor Chiro settled by agreement. No appearances by Lien Claimants Health Solution Mobile Medical or Cal State Interpreting. NOI to dismiss will issue.”

(12/19/24 Minutes.)

At the lien conference, defendant’s request to take the matter off calendar was granted, based on “non-appearance” of “lien claimant.” (*Ibid.*) Defendant also requested an order dismissing the lien filed by Cal State Interpreting. (*Ibid.*)

On December 26, 2024, the WCJ issued a NIT entitled “Notice of Intention to Dismiss the Lien of Cal State Interpreting for Nonappearance at Lien Conference Pursuant to Title 8, Cal. Code of Regs. §§10875(b), 10880(b)(1), 10888(e) and 10832.” The NIT stated,

“IT APPEARING THAT Defendants have moved for an Order Dismissing the Lien of CAL STATE INTERPRETING for failure to appear at the duly noticed Lien Conference conducted on December 19, 2024 before the undersigned Judge, and

GOOD CAUSE APPEARING

NOTICE IS HEREBY GIVEN that pursuant to Title 8, Cal. Code of Regs. §§10875(b), 10880(b)(1), 10888(e), and 10832, an ORDER DISMISSING the lien

of CAL STATE INTERPRETING shall issue ten (20) days from the date of service hereof plus additional time for mailing under Title 8, Cal. Code of Regs. §10605(a)(1) unless good cause to the contrary is shown in writing within said time.”

(12/26/24 NIT.)

The NIT designated service to defendant. (*Ibid.*)

Defendant’s Proof of Service (POS) indicated that lien claimant and its hearing representative were served with the December 19, 2024 Minutes, as well as the December 26, 2024 NIT, on January 8, 2025. (1/8/25 POS.)

On February 7, 2025, 30 days after the NIT was served, the WCJ issued the Order.

In the Petition, lien claimant’s representative alleges that it reviewed its files, and those of lien claimant, and found no record that either entity had received notice of the December 19, 2024 lien conference. (Petition, at p. 1.) It also alleges that it had found no record that they had received the NIT. (*Ibid.*)

## **DISCUSSION**

### **I.**

Former Labor Code section 5909<sup>1</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:

- (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

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<sup>1</sup> All section references are to the Labor Code, unless otherwise indicated.

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 March 7, 2025, and 60 days from the date of transmission is May 6, 2025. This decision is issued by or on May 6, 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 March 7, 2025, and the case was transmitted to the Appeals Board on March 7, 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 March 7, 2025.

## II.

“The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] . . . At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.” (Lab. Code, § 5803.)

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, 394-395 [62 Cal.Comp.Cases 924]; *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1120 [63 Cal.Comp.Cases 261].) Moreover, “[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) 82 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.)

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*)). 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.” (*Id.*, at p. 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[.]” (*Id.*, at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) “For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Ibid.*) The WCJ has the discretionary authority to develop the record when appropriate to provide due process or to fully adjudicate the issues. (Lab. Code, §§ 5701, 5702, 5906; *McClune, supra*, 62 Cal.App.4th at pp. 1121-1122; *Tyler, supra*, 56 Cal.App.4th at p. 394.)

A lien may be filed, following the procedures set forth in sections 4903(b) and 4903.05, and WCAB Rule 10862, for “the reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with Section 4600), and to the extent the employee is entitled to reimbursement under Section 4621, medical-legal expenses as provided by article 2.5 (commencing with Section 4620) of Chapter 2 of Part 2...” and the “[a]ppeals board may determine, and allow as liens against any sum to be paid as compensation...” (Lab. Code §§ 4903, 4903(b), 4903.05, 4906(a); Cal. Code Regs., tit. 8, § 10862.)

“The commission’s ‘discretion’ as to liens under paragraphs (a) through (e) of section 4903, though wide, does not include ‘discretion’ to disallow completely a lien where it is established that the lien claimant did furnish services or living expenses of value.” (*Bryant v. Industrial Acci. Com.* (1951) 37 Cal.2d 215, 220 [citations omitted].) “The WCAB’s discretion is

limited to determining whether the amount of the lien is reasonable in relation to the medical services rendered to treat the employee's industrial injuries. [citation] It may not disallow or reduce a lien unless it is properly litigated.” (*Hand Rehabilitation Center v. Workers’ Comp. Appeals Bd.* (1995) 34 Cal.App.4th 1204, 1210 [60 Cal.Comp.Cases 289], citing *Kaiser Foundation Hospitals v. Workmen’s Comp. Appeals Bd.* (1974) 13 Cal.3d 20, 23, 25.)

A lien claimant has a due process right to participate in a workers’ compensation hearing, and must be informed of the scope and purpose of any hearing that may affect its rights or liabilities. (*Beverly Hills Multispecialty Group, Inc. v. Workers’ Comp. Appeals Bd.* (1994) 26 Cal.App.4th 789, 803, 805-806 [59 Cal.Comp.Cases 461].) A lien claimant must be served with notice of all hearings. (*Id.*, at pp. 803-804; *Fox v. Workers’ Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205-1206 [57 Cal.Comp.Cases 149]; See also, Lab. Code, § 5504; Cal. Code Regs., tit. 8, § 10750(a).) A lien claimant must be permitted to present relevant evidence, inspect documents, cross-examine witnesses, and make reasonable objections. (*Beverly Hills Multispecialty Group, supra*, 26 Cal.App.4th at p. 804.) The denial of a lien claim without the lien claimant having been provided with an opportunity for a fair hearing is reversible per se. (*Id.*, at p. 806 [“if the denial of due process prevents a party from having a fair hearing, the denial of due process is reversible per se”].)

WCAB Rule 10875 requires that all defendants and lien claimants must appear at all lien conferences. (Cal. Code Regs., tit. 8, § 10875.) When a lien claimant fails to appear, the WCJ may issue an NIT pursuant to WCAB Rule 10888, or may defer the lien. WCAB Rule 10888(c) states that “A dismissal for failure to appear at a hearing shall only issue if the lien claimant was provided with notice of the lien conference or trial.” (Cal. Code Regs., tit. 8, § 10888(c).)

In *Fox, supra*, 4 Cal.App.4th at p. 1205, the Court of Appeal held “that lien claimants may seek relief from the consequences of a failure to appear by utilizing a procedure substantially similar to Code of Civil Procedure section 473, until such time as the matter is more specifically addressed by statutory provision or Board rule.” The Court explained, further, that, “[i]t is the policy of the law to favor, whenever possible, a hearing on the merits. 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. 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.” (*Id.*, at pp. 1205-1206.)

Applying these legal principles, we conclude that lien claimant must be provided with an opportunity to demonstrate why the Order should be vacated, and lien claimant's Petition must be treated as a petition to set aside.

Lien claimant requests that we vacate the Order on the grounds that it was not provided with actual notice of the lien conference from which the default was taken and did not receive the NIT. If lien claimant did not receive notice of the conference then there would be no legal basis to issue the NIT. If lien claimant did not receive the NIT and was not provided with an opportunity to object, there would be no legal basis to issue the NIT. Thus, any Order based on an improper NIT would be void.

Accordingly, we dismiss the Petition and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, lien claimant's Petition shall be treated as a petition to set aside in the first instance, and the WCJ shall set a hearing, to allow lien claimant an opportunity to put on testimony or other evidence. After the WCJ issues a decision, any aggrieved person may then timely seek reconsideration of that decision.

For the foregoing reasons,

**IT IS ORDERED** that lien claimant's Petition for Reconsideration is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**May 6, 2025**

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

**CAL STATE INTERPRETING  
COLLECTIVE RESOURCES  
COMPWEST NEWPORT BEACH**

**MB/ara**

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