

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

**KARINA TOVAR, *Applicant***

**vs.**

**PACIFIC DENTAL SERVICES;  
INSURED BY ARCH INDEMNITY INSURANCE  
administered by GALLAGHER BASSETT, INC., *Defendants***

**Adjudication Number: ADJ12777220  
Los Angeles District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the “Opinion and Order Denying Petition For Reconsideration and Granting Petition For Reconsideration and Decision After Reconsideration” (Decision) issued by the Workers’ Compensation Appeals Board on October 29, 2024. In that Decision, we denied defendant’s petition for reconsideration, and we granted lien claimant’s petition for reconsideration solely to defer the issue of sanctions (Finding of Fact #9) and otherwise affirmed the Findings and Order issued by a workers’ compensation administrative law judge (WCJ) on August 2, 2024.

Defendant contends that lien claimant’s Bell Community Medical Group’s lien should have been dismissed for failure to comply with the procedural requirements; that it was not liable for payment for Dr. Bazel’s and Dr. Wasserman’s August 11, 2020 medical reports as medical-legal expenses; that it should not have been ordered to reimburse a non-party to this case; and that various exhibits should not have been admitted because they were not previously served on defendant at least 20 days before trial in compliance with Labor Code<sup>1</sup> section 5703 in violation of defendant’s due process rights.

We have not received an Answer from applicant.

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise stated.

We have considered the allegations in the Petition and reviewed our October 29, 2024 Decision, and we have reviewed the record in this matter. Based on our review and, as discussed in our October 29, 2024 Decision and as discussed below, we will make no changes to our October 29, 2024 Decision, and we will dismiss the Petition.

## DISCUSSION

### I.

Former section 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 November 20, 2024, and 60 days from the date of transmission is Sunday, January 19, 2025. The next business day that is 60 days from the date of transmission is Tuesday, January 21, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Tuesday, January 21, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

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<sup>2</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.

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, since this is a petition seeking reconsideration of our decision, we did not receive a Report and Recommendation by a WCJ. Instead, a notice of transmission was served by the district office on November 20, 2024, which is the same day as the transmission of the case to the Appeals Board on November 20, 2024. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1), and consequently they had actual notice as to the commencement of the 60-day period on November 20, 2024.

## II.

It is well settled that where a party fails to prevail on a petition for reconsideration, the Appeals Board will not entertain a successive petition by that party unless the party is *newly* aggrieved. (*Goodrich v. Industrial Acc. Com.* (1943) 22 Cal..2d 604, 611 [8 Cal.Comp.Cases 177]; *Ramsey v. Workmen's Comp. Appeals Bd.* (1971) 18 Cal.App.3d 155, 159 [36 Cal.Comp.Cases 382]; *Crowe Glass Co. v. Industrial Acc. Com. (Graham)* (1927) 84 Cal.App. 287, 293-295 [14 IAC 221].) [italics added for emphasis.]. As stated in our en banc opinion in *Navarro v. A & A Framing* (2002) 67 Cal.Comp.Cases 296, 299:

The general rule is that where a party has filed a petition for reconsideration with the Board, but the party does not prevail on that petition for reconsideration, the petitioning party cannot attack the [Appeal's] Board's action by filing a second petition for reconsideration; rather, the petitioning party must either be bound by the [Appeals] Board's action or challenge it by filing a timely petition for writ of review.

Here, it is improper for defendant to file another Petition attempting to relitigate issues that have already been determined against defendant by the Appeals Board. That is, the current Petition contains same or similar allegations as were alleged in the original petition for reconsideration. Defendant is attempting an inappropriate "second bite" at what has already been litigated regarding the prior F&A. Defendant's remedy was to seek review with the Court of Appeal pursuant to

section 5950 et seq., and not the Appeals Board. Accordingly, we will dismiss the petition for reconsideration.

### III.

The Appeals Board is authorized to impose sanctions, costs and attorney's fees under section 5813, which states, in pertinent part, that:

(a) The workers' compensation referee or appeals board may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars (\$2,500) to be transmitted to the General Fund.

(b) The determination of sanctions shall be made after written application by the party seeking sanctions or upon the appeal board's own motion.

(§ 5813(a) and (b).)

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:

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(2) Filing a pleading, petition or legal document unless there is some reasonable justification for filing the document.

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(6) Bringing a claim, conducting a defense or asserting a position:

(A) That is:

- (i) Indisputably without merit;
- (ii) Done solely or primarily for the purpose of harassing or maliciously injuring any person; and/or
- (iii) Done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation. . .

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(7) Presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law . . .

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

Here, defendant filed a subsequent Petition that in effect basically duplicated its original petition for reconsideration. ***We admonish defendant's attorneys Negar Matian and the Matian Law Group, defendant employer Pacific Dental Services, LLC, and defendant insurer Arch Indemnity Insurance, as administered by Gallagher Bassett, for filing duplicative and meritless pleadings at the WCAB. This conduct could subject the offending party to sanctions pursuant to WCAB Rule 10421(b) as set forth above.***

Accordingly, we dismiss the Petition for Reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the Opinion and Order Denying Petition For Reconsideration issued by the Workers' Compensation Appeals Board on October 29, 2024 is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**January 21, 2025**

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

**KARINA TOVAR  
MMCK LITIGATIONS AND TRANSLATIONS  
MATIAL LAW GROUP**

**DLM/oo**

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