

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

LIBRADA SANCHEZ, *Applicant*

vs.

**GOODWILL INDUSTRIES; REDWOOD FIRE AND CASUALTY INSURANCE
COMPANY c/o BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ10107934
Oakland District Office**

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

Lien Claimant Express Interpreters (“EI”) seeks reconsideration of the Order Dismissing Express Interpreters Lien (“Order Dismissing”) issued on November 27, 2024, wherein the workers’ compensation administrative law judge (“WCJ”) dismissed EI’s lien based upon its failure to appear at an August 19, 2024 status conference. EI asserts that the WCJ erred because its representative, Lee Caballero, was not served with the Notice of Intention (“NOI”) to dismiss the lien or the notice of hearing, and therefore its due process rights were violated by the dismissal.

We received an Answer. We also received a Report and Recommendation on Petition for Reconsideration from the WCJ, recommending that reconsideration be denied.

We have reviewed the Petition, the Answer and the Report, as well as the record. For the reasons discussed below, we will rescind the Order Dismissing because we agree with EI that Caballero should have been served with the NOI, and that the failure to do so violated EI’s due process rights.

FACTUAL BACKGROUND

Applicant filed an Application for Adjudication in Case No. ADJ10107934 alleging a cumulative trauma injury sustained from August 3, 2014 to August 3, 2015, and settled the claim on November 23, 2023. Applicant also filed another Application for Adjudication in Case No.

ADJ3942025 for a specific injury sustained on October 14, 2007; this claim was settled on April 2, 2021.

EI filed liens in both case numbers – ADJ10107934 and ADJ3942025 – on August 22, 2016. Caballero filed a Notice of Representation (“NOR”) in Case No. ADJ3942025 on June 10, 2021, stating that he was representing EI. No NOR was concurrently filed in Case No. ADJ10107934. On March 2, 2022, EI settled its lien in Case No. ADJ3942025 for \$3,000.00.

On November 27, 2023, another lien claimant, NMCI Medical Clinic San Jose (“NMCI”), filed a Declaration of Readiness to Proceed (“DOR”) in Case No. ADJ10107934, to resolve the remaining liens in the case. The DOR was served on EI, but not on Caballero.

After various delays, the matter came on for a status hearing on April 8, 2024. Both case numbers - ADJ10107934 and ADJ3942025 – were listed on the Minutes of Hearing, and according to the Communications section of the Electronic Adjudication Management System (“EAMS”), Caballero was served with the notice of the hearing based upon his NOR in Case No. ADJ3942025 via a notice sent on February 6, 2024.

Nevertheless, neither EI nor Caballero appeared at the April 8, 2024 hearing. (Minutes of Hearing, 4/8/2024.) Accordingly, the WCJ issued a NOI to dismiss EI’s lien based on non-appearance. (NOI, 4/8/2024.) This NOI was issued under both case numbers - ADJ10107934 and ADJ3942025 – with instructions given to defendant Goodwill Industries pursuant to WCAB Rule 106329 (“Goodwill”) to serve the NOI on “all parties shown on the Official Address Record” (“OAR”). (*Ibid.*; Cal. Code Regs., tit. 8, § 10629.) However, according to the Proof of Service (POS) filed by Goodwill, the NOI was served only on the parties listed on the OAR for Case No. ADJ10107934. (Proof of Service for 4/8/2024 NOI, at p. 1.) As a result, although EI was served, Caballero was not.

Despite this lack of service, on April 18, 2024, Caballero filed an Objection to the NOI, alleging that Caballero did not receive notice of the April 8, 2024 hearing because “[d]ue to a clerical error, this representative did not file a Notice of Representation in case number (ADJ10107934) even though this representative filed a Notic [*sic*] of Representation in case number (ADJ3942025). A notice of representation will be filed forthwith.” (Objection, at p. 3.) In the same EAMS filing, but separated by a document separator sheet, Caballero also filed a “Request for Special Notice and Service Notice of Representation,” giving notice that he was EI’s lien representative and requesting entry in the OAR. (Request for Special Notice and Service

Notice of Representation, at p. 6.) This document was not separately uploaded into EAMS as its own filing, and is discoverable only by scrolling down in the PDF containing the Objection. A POS, also not separately uploaded but instead appended to the Objection like the NOI, shows service of both the Objection and the NOI on Goodwill's attorneys.

No action was ultimately taken on the April 8, 2024 NOI. Nor was the OAR in Case No. ADJ10107934 updated to include Caballero as lien representative for EI, although Caballero continued to be listed as the lien representative in the OAR for Case No. ADJ3942025.

On June 18, 2024, Goodwill filed a DOR for another lien conference. The DOR is filed under Case No. ADJ10107934, but in the section for listing further information, the DOR states: "Please also set on ADJ3942025." (DOR, 6/18/2024, at p. 7.) The POS for the DOR shows service on both EI and Caballero. (POS, 6/18/2024, at p. 2.)

In response, the WCJ set a hearing for August 19, 2024. According to the Communications section of EAMS, notice for this hearing was sent out only on Case No. ADJ10107934, and therefore Caballero was not served with notice of the hearing, although EI was. However, the Minutes of Hearing for the August 19, 2024 list both case numbers - ADJ10107934 and ADJ3942025. (Minutes of Hearing, 8/19/2024, at p. 1.)

At the August 19, 2024 hearing, Caballero did not appear. (*Id.* at p. 1.) The same day, the WCJ issued another NOI to dismiss EI's lien, noting the failure to appear and providing EI 10 days to file an objection showing good cause why the lien should not be dismissed. (NOI, 8/19/2024, at p. 1.) This NOI contains both case numbers – ADJ10107934 and ADJ3942025 – and again instructs Goodwill to serve the NOI on "all parties as shown in the Official Address Record." (NOI, 8/19/2024, at p. 1.) The POS filed by Goodwill, however, omits Case No. ADJ3942025 from its caption, and served only those parties listed on the OAR for Case No. ADJ10107934; as described above, this did not include Caballero. (POS, 8/19/2024 NOI, at p. 1–2.)

No Objection to the NOI was filed, and on November 27, 2024, the WCJ issued the Order Dismissing, dismissing EI's lien pursuant to the August 19, 2024 NOI. The Order Dismissing lists only Case No. ADJ10107934, and was not served on Caballero.

On December 19, 2024, Caballero filed a NOR in Case No. ADJ10107934, functionally identical to the one that was appended to the Objection to the April 8, 2024 NOI, except for the date. (NOR, 12/19/2024, at p. 4.)

On December 23, 2024, Caballero filed a Petition for Reconsideration, but wrongly listed the case number as ADJ7619777. A Petition for Reconsideration bearing the actual case number was filed immediately thereafter, correcting the mistake.

DISCUSSION

I.

Former Labor Code 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, Labor Code 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 Labor Code 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 December 26, 2024 and 60 days from the date of transmission is February 24, 2025. This decision is issued by or on February 24, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 December 26, 2024, and the case was transmitted to the Appeals Board on December 26, 2024. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on December 26, 2024.

II.

Initially, we admonish Caballero for the evident lack of care that has characterized his representation throughout this matter. First, Caballero failed to initially file a NOR in Case No. ADJ10107934, in violation of WCAB Rule 10401. Second, he failed to confirm that the April 18, 2024 NOR was properly filed and entered into the OAR. Third, he initially filed the Petition for Reconsideration in this matter with the wrong case number. Finally, although the April 18, 2024 Objection alleges to the contrary, it appears that Caballero was indeed served with notice of the April 8, 2024 hearing based upon his presence on the OAR for Case No. ADJ3942025, and yet still failed to appear at that hearing. This pattern of conduct falls below the expectations for non-attorney lien representatives, and could be a basis for the imposition of sanctions under Labor Code section 5813 and WCAB Rule 10421. We urge Caballero to exercise more care in the future; had such care been exercised here, considerable expenditure of judicial resources could have been avoided.

However, we agree with Caballero that the failure to serve him with the August 19, 2024 NOI – even if partially attributable to his own lack of care – renders the dismissal of EI's lien invalid.

Firstly, whatever failures on Caballero's part, his filing of the Objection to the April 8, 2024 should have resulted in his placement on the OAR pursuant to DWC Rule 10205.5, which states: "The Division of Workers' Compensation shall maintain an official participant record for

each adjudication file, which shall contain the names of all parties and lien claimants, and their attorneys or hearing representatives.” (Cal. Code Regs., tit. 8, § 10205.5(a).) Accordingly, despite Caballero’s failure to separately file a NOR, the filing of the Objection should have been enough to trigger his inclusion in the OAR for Case No. ADJ10107934.

Moreover, even assuming for purposes of argument that the fault lies entirely with Caballero for failing to ensure his inclusion in the OAR for Case No. ADJ10107934, the August 19, 2024 NOI bore both case numbers – ADJ10107934 and ADJ3942025 – and Caballero was listed in the OAR for Case No. ADJ3942025. Accordingly, when the WCJ ordered Goodwill to serve the NOI pursuant to WCAB Rule 10629 on “all parties as shown on the OAR,” that command necessarily applied to the OARs for both case numbers. The Answer does not provide any explanation for why Goodwill instead served the NOI only on the OAR for Case No. ADJ10107934.

Admittedly, although bearing both case numbers, in reality the NOI applied only to Case No. ADJ10107934, because EI’s lien in Case No. ADJ3942025 had previously been settled. It is presumably for this reason that Goodwill believed that service was only required on the parties listed on the OAR for ADJ10107934. That said, it was not up to Goodwill to unilaterally decide that a NOI issued under two case numbers only needed to be served on the parties listed in one of them. Goodwill’s failure to serve Caballero based on his presence on the OAR of Case No. ADJ3942025 therefore itself constitutes a sufficient basis to render service of the NOI defective.

Because service of the August 19, 2024 NOI was defective, we agree with Caballero that the resulting Order Dismissing must be rescinded. Accordingly, we will rescind the order, and return the matter to the WCJ for further proceedings.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the November 27, 2024 Order Dismissing Express Interpreters Lien is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the November 27, 2024 Order Dismissing Express Interpreters Lien is **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 21, 2025

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

**CABALLERO COLLECTIONS
MULLEN FILIPPI
ANTHONY RATTO
LAUGHLIN FALBO
NMCI MEDICAL CLINIC
RECOVERY RESOURCES**

AW/pm

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