

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

**MARTIN LOPEZ, *Applicant***

**vs.**

**EDELBROCK LLC., TRAVELERS, INSURANCE  
COMPANY OF THE WEST, *Defendants***

**Adjudication Number: ADJ15247947  
Long Beach Office 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 April 8, 2025.

Lien claimant contends that this matter was not placed on its calendar due to a calendaring error and when lien claimant’s representative received the Order, they were in the process of filing an objection to the Notice of Intention to Dismiss (NIT) the lien.

We have not received an Answer from any party.

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

We have considered the allegations in 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 April 8, 2025 Order.

**BACKGROUND**

We will briefly review the relevant facts.

Applicant filed an Application for Adjudication (Application) on October 5, 2021, claiming a cumulative injury from January 1, 2019 to May 27, 2021, to multiple body parts while employed by defendant as a driver.

The matter was resolved by Compromise and Release (C&R), and the WCJ issued an Order Approving the C&R (OACR) on December 27, 2022.

On May 21, 2024, lien claimant Cal State Interpreting and their non-attorney representative Collective Resources Long Beach filed a “Notice and Request For Allowance of Lien” for interpreting services provided during applicant’s medical appointments.

On December 12, 2024, defendant’s non-attorney representative filed a Declaration of Readiness (DOR) to Lien Conference requesting assistance with the resolution of liens. The proof of service shows service of the DOR on CAL STATE INTERPRETING, COLLECTIVE RESOURCES by email on December 12, 2024 and by U.S. mail service on December 13, 2024.

According to Communications in the Electronic Adjudication Management System (EAMS), a notice of hearing was served through EAMS on December 13, 2024.

A lien conference took place on February 20, 2025. The lien conference was attended by defendant’s non-attorney hearing representative as well as ICW Group Legal’s non-attorney hearing representative, and neither lien claimant nor their representative was present.

The minutes indicate that:

NOI to Dismiss CAL STATE INTERPRETING HAWTHORNE shall issue based on failure to appear-no LBO inbox email, no EAMS filing from party, no communication to either Defendant re: nonappearance

At the lien conference, the parties made a joint request to take the matter off calendar which was granted.

On February 26, 2025, the WCJ issued the NIT, which states:

IT APPEARING THAT Lien Claimant CAL STATE INTERPRETING HAWTHORNE, and Representative, COLLECTIVE RESOURCES LONG BEACH having been served with notice and having failed to appear at Conference in violation of CCR 10875 on February 20, 2025 at 8:30 am, and;

GOOD CAUSE APPEARING:

NOTICE IS HEREBY GIVEN that fifteen (15) days hence an order dismissing said lien claim shall issue absent an objection showing good cause to the contrary filed and served within said time.

(Notice of Intent, February 26, 2025.)

The NIT was served by the WCAB on Cal State Interpreting Hawthorne and defendant's attorneys via email, and Collective Resources Long Beach and ICW Group Legal via U.S. mail.

On March 3, 2025, defendant's Proof of Service indicated that lien claimant and their hearing representative were served with the minutes from the hearing of February 20, 2025.

On April 8, 2025, more than 30 days after the NIT was served, the WCJ issued the Order Dismissing the Lien.

In the Petition For Reconsideration lien claimant's representative states,

... Lien Claimant was in the process of filing an Objection to the Notice of Intention to Dismiss Lien (NOI) when Lien Claimant's representative received the Order Dismissing. . .Lien Claimant failed to appear at the February 20, 2025 Lien Conference was based on inadvertent calendar error. Lien Claimant's calendar department failed to place the matter on the calendar. Order Dismissing and now seeks relief from the consequences of failing to appear.

## **DISCUSSION**

Former Labor Code section<sup>1</sup> 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 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."

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

Here, according to Events, the case was transmitted to the Appeals Board on April 24, 2025, and 60 days from the date of transmission is June 23, 2025. This decision is issued by or on June 23, 2025, so that we have timely acted on the petition as required by section 5909(a).

Under 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 April 24, 2025, and the case was transmitted to the Appeals Board on April 24, 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 April 24, 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).) 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.)

“The WCAB . . . 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; see *Bryant v. Industrial Acci. Com.* (1951) 37 Cal.2d 215, 220 [citations omitted].) 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]; see *Fox v. Workers’ Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205-1206 [57 Cal.Comp.Cases 149].) A lien claimant must be permitted to present relevant evidence, inspect documents, cross-examine witnesses, and make reasonable objections. (*Id.* 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.)

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.)

Lien claimant requests an opportunity to be heard on its Petition and that the Order be set aside because the failure to appear at the February 20, 2025 lien conference was due to “excusable neglect,” that is, an inadvertent calendaring error by its calendaring department. Applying the legal principles above, 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.

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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

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

**PAUL KELLY, COMMISSIONER**  
**CONCURRING NOT SIGNING**



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

**June 23, 2025**

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

**COLLECTIVE RESOURCES  
DIMACULANGAN ASSOCIATES  
CAL STATE INTERPRETING  
ICW 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*