

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

**ROBERT SCHLIESMANN, *Applicant***

**vs.**

**SOLAR OPTIMUM DESIGN AND ELECTRICAL;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ14099837; ADJ18327322  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the April 15, 2025 Findings and Orders (F&O) wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that "[d]efendant failed to comply with the requests by the [panel Qualified Medical Evaluator (PQME)] for documents and diagnostic testing[.]" the QME process was incomplete due to the "lack of diagnostics," and there was therefore good cause "to vacate the [April 25, 2023] Order of Dismissal under Cal. Lab. Code sec. 5803." (F&O, p. 1.)

Defendant contends that applicant failed to provide good cause for his inaction and the reporting of PQME, Dr. Clive Segil, which was relied upon by the WCJ, is "defective, or in the alternative, supports State Fund's denial of a non-industrial injury, which would result in a 'take nothing[.]'" (Petition for Reconsideration (Petition), pp 3-4.) Defendant therefore argues that there was no good cause to vacate the Order of Dismissal.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition, the Answer, and have reviewed the record in this matter. Based upon the contents of the Report, which we adopt and incorporate herein, and the reasons discussed below, we will deny the Petition.

## FACTS

Applicant claimed that, while employed by defendant as a solar tech on August 24, 2020, he sustained an injury arising out of and in the course of employment (AOE/COE) to his lumbar spine, lower extremities, left leg, and bilateral feet.

The parties proceeded with discovery and retained Dr. Segil as the orthopedic PQME. Dr. Segil evaluated applicant on August 26, 2021, and issued a corresponding report wherein he found injury AOE/COE. In his report, Dr. Segil indicated that completion of additional diagnostics and provision of the complete medical file were needed prior to issuance of a full report. (Court Exhibit X, p. 11.)

On January 19, 2023, after a period of apparent inaction, defendant notified applicant of their intent to seek dismissal of the claim within thirty days absent a written objection demonstrating good cause. (Defense Exhibit A, p. 3.)

On March 2, 2023, a Petition to Dismiss Inactive Case was filed by defendant. (Defense Exhibit A.)

On March 2, 2023, the WCJ issued a Notice of Intention to Dismiss Inactive Case (NIT). The NIT indicated that an Order for Dismissal would issue within twenty-days after service of the NIT “unless good cause to the contrary [was] shown in writing within said time frame.” (Defense Exhibit B.)

On April 25, 2023, an Order of Dismissal was issued by the WCJ. The WCJ indicated that “no good cause to the contrary [had] been shown [by applicant] within the time allowed.” (Defense Exhibit C.)

On October 30, 2023, applicant filed a “Petition to Reopen or Alternatively Rescind Order of Dismissal.” Applicant requested that he be allowed to reopen his claim, or, alternatively, that the WCJ rescind his April 25, 2023 Order of Dismissal.

On April 14, 2025, the issue proceeded to Trial, and on April 15, 2025, the WCJ issued an F&O which held, in relevant part, that defendant failed to comply with the requests by the QME for documents and diagnostic testing, the QME process was incomplete due to the “lack of diagnostics,” and there was good cause to “vacate the Order of Dismissal under Cal. Lab. Code sec. 5803.” (F&O, p. 1.)

## DISCUSSION

### I.

Preliminarily, former Labor Code<sup>1</sup> 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 under the Events tab 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 June 24, 2025, and 60 days from the date of transmission is August 23, 2025, which is a Saturday. The next business day that is 60 days from the date of transmission is Monday, August 25, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision was issued by or on August 25, 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

---

<sup>1</sup> All further statutory references will be to the Labor Code unless otherwise indicated.

<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.

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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on June 24, 2025, and the case was transmitted to the Appeals Board on June 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 June 24, 2025.

## II.

Turning now to the merits of the Petition, pursuant to section 5803, “[t]he appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4]” and “[a]t 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.)

Here, an Order of Dismissal of case without prejudice was issued by the WCJ on April 25, 2025. Thereafter, upon receipt of applicant’s petition, and completion of a Trial on the issue of rescission, the Order of Dismissal was rescinded, via an April 15, 2025 F&O. Defendant contends that there was no good cause for the rescission because there was no good cause for applicant’s inaction and the reporting of PQME, Dr. Segil, which was relied upon by the WCJ, is “defective, or in the alternative, supports State Fund’s denial of a non-industrial injury, which would result in a ‘take nothing[.]’” (Petition, pp 3-4.)

We note that 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...” The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].)

Further, although it is true that applicant was inactive for a period of time, it is also true that defendant has a regulatory duty to conduct a reasonable and good faith investigation to determine whether benefits are due. Administrative Director (AD) Rule 10109 provides that:

- (a) [A] claims administrator must conduct a reasonable and timely investigation upon receiving notice or knowledge of an injury or claim for a workers' compensation benefit.
- (b) A reasonable investigation must attempt to obtain the information needed to determine and timely provide each benefit, if any, which may be due the employee.
  - (1) The administrator may not restrict its investigation to preparing objections or defenses to a claim, but must fully and fairly gather the pertinent information ... The investigation must supply the information needed to provide timely benefits and to document for audit the administrator's basis for its claims decisions. The claimant's burden of proof before the Appeal Board does not excuse the administrator's duty to investigate the claim.
  - (2) The claims administrator may not restrict its investigation to the specific benefit claimed if the nature of the claim suggests that other benefits might also be due.
- (c) The duty to investigate requires further investigation if the claims administrator receives later information, not covered in an earlier investigation, which might affect benefits due.
- ...
- (e) Insurers, self-insured employers and third-party administrations shall deal fairly and in good faith with all claimants, including lien claimants.

(Cal. Code Regs., tit. 8, § 10109.)

Additionally, as indicated by the WCJ his Report:

While there is no doubt that the Applicant failed to respond to the petition herein, the Defendant equally failed to follow up with Dr. Segil's request for testing and records. As stated in sec. 10109(b)(1) above, Applicant's burden of proof does not lessen Defendant's burden to produce, transmit and/or authorize necessary documentation so that the merits of the case can be established.

The undersigned is cognizant of Defendant's position. It is troubling that there were no responses to the notices. And had the medical-legal situation been resolved or finalized, it is possible that a different decision may have followed.

But since Dr. Segil requires a great deal of testing and documentation before finalizing his opinion, it is in the best interests of the Applicant, and it is consistent with the Defendant's affirmative duty under sec. 10109 that the QME report be finished and that the merits of the case dictate the case's conclusion.

(Report, p. 4.)

We agree with the WCJ's above statements. It is also well established that procedural dismissals are disfavored and there is a strong public policy favoring disposition of cases on their merits rather than on procedural grounds. (*Bland v. Workers Comp. Appeals Bd.* (1970) 3 Cal.3d 324 [35 Cal.Comp.Cases 513]; *Fox v. Workers' Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149].)

Taking the above into consideration, we believe there was good cause to rescind the April 25, 2023 Order of Dismissal. Accordingly, defendant's Petition is denied.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the April 15, 2025 Findings and Orders is **DENIED**.

**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**

**AUGUST 21, 2025**

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

**ROBERT SCHLIESMANN  
ULTIMATE LAW FIRM  
STATE COMPENSATION INSURANCE FUND**

**RL/cs**

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

**REPORT AND RECOMMENDATION ON**  
**PETITION FOR RECONSIDERATION**

**I. INTRODUCTION**

The Applicant is a [] year old solar technician who claims injury to his low back on 8/24/2020. The case was dismissed under Cal. Code of Regs. sec. 10550 on 4/25/2023.

The Petitioner is the Defendant carrier who claims that the undersigned erred by vacating the order of dismissal for good cause under Cal. Lab. Code sec. 5803.

The undersigned will recommend that the Petition be denied.

**II. STATEMENT OF FACTS**

This claim was filed on 1/12/2021 by prior counsel alleging a specific injury on or about 8/24/2020 to the low back. New counsel was obtained by Applicant. The claim was denied. The parties then selected Clive Segil M.D. to act as QME. He issued a report dated 8/26/2021 (Ex. X). He took a history of a non-related injury on September 7, 2020 and a work related injury on 8/24/2020.

Per Dr. Segil Applicant underwent back surgery (laminectomy) in September, 2020 resulting in ongoing complaints including leg problems and feet problems. Dr. Segil did not find the patient to be P&S. Applicant was in need of treatment. Dr. Segil needed a long list of additional documents and tests to finish his report. Consequently, Dr. Segil's efforts were not completed for lack of Xrays, MRI's, EMG/NCS, and medical reports and records. He found ROM loss, and many tests on examination were positive. He mentioned a possible diagnosis of failed back surgery.

On p.11 of Ex. X Dr. Segil states:

“I am withholding declaring him permanent and stationary and providing a whole person impairment pending receipt of the following:

Mr. Schliesmann required x-rays of the lumbar spine, 7 views, that include flexion and extension x-rays.



He also requires a new MRI of the lumbar spine and EMG/NCV studies on the bilateral lower extremities.

In reviewing the operative report, Dr. Ayman Salem (the spine surgeon) states the incision is 6 cm, I measure a 20 cm incision and am somewhat perplexed as to whether or not there has been another procedure that I am unaware of.

...

I would like to review his complete medical file as the records that I have received seem to be incomplete. For the sake of completeness, I would like to receive the test results and medical records at the same time in order to issue one comprehensive supplemental report addressing all issues.”

Dr. Segil did find that the “work related” injury on September 7, 2020, was the cause of the injury herein. This is a very confusing conclusion since the injury in September was not a work-related injury. It appears to be possible that Dr. Segil did not review his history before making this conclusion, but this significant oversight remains unresolved.

There is no documentary evidence that anything happened in this claim from September 2021 through March 2023.

A 30-day letter requesting dismissal of the claim was issued by the Defendant on 1/19/2023 (Ex. A). There was no apparent response. A Petition for Dismissal followed on 3/2/2023 (Ex. A). The WCJ at that time issued a Notice of Intention to Dismiss the case on 3/2/2023 (Ex. B). Again, there was no response from Applicant.

On or about 4/25/2023 the WCJ issued an Order of Dismissal of case having heard no objections (Ex. C).

On or about 10/30/2023 (six months later) Applicant filed a Petition to Re-open essentially claiming that the dismissal should be vacated for “good cause.” In the Minutes of Hearing dated 4/14/2025 the undersigned construed this petition to be a petition to vacate the order of dismissal for cause under Cal. Lab. Code sec. 5803.

Applicant's petition indicates (1) that discovery was not finished since the Defendant failed to schedule all the testing that Dr. Segil requested, and (2) negotiations were still continuing.

### **III. DISCUSSION**

Cal. Code of Regs. sec. 10109 states:

“(a)...A claims administrator must conduct a reasonable and timely investigation upon receiving notice or knowledge of an injury or claim for a workers’ compensation benefit.

(b) A reasonable investigation must attempt to obtain the information needed to determine and timely provide each benefit, if any, which may be due the employee.

(1)

The administrator may not restrict its investigation to preparing objection or defense to a claim, but must fully and fairly gather the pertinent information, whether that information requires or excuses benefit payment....The claimant’s burden of proof before the Appeals Board does not excuse the administrator’s duty to investigate the claim.” ... *Dutcher v. Cal. Psychcare, Inc.* 2019 Cal. Wrk. Comp. P.D. LEXIS 77.

In furtherance of that affirmative duty, the Appeals Board also favors a strong “public policy” that litigation should be resolved on the merits whenever possible. *Moore v. Waste Management* 2014 Cal. Wrk. Comp. P.D. LEXIS 621.

Dr. Segil’s report portrays an Applicant who may have significant problems. Applicant obviously relies on Medi-Cal for treatment as evidenced by the lien from Medi-Cal in this file. The parties clearly did not to facilitate the completion of the medical-legal analysis they had initiated.

While there is no doubt that the Applicant failed to respond to the petition herein, the Defendant equally failed to follow up with Dr. Segil’s request for testing and records. As stated in sec. 10109(b)(1) above, Applicant’s burden of proof does not lessen Defendant’s burden to produce, transmit and/or authorize necessary documentation so that the merits of the case can be established.

The undersigned is cognizant of Defendant's position. It is troubling that there were no responses to the notices. And had the medical-legal situation been resolved or finalized, it is possible that a different decision may have followed.

But since Dr. Segil requires a great deal of testing and documentation before finalizing his opinion, it is in the best interests of the Applicant, and it is consistent with the Defendant's affirmative duty under sec. 10109 that the QME report be finished and that the merits of the case dictate the case's conclusion.

Hence it was found that there is good cause to vacate the order of dismissal at this time pending further discovery. The "good cause" under Cal. Lab.Code sec. 5803 shall be both parties' failure to follow up with the QME as required. Instead, the claim was simply ignored.

#### **IV. RECOMMENDATION ON PETITION FOR RECONSIDERATION**

Based upon the facts and law set forth above, it is respectfully recommended that the Petition for Reconsideration be DENIED.

DATE: 6/24/2025

**Dean Stringfellow**

WORKERS' COMPENSATION

ADMINISTRATIVE LAW JUDGE