WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CHRISTINA PROCTOR, *Applicant*

vs.

AT&T MOBILITY SERVICES, LLC;
OLD REPUBLIC INSURANCE COMPANY, administered by
SEDGWICK, *Defendants*

Adjudication Number: ADJ13378071
Van Nuys District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION

Lien claimant, prior applicant's attorney, seeks reconsideration of the Order Approving Compromise and Release (OACR) that was issued by the workers' compensation administrative law judge (WCJ) on July 13, 2026.

Lien claimant contends, in essence, that the OACR of the case in chief should be vacated as there are outstanding issues that should have been addressed before the settlement was approved.

We have received Answers from the defendant as well as from applicant's current attorney.

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

We have considered the allegations of lien claimant's Petition and the Answers, and the contents of the WCJ's Report. 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 OACR in the first instance.

FACTS

Pursuant to the WCJ's Report, the relevant facts are as follows:

The matter initially came before the undersigned in the form of a walk through for approval of Compromise and Release on 5/19/2026. Petitioner, Lien Claimant Todd Whates, who was former Applicant's Attorney on this matter, was served with a copy of the Compromise and Release documents, which acknowledged his outstanding lien as former Applicant's Attorney. The undersigned issued an Order Approving Compromise and Release ("OACR") on 5/19/2026 and ordered Defendant to hold fees in trust pending a court order or fee split agreement between the parties.

Lien claimant objected to the Compromise and Release on the same day, 5/19/2026, and subsequently filed a Petition for Reconsideration of the undersigned's OACR on 5/26/2026, on the basis that Lien Claimant's attorney fee issue on retroactive TD was unresolved. The undersigned issued an Order Setting Aside the 5/19/2026 OACR on 6/2/2026 in response to Lien Claimant's Petition for Reconsideration and set the matter for a Status Conference scheduled on 7/1/2026 to hear the issue Lien Claimant raised on reconsideration. Lien Claimant requested the Status Conference be rescheduled to 7/8/2026, at which time the matter was heard before the undersigned.

At the 7/8/2026 Status Conference, the parties explained to the court that the issue Lien Claimant was referring to in his objection and Petition for Reconsideration was in relation to a retroactive TD payment, in the amount of $4,288.12, that Lien Claimant obtained for his former client, Applicant, in August of 2020 prior to Applicant's dismissal of Lien Claimant as her attorney on 8/20/2020. The issue of reasonable attorney's fees for legal services in relation to payment of the retroactive TD payment was raised by Lien Claimant before Judge David Pollak at an Expedited Hearing on 8/24/2020. Since the issue for the Expedited (i.e., retroactive TD payment) was resolved and Lien Claimant was dismissed as Applicant's Attorney, Judge Pollak ordered Defendant to withhold the $4,288.12 in attorney's fees for retroactive TD and the 8/24/2020 Minutes of Hearing state that the disputed issue of entitlement to attorney's fees "shall be deferred until resolution of the case in chief."

The undersigned issued an Order Approving Compromise and Release on 7/9/2026, expressly carving out the issue of Lien Claimant's entitlement to attorney's fees related to the retroactive TD period, in the amount of $4,288.12, which Defendant was ordered to hold in trust separate and outside of the Compromise and Release settlement. Further, the undersigned set the matter for a Mandatory Settlement Conference ("MSC") on the sole issue of Lien Claimant's entitlement to attorney's fees related to the retroactive TD period.

(Report, at pp. 1-2.)

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909[1], which states 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 August 25, 2026 and 60 days from the date of transmission is Saturday, October 24, 2026. The next business day that is 60 days from the date of transmission is Monday, October 26, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, October 26, 2026, 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

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[1] All section references are to the Labor Code, unless otherwise indicated.

[2] 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.

act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 25, 2026, and the case was transmitted to the Appeals Board on August 25, 2026. 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 August 25, 2026.

II.

Pursuant to section 5900(a):

> *Any person aggrieved directly or indirectly* by any final order, decision, or award made and filed by the appeals board or a workers' compensation judge under any provision contained in this division, may petition the appeals board for reconsideration in respect to any matters determined or covered by the final order, decision, or award, and specified in the petition for reconsideration.

(Lab. Code, § 5900(a), emphasis added.)

Here, prior applicant's attorney, a lien claimant, is a proper party in the case with full rights of participation as he is a party of record. (See Cal. Code Regs., tit. 8 § 10305(q)(3).) Moreover, because prior applicant's attorney is potentially aggrieved by the stipulation as to temporary disability in the C&R because of the outstanding claim for attorney's fees against applicant's temporary disability benefits, he may properly seek reconsideration.

III.

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.)

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is ". . . one of 'the rudiments of fair play' assured to every litigant . . . ." (*Id.* at p. 158.) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses;

introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal. Comp. Cases 584]; *Rucker*, *supra*, at pp. 157, 158; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) Moreover, there is a strong public policy favoring disposition of cases on their merits. (*Litzman v. Workmen's Comp. Appeals Bd.* (1968) 266 Cal.App.2d 203, 205 [33 Cal.Comp.Cases 584]; see *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.) Due process requires that a party be provided with reasonable notice and an opportunity to be heard. (*Katzin*, *supra*, at pp. 711-712.)

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*.)

Additionally, there must be a complete record for our review of the case. "[A] proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision." (*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 475.) The Appeals Board's record of proceedings is maintained in the adjudication file and consists of: the pleadings, minutes of hearing and summary of evidence, transcripts, if prepared and filed, proofs of service, evidence received in the course of a hearing, exhibits marked but not received in evidence, notices, petitions, briefs, findings, orders, decisions, and awards, and the arbitrator's file, if any. . . . Documents that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings. (Cal. Code Regs., tit. 8, § 10803.)

Applying the legal principles above, in the instant case, while lien claimant has filed a Petition for Reconsideration, it appears that in substance, lien claimant seeks to set aside the OACR issued by the WCJ on July 13, 2026. In the C&R, the parties stipulated that defendant paid $89,270.84 in temporary disability benefits for the period from March 6, 2020 to July 22, 2021, but there is no mention of the claimed lien for attorney's fees based on payment of retroactive

temporary disability benefits. The attorney's fee of $9,750.00 identified in the C&R appears to be based on a calculation of 15% of $65,000.00 settlement. No hearing was held where testimony was heard and documents were admitted into evidence. Notably, there was no evidence admitted showing periods and payments of temporary disability that defendant issued to applicant, whether a check for attorney's fees related to the retroactive temporary disability payment was previously issued but not cashed by lien claimant, and whether defendant has properly withheld $4,288.12 from the payment of temporary disability and placed it in trust. We are unable to provide a meaningful review without a proper record at this time.

Accordingly, we will dismiss the Petition and return this matter to the trial level. Upon return, we recommend that the WCJ treat the Petition as a petition to set aside the OACR in the first instance and set a hearing as there is currently no evidence admitted into the record regarding lien claimant's contentions. At the hearing, the parties will have an opportunity to create a record, raise all relevant issues, and submit evidence, including defendant's statement of benefits (Cal. Code Regs., tit. 8, § 10759(b) ["every defendant that has paid benefits shall have a current computer printout of benefits paid available for inspection at every mandatory settlement conference"]). After the WCJ issues a decision, any aggrieved person party may timely seek reconsideration.

Accordingly, we dismiss the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration of the OACR issued by the WCJ on July 13, 2026 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 26, 2026

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

CHRISTINA PROCTOR
THE PEOPLE'S LAW FIRM
WHATES LAW
CHAVEZ & BREAULT

JL/abs

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