WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

EMANUEL CONTRERAS MARTINEZ, *Applicant*

vs.

PERFECT 85 DEGREES C, INC.; ARCH INSURANCE COMPANY, administered and adjusted by SEDGWICK, *Defendants*

Adjudication Numbers: ADJ16510990, ADJ16510989
Van Nuys District Office

OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Order dismissing case numbers ADJ16510990 and ADJ16510989 (Order) issued by the workers' compensation administrative law judge (WCJ) on September 3, 2026.

Applicant's attorney essentially contends that dismissing applicant's cases places form over substance:

> Applicant's attorney contends that applicant was previously communicating with his attorneys regarding his workers' compensation claims, but at some point counsel unexpectedly lost contact with applicant. Applicant's current inability to communicate appears potentially related to a substantial disruption in his personal circumstances rather than deliberate neglect or abandonment. Applicant's attorney is actively attempting to determine Applicant's whereabouts and restore contact. According to applicant's attorney, applicant has not instructed counsel to dismiss his claims, withdraw his Applications for Adjudication of claims, abandon the proceedings, or otherwise indicate that he no longer wishes to pursue workers' compensation benefits.

We received an Answer from defendant.

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, the Answer, and the contents of the Report with respect thereto.

Based on our review of the record, and as discussed below, we will grant applicant's Petition, rescind the Order dismissing case numbers ADJ16510990 and ADJ16510989, and return the matter to the WCJ for further proceedings consistent with this decision.

BACKGROUND

We will briefly review the relevant facts and procedural history of applicant's two cases.

On August 4, 2022, applicant filed an Application for Adjudication of Claim in case number ADJ16510989, where applicant claimed injury to various body parts while employed by defendant as a shipping clerk, during the period from January 1, 2022 to April 27, 2022.

On August 4, 2022, applicant filed an Application for Adjudication of Claim in case number ADJ16510990, where applicant claimed injury to various body parts while employed by defendant as a shipping clerk on April 22, 2022.

On September 11, 2023, applicant's attorney advised defendant of applicant's change of address.

On January 28, 2026, defendant filed a petition to dismiss case numbers ADJ16510989 and ADJ16510990, on the basis that they had not been activated for hearing within one year of the petition.

On May 4, 2026, WCJ Holmes denied the petition for dismissal on the basis that defendant failed to serve applicant at the address listed on the official address record (OAR).[1]

On June 25, 2026, defendant filed an amended petition to dismiss case numbers ADJ16510989 and ADJ16510990, again on the basis that they had not been activated for hearing within one year of the petition.

On July 23, 2026, WCJ Mallory signed a Notice of Intent to dismiss case numbers ADJ16510989 and ADJ16510990, designating service to defendant. The Notice of Intent states:

> Defendant has filed a Petition to Dismiss Inactive Case on June 25, 2026. The Petition having been reviewed and
>
> NOTICE IS HEREBY GIVEN that it is the intention of the Court to grant said Petition unless there is the filing of a written objection showing good cause to the contrary within fifteen (15) days, subject to service. Absent written objection, the following order will issue:

[1] The Order was signed on March 13, 2026. The WCJ designated defendant to serve the Order on April 20, 2026, and defendant filed a proof of service declaring that the Order was served on May 4, 2026.

> "FOLLOWING A NOTICE OF INTENT WITH NO OBJECTION, GOOD CAUSE APPEARING
>
> Defendant's Petition to Dismiss Inactive Case is granted, and the case is ordered dismissed without prejudice."

(Notice of Intention, p. 1.)

On July 29, 2026, defendant served the Notice of Intent to dismiss case numbers ADJ16510989 and ADJ16510990. Defendant served applicant at 6111 Kingman Ave Apt D, Buena Park, CA 90621 and 700 W. La Jolla St., Apt. 102, Placentia, CA 92807. (Proof of Service, July 29, 2026.)

On September 3, 2026, WCJ Mallory issued an Order dismissing case numbers ADJ16510989 and ADJ16510990:

> FOLLOWING A NOTICE OF INTENT WITH NO OBJECTION, GOOD CAUSE APPEARING
>
> Defendant's Petition to Dismiss Inactive Case is granted, and the cases are ordered dismissed without prejudice.

(Order dismissing case numbers ADJ16510989 and ADJ16510990, p. 1.)

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section[2] 5909, 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.

[2] All statutory references are to the Labor Code unless otherwise stated.

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 September 9, 2026, and 60 days from the date of transmission is Sunday, November 8, 2026. The next business day that is 60 days from the date of transmission is Monday, November 9, 2026.(See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on Monday, November 9, 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 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 September 9, 2026, and the case was transmitted to the Appeals Board on September 9, 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 September 9, 2026.

II.

As a preliminary matter, we note that 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]; *Marino v. Workers' Comp. Appeals Bd*. (2002) 103 Cal.App.4th 485 [67 Cal.Comp.Cases 1273].)

[3] 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.

Due process requires the issuance of a Notice of Intent to dismiss as a condition precedent to dismissal, thereby affording the interested party or parties an opportunity to be heard. (*Fortich v. Workers' Comp. Appeals Bd.* (*Fortich*) (1991) 233 Cal.App.3d 1449, 1452-1453 [56 Cal.Comp.Cases 537]; Cal. Code Regs., tit. 8, § 10850; see Cal. Code Regs., tit. 8, § 10832.) Although WCAB Rule 10550 authorizes dismissal of an inactive case upon demonstration of the conditions that allow dismissal under the rule, and after affording the applicant notice and an opportunity to be heard, dismissal is **discretionary**, not mandatory. (*Roth v. Workers' Comp. Appeals Bd*. (1971) 20 Cal.App.3d 452 [36 Cal.Comp.Cases 604], emphasis added.)

WCAB Rule 10550 states:

> (a) Unless a case is activated for hearing within one year after the filing of the Application for Adjudication of Claim or the entry of an order taking off calendar, the case **may** be dismissed after **notice and opportunity to be heard**. Such dismissals may be entered at the request of an interested party or upon the Workers' Compensation Appeals Board's own motion for lack of prosecution.
> ...
>
> (f) A case may be dismissed after issuance of a 10-day notice of intention to dismiss **and an opportunity to be heard**, but **not by an order with a clause rendering the order null and void if an objection showing good cause is filed**.

(Cal. Code Regs., tit. 8, § 10550(a), (f), emphasis added.)

Both WCAB Rules 10550(f) and 10850(b) prohibit orders of dismissal that contain a clause rendering the order null and void if an objection showing good cause is filed. (Cal. Code Regs., tit. 8, §§ 10550(f), 10850(b).) These orders are commonly referred to as "self-destruct" orders.

WCAB Rule 10850(b) states:

> (b) All other orders of dismissal of Applications for Adjudication of Claim shall issue only after service of a notice of intention allowing at least 10 days for any adverse party to show good cause to the contrary, and **not by an order with a clause rendering the order null and void if an objection showing good cause is filed**.

(Cal. Code Regs., tit. 8, § 10850, emphasis added.)

Also relevant to the case before us, WCAB Rule 10832 states:

> (a) The Workers' Compensation Appeals Board may issue a notice of intention for any proper purpose, including but not limited to:
> ...

(5) Dismissing an application.

(b) A Notice of Intention may be served by designated service in accordance with rule 10629.

...

(d) Any order issued after a notice of intention shall be served by the Workers' Compensation Appeals Board pursuant to rule 10628.

(e) **An order with a clause rendering the order null and void if an objection is received is <u>not a Notice of Intention</u>** and **must be served by the Workers' Compensation Appeals Board**.

(Cal. Code Regs., tit. 8, § 10832, emphasis added.)

Here, the Notice of Intent to dismiss the cases contained the following clause: Absent written objection [showing good cause to the contrary within fifteen (15) days], the following order will issue: "Defendant's Petition to Dismiss Inactive Case is granted, and the case is ordered dismissed without prejudice." The WCJ subsequently issued an Order dismissing the cases, but the initial Notice of Intent contained a self-destruct clause. Additionally, the WCJ designated service of the Notice of Intent with the self-destruct clause, in violation of WCAB Rule 10832(e).)

Applicant's counsel stated that applicant likely did not receive the petition to dismiss or the Notice of Intent, which raises procedural due process concerns as to whether the required notice was received by applicant. A failure to serve applicant with the Notice of Intent to dismiss his cases is not only a violation of WCAB Rules; it constitutes a fundamental violation of applicant's due process rights, rendering the resulting Order dismissing case numbers ADJ16510989 and ADJ16510990 void on its face.

We note that under the so-called "mailbox rule," a letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail. (Evid. Code, § 641.) However, if applicant no longer resides at the address where mail was sent, it calls into question whether he received the Notice of Intent. As we discussed in our en banc decision *Suon v. California Dairies*, the presumption that a letter mailed was received is rebuttable:

> If the opposing party alleges that the information was not received, the WCJ may separately consider lack of receipt of the information by the opposing party in evaluating whether equitable relief is warranted ... The presumption that a letter mailed was received is rebuttable. However, the trier of fact is obligated to assume the existence of the presumed

> fact unless and until evidence is introduced to support a finding of its nonexistence. A mere allegation that the recipient did not receive the mailed document has been found to be insufficient to rebut the presumption. If the sending party thus produces evidence that a document was mailed, the burden shifts to the recipient to produce believable contrary evidence that it was not received. Once the recipient produces sufficient evidence showing non-receipt of the mailed item, the presumption disappears and the trier of fact must then weigh the denial of receipt against the inference of receipt arising from proof of mailing and decide whether or not the letter was received.

(*Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1817, citations and internal quotations omitted (Appeals Bd. en banc).)

With respect to the dismissal without prejudice, we note that the dismissal of an applicant's claim "without prejudice" has the effect of terminating the proceedings before the WCAB. "A dismissal without prejudice has the effect of a final judgment in favor of the defendant insofar as it terminates the proceeding and concludes the right of the parties in the particular action. Such a dismissal filed within the time of the applicable statute of limitations does not bar a subsequent action on the same cause filed within the applicable statutory period. " (*Nolan v. Workers' Comp. Appeals Bd*. (1977) 70 Cal.App.3d 122, 128 [42 Cal.Comp.Cases 401], citations omitted.) In other words, A dismissal without prejudice leaves a case as if no application had been filed and an injured worker may file an opening document such as another Application for Adjudication of Claim, subject to the time limits imposed by the statute of limitations.

With respect to whether applicant's claims are barred by the statute of limitations, the three points designated in section 5405 as the start of the one year statute of limitations period are: date of injury; the last payment of disability indemnity; and the last date on which medical treatment benefits were furnished. (Lab. Code, § 5405(a)-(c).) Thus, a dismissal without prejudice is not distinct from a dismissal with prejudice if the case is dismissed more than one year from either the date of injury; the last payment of disability indemnity; or the last date on which medical treatment benefits were furnished. (Lab. Code, § 5405(a)-(c).) Here, there is no evidence in the record regarding whether applicant received disability indemnity payments or medical treatment, nor any findings regarding the dates of injury. Because it is unclear whether applicant's claims would be barred by the statute of limitations if his cases are dismissed, we cannot determine whether the dismissals are with or without prejudice.

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].) The "essence of due process is simply notice and the opportunity to be heard." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd*. (*McKernan*) (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].) 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*, 82 Cal.App.4th at pp. 157-158.) Due process requires "a 'hearing appropriate to the nature of the case.'" (*In re James Q*. (2000) 81 Cal.App.4th 255, 265, quoting *Mullane v. Cent. Hanover Bank & Trust Co*. (1950) 339 U.S. 306, 313.) Although due process is "a flexible concept which depends upon the circumstances and a balancing of various factors," it generally requires the right to present relevant evidence. (*In re Jeanette V*. (1998) 68 Cal.App.4th 811, 817.)

The Appeals Board also has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd*. (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The "Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee." (*McKernan*, *supra*, 74 Cal.App.4th at pp. 937-938.)

Here, applicant's attorney contends that applicant likely did not receive the Notice of Intent or the Order dismissing the cases. If this is true, applicant was not provided with adequate notice and an opportunity to be heard. As a practical matter, if applicant did not receive the Notice of Intent, he could not object to it. Since the Orders of dismissal are premised on the notice and opportunity to be heard provided by the Notice of Intent, the Orders of dismissal are likely void. Moreover, if applicant did not receive the Orders of dismissal, he was not provided with notice and an opportunity to challenge the Order. We also observe that the failure to provide applicant with the requisite due process is in itself good cause to set aside the Orders of dismissal.

In the absence of an evidentiary record, we are unable to evaluate the basis of the WCJ's Order. Therefore, we must return this matter to the trial level for further proceedings.

Accordingly, we grant applicant's Petition, rescind the Order dismissing case numbers ADJ16510990 and ADJ16510989 issued on September 3, 2026, and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return to the trial level, we recommend

that the WCJ consider what further development of the record may be appropriate, set the matter for hearing, and provide the parties with the opportunity to present relevant evidence.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order dismissing case number ADJ16510990 issued by the WCJ on September 3, 2026 is **RESCINDED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order dismissing case number ADJ16510989 issued by the WCJ on September 3, 2026 is **RESCINDED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

CRAIG L. SNELLINGS, COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 9, 2026

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

EMANUEL CONTRERAS MARTINEZ
THE LAW OFFICES OF ROBERT OZERAN
BRADFORD & BARTHEL, LLP

JB/*pm*

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