WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

EMMANUEL ARGUELLO, ***Applicant***

vs.

SUPER KING MARKET; SAFETY NATIONAL CASUALTY CORPORATION,
Defendants

Adjudication Number: ADJ21873454
Anaheim District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Anna Ghajar and the law firm Dietz, Gilmor & Chazen, who are defendant's counsel in this matter, seek reconsideration of a workers' compensation administrative law judge's (WCJ) Finding and Order Imposing Sanctions of August 14, 2026 wherein it was found that "counsel for defendant engaged in sanctionable conduct by filing a verified pleading which included material misstatements of the law (see Regulation 10421(b)(8) and Business and Professions Code 6068) (see also Sedano v. Live Action [ADJ17550375] sanctioning Dietz Gilmor & Chazen $750.00 for misstating the law). Despite the contentions contained within the 'Response' dated 8/12/2026, the 'supporting affidavit' requirement contained within CCP 1985.6 does NOT apply to workers compensation cases. See CCP 1985.6(i): 'This section does not apply to proceedings conducted under … Division 4 (commencing with Section 3200) …of the Labor Code.' (See also CCP 1985.6(k))." The WCJ thus imposed sanctions jointly and severally upon Ms. Ghajar and her law firm in the amount of $500.00. In this matter, applicant claims that while employed on August 23, 2025 as a cashier, he sustained industrial injury in the form of a heart attack. The parties have entered into a Compromise and Release settling this matter, although it has not yet been acted upon by the WCJ.

Petitioners contend that the WCJ erred in assessing sanctions against them. The WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

As explained below, we will grant reconsideration and issue an order rescinding the WCJ's Order Imposing Sanctions and discharging the Notice of Intent to Impose Sanctions.

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 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.
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> (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 August 31, 2026 and 60 days from the date of transmission is October 30, 2026. This decision is issued by or on October 30, 2026, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 31, 2026, and the case was transmitted to the Appeals Board on August 31, 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 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 August 31, 2026.

II.

Turning to the merits, applicant's counsel purportedly issued a subpoena duces tecum seeking employment records from applicant's employer.[1] Defendant filed a Motion to Quash the subpoena, which stated as follows in pertinent part:

> 1 Pursuant to California Code of Civil Procedure 2019.010, a party seeking discoverable information "should avail itself of proper vehicles of discovery concerning depositions to adverse parties rather than having used the SDT procedure under CCP 1985." See, e.g. *Flora Crane Service, Inc. v. Superior Court* (1995) 234 Cal. App. 2d 767. Thus a party has no legal right to issue a SDT until other avenues of discovery have been attempted. In the instant case, the undersigned does not have information to determine whether other avenues of discovery have been attempted by the applicant's attorney.
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> 2. In addition, materiality has not been shown by the applicant. Specifically, Article 7, Title 8 of the California Code of Regulations 10530 asserts that a Workers' Compensation Appeals Board may issue a SDT upon request and in accordance with the provisions of California Code of Civil Procedures 1985 and 1987.5.
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> Section 1985 of the Code of Civil Procedure sets forth procedures and requisites of all subpoenas. The code specifically imposes the requirement of an affidavit to be served with the SDT. Specifically, Code of Civil Procedure 1985(b) states in relevant part that:
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> A copy of an affidavit shall be served with a subpoena duces tecum issued before trial, showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materialities thereof to the issues involving the case. (Emphasis Added)

(Motion to Quash at pp. 1-2.)

On June 2, 2026, the WCJ issued an Order Denying the Motion to Quash and issued the following Order:

> **IT IS FURTHER ORDERED** that within 15 days of receipt of this Order, Defendant shall file a verified response explaining its use of statutes and case law that either do not support Defendant's contentions or appear to materially misstate the law.

[1] We were unable to locate the actual subpoena in the electronic file. Defendant's Motion to Quash includes an attached "Records Request Form" from a copying service referencing a subpoena that was purportedly issued, but not the actual subpoena.

> For one, Defendant cites Cal Code Civ Proc §1985 for the proposition that Defendant's subpoena is defective because it did not contain an affidavit. Defendant is to explain how CCP §1985 comports with §1985.6, which specifies that the section is inapplicable to cases governed by the workers' compensation statutory framework under Labor Code 3200. Additionally, Defendant is to explain the import of Cal Code Civ Proc §2020.410(c)), which states that a deposition subpoena that commands only the production of business records for copying need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it.
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> Secondly, Defendant appears to materially misstate the case *Flora Crane Service, Inc. v. Superior Court*, (1995) 234 Cal. App. 2d 767. That case explains that a subpoena duces tecum is to be used to obtain records already in existence; and should not be used when the recipient of the subpoena is being asked to create additional records. Defendant should explain how this case is relevant to the present matter.

Defendant did not file a timely response to the Order and thus on August 12, 2026, the WCJ issued a Notice of Intention to Impose Sanctions on petitioners. Petitioners filed a written response, but the WCJ nevertheless issued the Order Imposing Sanctions. It appears that the Notice Imposing Sanctions was based only on petitioners' argument that a subpoena duces tecum must be accompanied by a good faith affidavit. The Order states:

> Despite the contentions contained within the "Response" dated 8/12/2026, the "supporting affidavit" requirement contained within CCP 1985.6 does NOT apply to workers compensation cases. See CCP 1985.6(i): "This section does not apply to proceedings conducted under … Division 4 (commencing with Section 3200) …of the Labor Code." (See also CCP 1985.6(k))

The Order does not mention *Flora Crane Service, Inc. v. Superior Court*, (1995) 234 Cal. App. 2d 767, and any misstatement regarding the *Flora Crane* case is not mentioned as a basis for imposing sanctions in the WCJ's Report.

III.

Labor Code section 5813(a) states, "The workers' compensation referee or appeals board may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars ($2,500) to be transmitted to the General Fund."

Appeals Board Rule 10421(b)(6-8) states, in pertinent part:

> Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit. Violations subject to the provisions of Labor Code section 5813 shall include but are not limited to the following:
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> (6) Bringing a claim, conducting a defense or asserting a position:
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> (A) That is:
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> (i) Indisputably without merit;
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> (ii) Done solely or primarily for the purpose of harassing or maliciously injuring any person; and/or
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> (iii) Done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation; and
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> (B) Where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.
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> (7) Presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law -- unless it can be supported by a non-frivolous argument for an extension, modification or reversal of the existing law or for the establishment of new law -- and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct. In determining whether a claim, defense, issue or argument is warranted under existing law, or if there is a reasonable excuse for it, consideration shall be given to:
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> (A) Whether there are reasonable ambiguities or conflicts in the existing statutory, regulatory or case law, taking into consideration the extent to which a litigant has researched the issues and found some support for its theories; and
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> (B) Whether the claim, defense, issue or argument is reasonably being asserted to preserve it for reconsideration or appellate review.
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> This subdivision is specifically intended not to have a "chilling effect" on a party's ability to raise and pursue legal arguments that reasonably can be regarded as not settled.

> (8) Asserting a position that misstates or substantially misstates the law, and where a reasonable excuse is not offered or where the offending party has demonstrated a pattern of such conduct.

(Cal. Code Regs. tit. 8, § 10421, subd. (b)(6-8).

We find that petitioners' conduct in this matter does not meet the criteria enumerated above.

With respect to defendant's argument that business records subpoenas must be accompanied by a good cause affidavit, we note that Appeals Board Rule 10640 which governs subpoenas specifically references Code of Civil Procedure section 1985. "The Workers' Compensation Appeals Board shall issue subpoenas and subpoenas duces tecum upon request in accordance with the provisions of Code of Civil Procedure sections 1985 and 1987.5 and Government Code section 68097.1." (Cal. Code Regs., tit. 8, § 10640.) Code of Civil Procedure section 1985(b) expressly requires that a subpoena duces tecum be accompanied by a good faith affidavit. The WCJ correctly noted that in a civil case it was found that the subsequent enactment of Code of Civil Procedure section 2020.410 in the Civil Discovery Act, which expressly states that records-only subpoenas need not be accompanied by a good cause affidavit, superseded section 1985. (*Terry v. Slico* (2009) 175 Cal.App.4th 352) and that this reasoning has been adopted in WCAB proceedings. (See *Voelker v. G.S.E. Construction* 2015 Cal. Wrk. Comp. P.D. LEXIS 372 [Appeals Bd. panel]; *Voelker v. Workers' Comp. Appeals Bd.* (2015) 80 Cal.Comp.Cases 1233 [writ den.].) Although we agree with the WCJ's reasoning, we do not find the defendant's argument to be frivolous. Our rules explicitly incorporate section 1985, but do not mention section 2020.410 or the Civil Discovery Act. The Civil Discovery Act does not expressly govern workers' compensation proceedings. While the *Voelker* decision did apply section 2020.410 and *Terry* to workers' compensation proceedings, as noted in the WCJ's own Report (p. 6, fn. 19), panel decisions and digest summaries of cases denied writ review by the Court of Appeal are not binding on the WCAB. (*MacDonald v. Western Asbestos Co.* (1982) 47 Cal.Comp.Cases 365, 366 [Appeals Board en banc].)[2]

[2] In imposing sanctions, the WCJ invoked Code of Civil Procedure section 1985.6 which imposes additional requirements to subpoenas in civil actions when employment records are sought. However, section 1985.6 by its own terms does not apply to workers' compensation proceedings, stating "This section does not apply to proceedings conducted under Division 1 (commencing with Section 50), Division 4 (commencing with Section 3200), Division

Thus, the WCJ erred in imposing sanctions based on the petitioners argument that a subpoena duces tecum must be accompanied by a good faith affidavit. While that argument may not win the day, we do not find it to be frivolous or in bad faith.

With regard to defendant's citation to *Flora Crane, supra*, this does not appear to have been the basis for the imposition of sanctions. As noted above, defendant wrote the following in its Motion to Quash:

> Pursuant to California Code of Civil Procedure 2019.010, a party seeking discoverable information "should avail itself of proper vehicles of discovery concerning depositions to adverse parties rather than having used the SDT procedure under CCP 1985." See, e.g. *Flora Crane Service, Inc. v. Superior Court* (1995) 234 Cal. App. 2d 767. Thus a party has no legal right to issue a SDT until other avenues of discovery have been attempted. In the instant case, the undersigned does not have information to determine whether other avenues of discovery have been attempted by the applicant's attorney.

However, the language within the quotation marks does not appear in either Code of Civil Procedure section 2019.010 which is the citation which precedes it, nor *Flora Crane*, the case following the citation. As noted by the WCJ in the proceedings below, while *Flora Crane* contains similar language, this language is for the proposition that a subpoena duces tecum cannot be used to force a witness to compile information into a document. Rather, a subpoena duces tecum is properly used to seek documents that are already in existence. Additionally, the statement that "a party has no legal right to issue an SDT until other avenues of discovery have been attempted" is not supported.

Although we set aside the WCJ's sanctions order, petitioners are reminded of the general rule set forth in Business and Professions Code section 6068(d) that an attorney is "to employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law."

4.5 (commencing with Section 6100), or Division 4.7 (commencing with Section 6200), of the Labor Code." (Code of Civ. Proc., § 1985.6, subd. (i).) The WCJ appears to have interpreted "this section" in 1985.6(i) to mean that section 1985 (a different section) does not apply to workers' compensation proceedings. However, section 1985, which is specifically referenced in our Rules, does apply to workers' compensation proceedings, although, as noted above, there is authority for the proposition that its requirement of a good faith affidavit has been superseded by section 2020.410. Section 1985.6 was not mentioned by petitioners and is not relevant to any issue in this matter. Petitioners cannot be sanctioned for failing to cite to a statute that by its own terms does not apply to workers' compensation cases.

For the foregoing reasons,

IT IS ORDERED that Anna Ghajar and Dietz, Gilmor & Chazen's Petition for Reconsideration of the Finding and Order Imposing Sanctions of August 14, 2026is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Finding and Order Imposing Sanctions of August 14, 2026 is **RESCINDED** and that the Notice of Intention to Impose Sanctions of August 12, 2026 is hereby **DISCHARGED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 30, 2026

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

EMMANUEL ARGUELLO
DIMARCO ARAUJO MONTEVIDEO
DIETZ GILMOR & CHAZEN

DW/bp

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