

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

FERNANDO GUTIERREZ (deceased) *Applicant*

vs.

**HENRY RADIO;
CALIFORNIA INSURANCE GUARANTEE ASSOCIATION for HIH AMERICA
INSURANCE, in liquidation, ADMINISTERED BY SEDGWICK CLAIMS
MANAGEMENT SERVICES AND GOLDEN EAGLE INSURANCE administered by
LIBERTY MUTUAL INSURANCE, *Defendants***

***Real Parties in Interest:*
DENTAL TRAUMA CENTER, *Lien Claimant***

**Adjudication Numbers: ADJ939270 (MON 0272023); ADJ4531595 (MON 0269862)
Marina del Rey District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Lien Claimant Dental Trauma Center (Dental) seeks reconsideration of the Joint Order Dismissing Liens per Notice of Intent (Order) issued on February 19, 2026. The workers' compensation administrative law judge (WCJ) issued a single order dismissing 17 liens across two cases for failure to prosecute the liens pursuant to WCAB Rule 10888 (b) (Cal. Code Regs., tit. 8, § 10888).

Dental argues that the Order is vague as it does not refer to a specific notice of intent and does not outline the basis for the Order or Notice of Intent. They also argue that the Order improperly dismisses multiple liens without individualized findings. Last, they contend that dismissal "with prejudice" is not appropriate in this instance.

There was no response from any party defendant. The WCJ issued a Report and Recommendation on Defendant's Petition for Reconsideration (Report) recommending denial of Dental's Petition.

On March 20, 2026, Dental filed an “Answer to Report and Recommendation on Defendant’s Petition for Reconsideration.” Here, Dental did not seek permission to file supplemental pleadings as required by WCAB Rule 10964. While WCAB Rule 10964 does not require the Appeals Board to accept supplemental pleadings, the Appeals Board may exercise its discretion to accept supplemental pleadings and consider them. We accept Dental’s Answer to the Report for filing as a supplemental pleading and consider it as part of the record. (Cal. Code Regs., tit. 8, § 10964.)

We have considered the allegations of the Petition for Reconsideration and the supplemental pleading and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will grant reconsideration and vacate the Order.

FACTS

On October 24, 2000, applicant filed an Application for Adjudication (Application) alleging a specific injury on October 14, 2000 to wrist, back, circulatory system, nervous system while working for defendant employer (ADJ4531595). On December 12, 2000, applicant filed a second Application for a cumulative injury from November 1, 1999 through November 14, 2000 to his wrist, circulatory system, nervous system, and “unclassified” (ADJ939270).¹ There is no record that these cases were consolidated.

On June 13, 2024, a settlement was reached by way of Compromise and Release (C&R) between applicant’s estate and Liberty Mutual (Liberty) in ADJ939270. Liberty agreed to pay, adjust, or litigate all liens. The Order Approving Compromise and Release (OACR) issued the same date. The OACR was served on all parties by Liberty’s counsel, including Dental, on August 15, 2024. CIGA was not a party to this C&R.

On May 20, 2025, a second C&R was completed between applicant’s estate and CIGA resolving the specific injury, ADJ4531595. CIGA agreed to pay, adjust, or litigate all liens reserving its defenses. The OACR issued and was served by CIGA’s counsel on all parties, including Dental, on the same date.

¹ The history of the case is unclear given the age of the cases. However, at some point California Insurance Guarantee Association (CIGA) took over for a liquidated carrier, HIH American Insurance. Still, Sedgwick CIGA is only listed as a party in ADJ939270, while only CIGA’s former servicing facility, Intercare, is listed as a party in ADJ4531595. Additionally, at some point Liberty was joined to ADJ939270, but are likewise not listed as a party in EAMS.

On January 8, 2026, defendant CIGA filed individualized petitions to dismiss for lack of prosecution for each lien outstanding in both cases at issue here. A petition to dismiss Dental was likewise filed on January 8, 2026 and served on Dental and their attorney by mail.

On January 12, 2025, the WCJ issued a “Joint Notice of Intent to Dismiss Liens for Failure to Prosecute” (NIT). The NIT gives notice in one document of the intention to dismiss all outstanding liens for which CIGA filed a petition to dismiss. The NIT cites failure to prosecute, without more, as the basis for dismissal in both cases. “Laughlin Falbo San Diego” was designated to serve the NIT and did file a proof of service noting service of the NIT on all parties, including Dental and their counsel on January 13, 2026. The NIT states:

Unless Good Cause to the contrary be shown within TWENTY (20) days from the date of service of this Notice of Intention. Good Cause will not be found by mere objection, but rather by specific response to the basis for denial of petition together with copies of any additional documentary evidence that the parties wish to be considered and an offer of proof as to any oral testimony to be presented at a hearing before the WCAB including the identity of the witnesses and the substance of said testimony.

On February 19, 2026, the WCJ issued the Order, which stated that:

Pursuant to the Notice of Intention and no good cause to the contrary having been shown within the time allowed, IT IS ORDERED that the following liens are dismissed with prejudice:

On ADJ939270: HEPPS PRESCRIPTION PHARMACY, SHARON MALCA LANGUAGE SERVICES, JAY J RICHLIN, BUENA VISTA MEDICAL SERVICES, DENTAL TRAUMA CENTER, 770 INTERNATIONAL INC, WORKINGRX, AD-RX PHARMACY, JAY RICHLIN MD, MH EXPRESS PHARMACY, BOBS REXALL DRUG SEAL BEACH, PHOENIX PAIN MEDICINE, EXPRESS PHARMACY, THOMAS CURTIS MD

On ADJ4531595: JAY J RICHLIN, ROBERT GROMIS, SHARON MALCA LANGUAGE SERVICES, ASSOCIATED LIEN SHERMAN OAKS, BUENA VISTA MEDICAL SERVICES, JOYCE ALTMAN INTERPRETERS TUSTIN, DENTAL TRAUMA CENTER, ASSOCIATED REPRODUCTION SERVICES, BOBS REXALL DRUG SEAL BEACH, COMPREHENSIVE OUTPATIENT SURGERY CT.

Again, all the outstanding liens are listed and dismissed in one document without specific bases for each dismissal. The WCJ designated “Laughlin Falbo San Diego” to serve the order.

DISCUSSION

I.

Former Labor Code section 5909² 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 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 March 16, 2026 and 60 days from the date of transmission is May 15, 2026. This decision is issued by or on May 15, 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 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 March 16, 2026 and the case

² All further references are to the Labor Code unless otherwise noted.

was transmitted to the Appeals Board on March 16, 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 March 16, 2026.

II.

The Order of Dismissal is void by operation of law as explained below.

First, the WCJ may issue a notice of intention for any proper purpose, including allowing, disallowing, or dismissing a lien. (Cal. Code Regs., tit. 8, § 10832 (a)(1).) Specifically, the Appeals Board or a workers' compensation judge may order a lien dismissed for lack of prosecution where a lien claimant fails to file a Declaration of Readiness to Proceed within 180 days of resolution of the underlying case or 180 days after a lien conference or lien trial is ordered off calendar. (Cal. Code Regs., tit. 8, §10888(b).)

Before issuing an order dismissing a lien, the Appeals Board or WCJ “shall issue a Notice of Intention to Dismiss the lien claim consistent with rule 10832 that provides at least 10 days for the lien claimant to file and serve a response showing good cause why an Order dismissing the lien should not issue.” (Cal. Code Regs., tit. 8, § 10888(e).) Due process requires the issuance of an NIT to dismiss a petition 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; Cal. Code Regs., tit. 8, § 10832.) The NIT must clearly state the reason(s) for dismissal, so as to provide the parties with adequate notice and a meaningful opportunity to respond. The basis for the NIT must also be supported by the evidence. (See, e.g., *Terrazas v. S & S Foods, LLC* (March 27, 2023, ADJ14315608) 2023 Cal. Wrk. Comp. P.D. LEXIS 77, *6-8 [NIT contained language “too vague to constitute proper notice or to ensure due process.”].) If an NIT is issued in violation of due process, the corresponding order issued thereafter is invalid.

Here, the NIT does not identify with particularity the basis for the dismissal of each lien. The WCJ should have issued a separate NIT in response to each of defendant's petitions to dismiss, with the basis for dismissal of that individual lien in that individual case. Thus, the NIT here is void as does not provide adequate notice so as to provide an adequate opportunity to be heard.

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 includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, 82Cal.App.4th at p. 157-158 citing *Kaiser Co. v. I.A.C. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Here, since the NIT was void, the Order based on the NIT is void, and it must be vacated. Nonetheless, we also observe that other bases exist to rescind the Order as discussed below.

WCAB Rule 10832 (d) states, “**Any order** issued after a notice of intention shall be served by the Workers' Compensation Appeals Board pursuant to rule 10628.” (Cal. Code Regs., tit. 8, §10832(d).) WCAB Rule 10628(a) requires the WCAB to serve all parties of record with any final order, decision, or award issued by it, and shall not designate service. (Cal. Code Regs., tit. 8, §10628(a).) Here, the Order following the NIT was designated for service by Laughlin Falbo San Diego. Not only is designated service of a final order prohibited, but it is also unclear whether CIGA was actually a proper party in both cases. Thus, service is defective.

Section 5313 requires that after a matter is submitted, and together with findings of fact, orders, and/or awards, a WCJ “shall” serve “a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, § 5313.) 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).) “Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, § 5313; see *Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

“The WCJ is also required to prepare an opinion on decision, setting forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.) “For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record. (*Hamilton, supra*, 66

Cal.Comp.Cases at p. 476.) “The opinion enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350].) In short, the lack of an opinion that articulates the basis for the decision and identifies the relevant evidence is also an issue of due process.

In this matter, neither the NIT nor the Order provides the basis for the dismissals. The WCJ argued in his Report that a WCJ’s report may cure any technical or alleged defect in satisfying the requirements of section 5313 per *Smales v. Workers’ Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 1026. First, the Report cannot cure defects on the face of the NIT or the Order. As noted above, the Order was improperly designated for service, the NIT did not provide sufficient notice of the basis for dismissal, and the Order did not outline the evidence and basis for the dismissal of any of the liens. Defendant filed separate petitions for each lien they sought to be dismissed. Due process requires that each lien claimant is entitled to be apprised of the specific evidence and basis for dismissal in each case as there is no evidence that these cases have ever been consolidated. Second, even if the Order was not void, the Report in this case does not cure the *Hamilton* issue as, again, there is no citation to the evidence that supports the dismissal of each and every lien in each case, nor is there an opinion as to the basis for dismissal of each lien.

Accordingly, we grant the Petition for Reconsideration and vacate the Order.

For the foregoing reasons,

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

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order of Dismissal issued by the WCJ on February 19, 2026 is **VACATED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 15, 2026

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

TF/md

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

SERVICE LIST

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