WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GREGORIO VALLECILLO MENA, ***Applicant***

vs.

CULINARY INTERNATIONAL, LLC; AMERICAN HOME ASSURANCE COMPANY administered by HELMSMAN MANAGEMENT ROCKLINGRS-GARMENT RELATED SERVICE; NORGUARD INSURANCE COMPANY administered by GUARD INSURANCE; SOUTH BAY SAFETY INC.; UNINSURED EMPLOYERS BENEFITS TRUST FUND, ***Defendants***

Adjudication Number: ADJ13427439
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant's attorney seeks reconsideration from the First Amended Order Imposing Sanctions and Costs (Amended Order) issued by a workers' compensation administrative law judge (WCJ) on July 27, 2026, wherein the WCJ imposed sanctions of $500.00 for applicant attorney's failure to comply with the WCJ's March 17, 2025 discovery orders that ordered him to produce medical reports that indicate that applicant is in need of a guardian ad litem and affidavits regarding contacts with applicant.

Applicant's attorney contends that the Amended Order should be rescinded as he has not engaged in sanctionable conduct because no responsive medical reports exist and the order for affidavits was vague and may involve matters protected by attorney-client privilege.

Defendant did not file an answer. The WCJ issued a Report and Recommendation (Report) in response to applicant's attorney's initial petition for reconsideration, wherein he appeared to believe that the Amended Order sufficiently responded to the initial petition. He did not issue a Report in response to the subject Petition.

We have considered the allegations of the Petition for Reconsideration. Based on our review of the record, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings consistent with this decision.

FACTS

Applicant filed an Application for Adjudication alleging a cumulative injury from June 15, 2020 through June 28, 2020, while working as a general laborer to his feet, second toe amputation on right foot, left big toe infections, psyche, and internal. The initial application was filed against South Bay Safety, Inc., but has been amended several times to add additional employers and carriers.[1] Uninsured Employers Benefit Trust Fund (UEBTF) was joined on November 1, 2023.

On August 21, 2024, defendant NorGuard Insurance filed a "Petition to Compel Attendance at Panel Qualified Medical Legal Exam." An Order Compelling Attendance at Medical Examination issued on August 23, 2024.

On August 23, 2024, applicant filed a Declaration of Readiness to Proceed (DOR) to Mandatory Settlement Conference (MSC). According to Communications in the Electronic Adjudication Management System (EAMS), a notice of hearing was served on August 29, 2024.

On September 10, 2024, defendant NorGuard Insurance filed a "Motion to Compel Attendance at Deposition." On September 20, 2024, an Order Compelling Applicant to Attend Remote Deposition issued.

On December 3, 2024, defendant NorGuard filed a "Petition for Order to Compel Applicant's Attendance to Attend Mandatory Settlement Conference Pursuant to CCR 10755 and 10832 and Petition For Dismissal of Claim for Failure to Comply with Court Orders to Compel the Applicant's Attendance to PQME Evaluation and Deposition." No action was taken by a WCJ in response.

An MSC occurred on January 23, 2025, and applicant appeared by way of his attorney. The Comments note, "AA said applicant was present at check in. At the 9:40 am call back she said she was unable to reach the applicant today. NOI to dismiss will issue."

On January 23, 2025, a Notice of Intention to Dismiss Case issued stating:

> [applicant] has filed an Application for Adjudication of Claim alleging injury as a result of the Applicant's employment by Defendant. On September 23, 2024, an

[1] Defendants are reminded of their continuing obligation to ensure that defendants are identified by their correct legal names and that third party administrators and insurance carriers are properly identified. (See *DiFusco v. Hands On Spa* (2025) 90 Cal.Comp.Cases 1007.)

> order was issued compelling applicant to attend a deposition on the grounds he missed a deposition and gave no excuse. Applicant did not attend the compelled deposition. On August 23, 2024, an order was issued compelling Applicant to attend a medical evaluation on the grounds he missed an examination. Applicant did not attend the compelled medical examination with giving any excuse. On January 23, 2025, Applicant's attorney misrepresented to the court that she was in contact with the Applicant by phone. The matter was trailed and when the parties came back Applicant's attorney confessed that they had lost contact with the Applicant.

The notice indicated that an order dismissing case will issue 10 days after service unless good cause to the contrary is shown in writing. Defense counsel was designated to serve and according to the proof of service, the notice was served on January 24, 2025.

On February 3, 2025, in an unverified pleading, applicant's counsel filed an Objection to Notice of Intent to Dismiss Cases.

On February 11, 2025, without setting the matter for a hearing, the WCJ issued an Order Dismissing Case without prejudice.

Thereafter, on March 10, 2025, applicant filed a petition for reconsideration.

On March 17, 2025, the WCJ issued an Order Rescinding Decision, Vacating Submission and Setting Further Proceedings. He rescinded the February 11, 2025 Order Dismissing and set the matter for June 26, 2025. The Order further stated that:

> IT IS FURTHER ORDERED that Applicant's Attorney shall file and serve on defense counsel any and all medical reports that indicate that Applicant is in need of a guardian ad litem.
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> IT IS FURTHER ORDERED that Applicant's Attorney shall file and served affidavits regarding contact with the applicant, signed under penalty of perjury by each and every person that the reconsideration states had contact with the applicant.
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> IT IS FURTHER ORDERED that the items ordered to be filed and served be filed and served at least twenty days prior to the hearing date above.

A Status Conference was held on June 26, 2025, but was continued to October 16, 2025 because applicant's counsel had not complied with the order.

Defendant filed a "Petition to Rescind Order Vacating Pursuant to Labor Code § 5803 and Petition for Reinstatement of Order for Dismissal of Claim Pursuant to CCR § 10755 and § 10832" on July 10, 2025.

On October 16, 2025 the status conference went forward. In supplemental pages to the Minutes of Hearing the WCJ took extensive notes, but did not go on the record. The supplemental minutes then state:

> NOTICE IS HEREBY GIVEN that, absent written objection and demonstration of good cause to the contrary filed and served with the undersigned WCJ on or before November 13, 2025, the undersigned WCJ will impose sanctions payable to the Workers' Compensation Appeals Board of five hundred dollars ($500.00)," against applicant's counsel. The WCJ also noted he intended to award costs to defendant.

Service was completed by the court on October 20, 2025.

On June 25, 2026, another status conference went forward. In the notes, the WCJ stated, "Order dated October 16, 2025 issued and AA has not complied. NOI for sanctions was issued. Needs trial on need for Guardian ad Litem and costs to defendant regarding sanctions. Sanction order to issued [*sic*] in separate document to be served by mail." The matter was continued to an MSC set for November 19, 2026.

On June 29, 2026, the WCJ issued an order imposing sanctions.

On July 23, 2026 applicant filed a timely petition.

On July 27, 2026, the WCJ issued the Amended Order. Applicant filed the subject Petition in response to the Amended Order.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909[2], 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] All further statutory references will be to the Labor Code unless otherwise indicated.

> (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 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 3, 2026. Applicant's attorney filed the Petition for Reconsideration on August 19, 2026. The filing of the Petition should have triggered return of the case to the district office, but for reasons that are not entirely clear, it did not. In an abundance of caution, we issue this decision based on the date of initial transmission, even though it was legally impossible for the time to act on the Petition to commence before the Petition was filed. Sixty days from the date of transmission is October 2, 2026, and this decision is issued by or on October 2, 2026, so that we have timely acted on the Petition within the language of 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, the case was transmitted to the Appeals Board on August 3, 2026. The WCJ did not issue a Report in response to the Petition, and no other notice of transmission was provided by the district office. Thus, we conclude that the parties were not provided with the notice of transmission required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties arguably did not have notice of the commencement of the 60-day period in response to the filing of the Petition.

II.

WCAB Rule 10961 (Cal. Code Regs., tit. 8, § 10961) provides that a case remains with the district office for up to 15 days after the timely filing of a petition for reconsideration and sets forth the following actions that a WCJ may take in response: (1) The WCJ may prepare a report and transfer the case to the Appeals Board to address the merits of the petition (Cal. Code Regs., tit. 8, § 10961(a); see Cal. Code Regs., tit. 8, § 10962); (2) The WCJ may rescind the entire order, decision or award and initiate proceedings within 30 days (Cal. Code Regs., tit. 8, § 10961(b)); or (3) The WCJ may rescind the order, decision or award and issue an amended order, decision or award, and a new petition for reconsideration must be filed in response to the amended order, decision or award (Cal. Code Regs., tit. 8, § 10961(c)). Consequently, if the order, decision or award is rescinded pursuant to subdivision (b) or subdivision (c) within the 15-day period wherein the WCJ retains control, the original petition is deemed moot because the order, decision or award that is the subject of the petition no longer exists.

Here, the WCJ properly issued the Amended Order, and we do not consider the original order. That is, at issue here is the First Amended Order for sanctions in the amount of $500.00 against applicant's counsel issued on July 27, 2026. This order was based on a Notice of Intent which issued in the supplemental pages to the Minutes of Hearing dated October 16, 2025.

While we are sympathetic to the WCJ's frustration about the court's time and resources, in workers' compensation proceedings, "[d]emurrers, petitions for judgment on the pleadings and petitions for summary judgment are not permitted." (Cal. Code Regs., tit. 8, § 10515.) Yet, no record was ever created, no evidence was ever admitted, and no testimony was ever given in support of multitude of orders issued here in violation of WCAB Rule 10787. (Cal. Code Regs., tit. 8, § 10787.) The WCJ's attempts to recreate conversations in his Report, in the notices of intention, and on the minutes simply place him in the role of a witness; they are not evidence and they are not a proper record of proceedings.

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].) Due process requires that a party be provided with reasonable notice and an opportunity to be heard. (*Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 711-712 [57 Cal.Comp.Cases 230].) Due process guarantees all parties the right to notice of hearing and a fair hearing. (*Rucker*,

supra, 82 Cal.App.4th at pp. 157-158.) 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*, *supra*, 89 Cal.App.4th at p. 1295; *Rucker*, *supra*, at pp. 157-158, citing *Kaiser Co.* v. *I.A.C.* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin*, *supra*, 5 Cal.App.4th at p. 710.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (Id. at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

The Appeals Board is authorized to impose sanctions, costs and attorney's fees under section 5813. (Lab Code, § 5813(a) and (b).) Orders for sanctions, costs and attorney's fees can be based upon the WCJ's own motion or on a petition filed pursuant to Workers' Compensation Appeals Board (WCAB) Rule 10510. (Cal. Code Regs., tit. 8, §§ 10421(a), 10510.) Before issuing such an order, "the alleged offending party or attorney must be given notice and an opportunity to be heard." (Cal. Code Regs., tit. 8, § 10421(a).)

Here, we disagree that the Notice of Intent to Sanction provided the offending party with proper notice. First, the notice is buried in a lengthy minute order on the last page. While we understand that the WCJ was providing the procedural landscape to support the NIT, the effect of proper notice is lost. In the minutes for the hearing on June 25, 2026, no record was made nor evidence entered to support the decision that applicant's counsel acted in bad faith with the intent to delay. This sequence of events creates not only confusion for the person being sanctioned but also is completely devoid of an appropriate record and evidence.

Additionally, we note that any orders for medical evidence to support incapacitation of the applicant or for affidavits from applicant's counsel's staff or applicant's daughter were not appropriate or ripe at the time of issuance because no record had been created to demonstrate the need for that evidence or those affidavits and there was no pending petition to appoint a guardian ad litem. There was also no record created to support that applicant failed to appear at deposition or at a medical evaluation. Moreover, while it is not germane here, we observe that applicant did appear by way of counsel at the January 23, 2025, and there is no indication that the WCAB sent a notice to applicant to personally appear. Thus, there was no basis to find that applicant failed to appear.

We agree with the WCJ that it is concerning that no petition or evidence has been provided, but without such a petition in place, it is premature to speculate as to the issue. As such, we do not see that affidavits would be reasonably calculated to lead to the discovery of admissible evidence. Once a petition is filed, it is reasonable to expect that applicant provide the necessary medical documentation to support incompetency.

In sum, an evidentiary record, a proper notice identifying the person responsible and the alleged conduct with particularity, and an opportunity to be heard are all required. Accordingly, we grant applicant's Petition and rescind the Amended Order granting sanctions dated July 27, 2026.

For the foregoing reasons,

IT IS ORDERED that The Petition for Reconsideration of the First Amended Order Imposing Sanctions and Costs of July 27, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the First Amended Order Imposing Sanctions and Costs of July 27, 2026 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 2, 2026

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

GREGORIO VALLECILLO MENA
EQUITABLE LAW
ALBERT MACKENZIE
UNINSURED EMPLOYERS BENEFITS TRUST FUND (OAKLAND)
LAW OFFICE OF ANNABELLE KRISHEL
RK LAW

TF/md

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