

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

JOSE ESPINOZA, *Applicant*

vs.

MONTEREY MUSHROOMS, INC.;
permissibly self-insured, administered by ACCLAMATION CLAIMS SERVICES,
Defendants

Adjudication Number: ADJ20424458
Salinas District Office

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

Applicant seeks reconsideration of the Order Dismissing Case (Order) issued by the workers' compensation administrative law judge (WCJ) on April 7, 2026. As there was no timely objection to the Notice of Intention (NOI) dated March 16, 2026 and served on March 18, 2026, the WCJ found good cause and issued an Order dismissing the case without prejudice for inactivity.

Applicant requests that the Order be vacated as he contends there was a lack of proper notice of the NOI to Dismiss and the Order, he has continuously prosecuted his claim, and the Order is not supported by substantial evidence.

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we grant reconsideration, issue an Order Rescinding the Order, and return the matter to the district office for further proceedings including a status conference to confirm a discovery plan.

We have considered the allegations of the Petition and the contents of the WCJ's Report. Based on our review of the record, for the reasons stated in the Report, and for the reasons discussed below, we will grant reconsideration, rescind the Order, and return the matter to the WCJ for further proceedings consistent with this opinion.

FACTS

We will briefly review the relevant facts.

On January 24, 2025, applicant filed an Application for Adjudication of Claim (Application) claiming a cumulative injury to multiple body parts while employed by defendant as a laborer from December 1, 2021 to December 23, 2024. On the same day, applicant's prior attorney, also filed a Fee Disclosure Statement, Labor Code section 4906(h)¹ Declaration, Venue Authorization, and DWC-1 Claim Form.

On May 15, 2025, applicant's new and current attorney filed a Substitution of Attorneys (SOA), Notice of Dismissal of Attorney, Fee Disclosure Statement, and Section 4906(h) Declaration. In the dismissal, applicant dismissed his prior attorneys, and in the substitution, applicant appointed his new attorney in the place of "pro per."

On May 16, 2025, the Division of Workers' Compensation (DWC) rejected the SOA and a notice was issued as follows:

- 1) SOA is invalid. SOA should only be filed when one law firm is replacing another and is signed by both attorneys (former and current).
- 2) DOA is acceptable when filed with Notice of Representation (sample attached). The required Fee Schedule and 4906(h) Declaration has been received. Please file NOR at your earliest convenience to be added to the [sic]

(Notice Regarding Rejected E-filed SOA, May 15, 2025, at p. 1.)

On January 27, 2026, defendant served applicant a letter advising of its intention to file a Petition to Dismiss an inactive case within thirty days of the letter. (Intention to File a Petition to Dismiss, January 27, 2026 at p. 1.) In the letter, defendant indicated applicant's counsel of record was also provided with a copy of the letter. (*Id.*) However, defendant's proof of service only listed applicant's prior attorney.

On March 6, 2026, defendant filed a Petition to Dismiss for lack of prosecution pursuant to WCAB Rule 10550. (Cal. Code Regs., tit. 8, § 10550.) Once again, defendant's proof of service did not list applicant's current attorney.

On March 17, 2026, the WCJ issued a NOI to Dismiss Case and ordered defendant to serve. On March 18, 2026, defendant served the NOI to Dismiss Case to applicant and applicant's prior attorney.

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

On April 7, 2026, the WCJ issued the Order Dismissing Case. On the face of the Order, defendant was delegated to serve the Order, however, the proof of service did not highlight any party as being served. There is no proof of service in the record.

On April 9, 2026, applicant's current attorney filed a Notice of Representation and re-filed a SOA, Dismissal of Attorney, section 4906(g) Declaration, and Fee Disclosure Statement.

On April 10, 2026, applicant filed a Petition for Reconsideration.

DISCUSSION

I.

Preliminarily, former section 5909 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 under the Events tab 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 April 14, 2026, and 60 days from the date of transmission is June 13, 2026, which is a Saturday. The next business day that is 60 days from the date of transmission is Monday,

June 15, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision was issued by or on June 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 shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on April 14, 2026, and the case was transmitted to the Appeals Board on April 14, 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 April 14, 2026.

II.

Turning to the merits of the Petition, applicant requests the WCJ's Order dismissing his case be vacated as his new attorney was not properly served with any of the documents or notices pertaining to the April 7, 2026 dismissal order.

WCAB Rule 10550, regarding petitions to dismiss inactive cases, requires:

- (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.
- (b) At least 30 days before filing a petition to dismiss, the defendant seeking to dismiss the case shall send a letter to the applicant and, *if represented, to the applicant's attorney or non-attorney representative*, stating the defendant's intention to file a "Petition to Dismiss Inactive Case" 30 days after the date of that letter, unless the applicant or applicant's attorney or non-attorney representative objects in writing, demonstrating good cause for not dismissing the case.

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.

- (c) A petition to dismiss shall be filed with the district office having venue or in EAMS and the *petition shall be served on all parties* and all lien claimants pursuant to Rule 10625.
- (d) A petition to dismiss shall be captioned “Petition to Dismiss Inactive Case [assigned ADJ number].”
- (e) The following documents shall be filed with a petition to dismiss:
 - (1) A copy of the letter required by subdivision (b) of this rule; and
 - (2) Any reply to the letter required by subdivision (b) of this rule.
- (e) 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, emphasis added.)

Code of Civil Procedure section 473 provides in pertinent part, “[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.” (Cal. Code Civ. Proc., § 473(b).) Section 5506 allows the Appeals Board to grant relief under Code of Civil Procedure section 473. (Lab. Code, § 5506; See *Fox v. Workers’ Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149].)

In the instant case, applicant filed a Notice of Dismissal of Attorney dismissing his prior attorney as well as a SOA appointing his new attorney in place of “pro per” on May 15, 2025. However, on May 16, 2025, the DWC rejected the SOA and issued a Notice advising that a SOA should only be filed when one law firm is replacing another and is signed by both the former and current attorneys. The DWC also indicated that for the Notice of Dismissal of Attorney to be accepted, a Notice of Representation be filed.

This is not correct. There is no basis for the statements that the “SOA is invalid. SOA should only be filed when one law firm is replacing another and is signed by both attorneys (former and current)” and “DOA is acceptable when filed with Notice of Representation (sample attached). The required Fee Schedule and 4906(h) Declaration has been received. Please file NOR at your earliest convenience to be added to the [sic].” These statements are not orders by a WCJ or the Appeals Board and have no legal basis for their enforcement.

Under WCAB 10402 (Cal. Code Regs., tit. 8, § 10402), applicant filed the substitution, a legal pleading, and the DWC should have accepted it and made the requested change. WCAB Rule 10402(b)(1) states that the substitution shall “include[] the information required for a notice of representation filed pursuant to rules 10400.” Here, the documents filed included the information required under WCAB Rule 10400 (Cal. Code Regs., tit. 8, § 10400), with the exception of Alex Narayan’s State Bar number.

We are unable to locate any legal authority in the Labor Code or in our rules to support the unknown person at DWC’s decision to reject the SOA, and we emphasize that this action is without merit and usurps the authority of the Appeals Board.

We further observe that the principles of “liberal pleading” have infused California’s statutory landscape for more than 150 years. Enacted in 1872, Code of Civil Procedure section 452 requires that, “[i]n the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties.” The workers’ compensation system “was intended to afford a simple and nontechnical path to relief.” (*Elkins v. Derby* (1974) 12 Cal.3d 410, 419 [39 Cal.Comp.Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) Generally, “the informality of pleadings in workers’ compensation proceedings before the Board has been recognized. (*Zurich Ins. Co. v. Workmen’s Comp. Appeals Bd.* (1973) 9 Cal. 3d 848, 852 [38 Cal.Comp.Cases 500, 512]; *Bland v. Workmen’s Comp. App. Bd.* (1970) 3 Cal. 3d 324, 328–334 [35 Cal.Comp.Cases 513].) “[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee’s entitlement to rehabilitation benefits.” (*Martino v. Workers’ Comp. Appeals Bd.*, (2002) 103 Cal.App.4th 485, 490 [67 Cal.Comp.Cases 1273].) Courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*Rubio v. Workers’ Comp. Appeals Bd.* (1985) 165 Cal. App. 3d 196, 200–01 [50 Cal.Comp.Cases 160]; *Liberty Mutual Ins. Co. v. Workers’ Comp. Appeals Bd.* (1980) 109 Cal.App.3d 148, 152–153 [45 Cal.Comp.Cases 866].)

Here, the district office rejected the use of the SOA as the proper form since applicant was not an attorney. However, as discussed above, applicant provided sufficient notice of his new attorney and the SOA should not have been rejected. Consequently, there was sufficient notice of applicant’s new representative and notice needed to be provided. Defendant did not comply with WCAB Rule 10550(b), which requires that thirty days prior to filing a petition to dismiss, a defendant must send a letter to applicant and applicant’s attorney, informing them of defendant’s

intention to file a “petition to dismiss inactive case.” (Cal. Code Regs., tit. 8, § 10550(b).) Although defendant sent the required letter to applicant, it failed to properly serve applicant’s new attorney.

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 citing *Kaiser Co. v. Industrial Acci. Com. (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].) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties’ rights to due process. (*Gangwish, supra*, at p. 1295, citing *Rucker, supra*, at pp. 157-158.)

Here, as applicant’s new attorney was never served with the NOIs, Petition to Dismiss, nor the Order, applicant had neither notice nor an opportunity to be heard. We agree with the WCJ that the Order must be rescinded and that the matter must be returned to the district office for further proceedings including a status conference to confirm a discovery plan.

Accordingly, we grant applicant’s Petition, rescind the Order, and return the matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the decision of April 7, 2026 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the April 7, 2026 Order Dismissing Case is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with the opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 15, 2026

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

**JOSE ESPINOZA
ALEX NARAYAN
SCR LAW**

JL/abs

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