

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

KENNETH ELDER, *Applicant*

vs.

**SONOCO;
LIBERTY MUTUAL INSURANCE CORPORATION administered by CORVEL
*Defendants***

**Adjudication Number: ADJ20172102
Lodi District Office**

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

Defendant's attorney seeks reconsideration of Orders outlined in the Minutes of Hearing and Orders (Orders) dated February 11, 2026. In relevant part, the workers' compensation administrative law judge (WCJ) ordered defendant's attorneys David Jane and Associates and David Na, as principle, to pay sanctions in the amount of \$2,500.00 and attorney David Na to appear personally at a continued trial.

Defendant's attorney contends that the sanctions order is not supported by Labor Code section 5813¹ as the record does not support bad faith actions or tactics because at each trial date defendant's law firm did have a representative appear; that they were not afforded a meaningful opportunity to be heard; and that the order for him to appear is speculative and not supported by good cause.

Applicant did not file an answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) on March 16, 2026, recommending the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will grant reconsideration and rescind the seven Orders.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

FACTS

Applicant filed an Application for Adjudication of Claim on November 6, 2024, alleging injury to the ear as the result of cumulative injury through November 25, 2024, while employed with defendant.

On September 19, 2025, applicant filed a Declaration of Readiness to Proceed (DOR) to a Mandatory Settlement Conference (MSC). The DOR states, "Hearing necessary to force the defense to pay LC 5710 fee demand made 6/24/25." According to Communications in the Electronic Adjudication System (EAMS), a notice of hearing was sent on September 22, 2026.

At the October 9, 2025 MSC, a Pre-Trial Conference Statement (PTCS) was completed and signed by applicant's attorney. The only appearance listed on the PTCS is by applicant's counsel. At page 1, the document states, "Issue of costs and sanctions raised on WCAB motion." The issues listed are "LC 5710" and "LC 5813 deferred." At page 4, the court noted, "this PTCS submitted by AA only after DA failed to produce joint PTCS four hours after MSC was concluded." The PTCS also states, "all parties will appear in person," and it is signed by the WCJ. Trial was set for November 19, 2025. According to the record in FileNet in EAMS, there was no other record created of appearances at the MSC. According to Communications, a notice of hearing was sent out on October 13, 2026. According to the record in FileNet, there is no other notice of hearing.

On November 19, 2025, defense counsel filed a petition for a virtual appearance for trial scheduled for November 19, 2025. The petition alleges that the appearing attorney had sustained a physical injury which prevented her from appearing in person.

On November 19, 2025, the parties went on record. Appearances were made by applicant's counsel, and defendant's attorney Phillip Woo. On the record, the WCJ stated, "This matter had previously come on for MSC on October 9, 2025. It should be noted at that time that no appearance was made by the defendants at the MSC." (Minutes of Hearing (MOH), 11/19/2025, 2:3-4.) The WCJ went on to add, "The parties were ordered to appear in person for today's trial. Unfortunately, counsel assigned to the case was taken ill this morning, and nobody appeared in person. Mr. Woo has graciously appeared remotely via Court Call on at least three occasions today; however they could not produce a lawyer to appear in person." (*Id.* at 2:8-10.) They were able to agree with respect to the outstanding 5710 fee, but they were not able to resolve issue of costs and sanctions for failure to appear at the MSC and trial.

The MOH included a section labeled, “Notice of Intent” which stated in relevant part that:

The Court hereby provides Notice of their Intention to Impose Costs and Sanctions for the failure to appear at both the MSC, and today’s trial, as ordered, in person. .

..

It is further noticed that the Court intends to impose sanctions on David Jane & associates for their failure to appear at the MSC October 9th, and at today’s trial to appear in person as ordered. The sanction of \$2500.00 will be imposed.

This order will become final after the passage of 15 days after service of these Minutes of Hearing.

Let the Minutes reflect that if a timely objection is filed, it’s the Court’s intention to set this for an in-person trial on all issues. It shall be noted for the record that Mr. Woo, Mr. Gonzalez, and all parties are hereby noticed that all appearances will be in person. No further continuances will be entertained, and the defense is **Ordered** to have a person appear at trial that has authority to negotiate any potential costs under 5811 and 5813 and sanctions on behalf of the firm.

(*Id.* at 2:20-3:5.)

The MOH was served on all parties November 19, 2025. According to the record in FileNet, there is no separate notice of intention to impose sanctions, and defendant’s attorney did not file any objection. According to Communications, a notice of hearing was sent on January 21, 2026.

On February 11, 2026, applicant’s counsel and defendant’s attorney Mr. Woo were present in person. The WCJ summarized the proceedings in relevant part as follows.

After discussions with Mr. Woo, and apparently Mr. Na from the defense counsel, a gentleman named Anthony Choe was scheduled to appear at the October 9th MSC, but due to unforeseen circumstances, did not make an appearance that day.

Thereafter, the matter was set for trial to take place on November 19, 2025, in front of this Judge. At that time, parties were ordered to be personally present at the trial of November 19, 2025. At the trial of November 19, 2025, Mr. Gonzalez appeared in person, and Mr. Woo appeared via CourtCall due to a misunderstanding regarding the in-person nature of the trial at that time. The parties had several discussions regarding how to resolve the 5710 issue and the resulting petitions for costs for nonpayment of the 5710 fee. At the time of the November 19th hearing, Mr. Woo indicated on the record that his client had agreed to pay the outstanding 5710 fee costs in the amount of \$360.00.

It should be noted that to date that 5710 fee remains unpaid.

At the time of the November 19th trial, this Court, this Judge, issued a Notice of Intent to Impose Sanctions on the David Jane law firm and Mr. David Na, principle,

for failure to appear at the October 9th, 2025 MSC and for failure to appear in person at the November 19, 2025 trial.

Parenthetically, it should be noted, Mr. Woo, while he made an appearance via teleconference on November 19th, and is here in person today, has made valiant efforts to resolve this case, but it appears as though the ultimate authority is beyond his control. Further discussions have indicated that Mr. David Na is the principle owner of the David Jane and Associates law firm, and Mr. Na is not present today despite the order in the Minutes of Hearing dated November 19th, that the defense is ordered to have a person appear at trial that has authority to negotiate any potential cost under 5811 and 5813 and sanctions on behalf of the firm.

It is the Court's opinion that that person appears to be Mr. Na only, and he is not present today.

It should be further noted that there was no objection to the Notice of Intent to Impose Sanctions, dated November 19, 2025. Therefore, it is the Court's intention to impose sanctions today on the David Jane and Associates law firm and David Na, as principle. The amount of the sanction is \$2,500.00 pursuant to the Notice of Intent, dated November 19th, 2025.

It is the parties' intention today to set the issue of the 5710 fees and the potential costs, attorney's fees and penalties for trial. The matter is set for trial to take place March 25, 2026, starting at 9:30 a.m., in order to allow defense counsel time for travel.

(MOH, 2/11/2026, 2:4-3:7.)

There were multiple orders outlined in the MOH, but as relevant here, the WCJ issued the following orders:

ORDER #1: Mr. Na and the law firm are Ordered to pay sanctions in the amount of \$2,500.00 to the WCAB . . .

ORDER #2: Mr. David Na is Ordered to personally appear at trial on 3/25/26.

(*Id.* at 3:9-14.)

Mr. Woo made the following statement:

In regards to the November 19th, 2025 hearing that was in person, the appearance was made remotely by our office, and by myself, specifically, due to the fact that the scheduled attorney submitted a request for remote appearance the night before the hearing due to a medical condition. The request for remote appearance was denied, and she could not attend due to her medical condition. I was asked to attend last-minute remotely.

(*Id.* at 4:6-10.)

Defendant alleges in the Petition that on October 9, 2025, hearing representative Yamilet Munoz appeared at the hearing on behalf of defendants, therefore the basis for the sanctions is not supported by the facts. (Petition, 5:2-4.) They further attest that their lack of in person appearance at the November 19, 2025 trial was due to a misunderstanding by the handling attorney who had a medical disability that prevented her from appearing in person, but that someone from their office did appear virtually. (*Id.* 5:11-16.) They also attempted settlement, unsuccessfully, with applicant's counsel prior. Thus, they demonstrated good faith efforts to participate rather than delay. Last, they contend that they were not given a meaningful opportunity to be heard given the manner in which the issues were discussed at the hearings. They also argued that the appearing attorney, Mr. Woo, had authority to negotiate any issues and was in contact with the firm. Thus, ordering Mr. Na to appear was outside the authority of the WCAB.

The WCJ issued a Report recommending the petition be denied noting that he was unsure that reconsideration was the correct vehicle in this instance. He notes that failure to participate in the pre-trial conference statement is a basis for sanctions, in addition to missed appearances and defense counsel ignoring orders for in person appearances.

DISCUSSION

I.

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 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 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 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.

WCAB Rule 10642 states that:

A notice to appear or produce in accordance with Code of Civil Procedure section 1987 is permissible in proceedings before the Workers’ Compensation Appeals Board.

(Cal. Code Regs., tit. 8, § 10642.)

WCAB Rule 10750 states that:

The Workers’ Compensation Appeals Board shall either serve or, under rule 10629, cause to be served notice on all parties and their attorneys or non-attorney representatives of record of the time and place of each hearing scheduled, whether or not the hearing affects all parties, as provided in rule 10610.

Notice of hearing shall be given at least 10 days before the date of hearing, except where:

(a) Notice is waived; or

(b) A different time is expressly agreed to by all parties and concurred in by the Workers' Compensation Appeals Board.

(Cal. Code Regs., tit. 8, § 10750.)

Here, despite the WCJ's belief that he provided notice to the parties that appearances at the hearings were to be in person, the official EAMS notices from the WCAB did not state that appearances were in person. In order to override or contradict the official EAMS notice, the WCJ must serve, or cause to be served, a notice of hearing that clearly designates the hearing as in person and clearly identifies the name of the person who is to appear. Instead, the October PTCS only contained a sentence on the bottom that appearances were to be in person. We do not wish to imply that parties should not follow all orders by a WCJ or otherwise obviate parties' obligation to comply with court orders, nevertheless, due process requires that a notice of the hearing must clearly state that it be in person and/or that a particular person must appear. Thus, to the extent that the defendant's attorney's failure to appear in person at the November 19, 2025 hearing was a basis for the NIT, it is invalid.

WCAB Rule 10752 states in pertinent part that:

(a) Each applicant and defendant shall appear or have an attorney or non-attorney representative appear at all hearings pertaining to the case in chief. . . .

(b) Each required party shall have a person available with settlement authority at all hearings. This person need not be present if the party's attorney or non-attorney representative is present and can obtain immediate authority.

(Cal. Code Regs., tit. 8, § 10752.)

Under WCAB Rule 10752, a party may have the representative of their choice appear at any hearing, and the person with settlement authority need not be present if authority can be obtained. Here, as explained above, the notice of hearing did not identify that Mr. Na should appear. Moreover, Mr. Woo was able to obtain authority to resolve the section 5710 fee, and it is not clear from this record that he lacked the authority to resolve any other issues.

Section 5813 authorizes the WCJ to order a party or attorney to pay reasonable expenses incurred by another party as a result of "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813.) The Appeals Board is authorized to impose sanctions, costs and attorney's fees under section 5813, and sanctions under section 5813 are designed to punish litigation abuses and to provide the court with a tool for curbing improper legal

tactics and controlling their calendars. (*Duncan v. Workers' Comp. Appeals Bd.* (2008) 166 Cal.App.4th 294, 302.)

Accordingly, sanctions are similar to penalties under section 5814, in that they are designed to have both remedial and penal aspects. (See *Ramirez v. Drive Financial Services* (2008) 73 Cal.Comp.Cases 1324 (Appeals Board En Banc).)

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) bold and italics added for emphasis.) The NIT must clearly state the reason(s) for the sanctions, 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.

WCAB Rule 10421, subdivision (b), authorizes sanctions for a party who has committed “[b]ad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay including actions or tactics that result from 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.” (Cal. Code Regs., tit. 8, § 10421(b).) Subdivision (b) provides a comprehensive but non-exclusive list of actions that could be subject to sanctions. As applicable here, violations subject to sanctions, pursuant to WCAB Rule 10421(b), include:

- (1) Failure to appear or appearing late at a conference or trial where a reasonable excuse is not offered or the offending party has demonstrated a pattern of such conduct.

Here, as explained above, the notice of hearing for November 19, 2025 did not identify the hearing as an in person hearing, so that a failure to appear in person cannot be the basis for the NIT. Moreover, the initial NIT in the MOH of November 19, 2025 indicated an intent to sanction “David Jane & Associates.” The later Order for sanctions actually sanctioned both David Na and David Jane & Associates. The inclusion of David Na should have triggered a new notice of intent as it includes, for all intents and purposes, a separate party. As result, the order is null and void as the precipitating notice did not include both parties and therefore, they were not given notice and opportunity to be heard.

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 and the WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; *Hamilton, supra*, at p. 476.) 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.” (*Hamilton at p. 476, citing Evans v. Workmen’s Comp. Appeals Bd. (1968) 68 Cal.2d 753, 755.*) The purpose of the requirement is “to assist the reviewing court to ascertain the principles relied upon by the lower tribunal, to help that tribunal avoid careless or arbitrary action, and to make the right of appeal or of seeking review more meaningful.” (*Evans, supra*, at p. 755.)

The matter should be returned so that a full trial can be held on penalties and sanctions so that a record may be created to support the bases for sanctions pursuant to section 5813. While the record demonstrates that on one occasion defense counsel may not have appeared, in order for the failure to appear to support an order of sanctions, the WCJ must make a clear *contemporaneous* record of the failure. In addition, defendant’s attorneys did appear at the next two trials either virtually or in person. We sympathize with the fact that to the extent that there were orders in place to appear in person at the trials, in at least one instance, perhaps two, it appears that there were mitigating circumstances that prevented in person appearances. The current record does not demonstrate bad faith.

However, we do caution attorney Na to carefully review the record prior to filing pleadings. A petition for reconsideration must fairly state all of the material evidence relative to the point or points at issue. (Lab. Code, § 5902; Cal. Code Regs., tit. 8, § 10945(a).) It should be noted that in his Petition, he contends that Ms. Yamilet Munoz appeared on October 9, 2025. However, the PTCS filed the same day noted no appearance by defense counsel, moreover it noted no participation on the part of defense counsel to complete the PTCS. Further, in the MOH dated February 11, 2026, defendant’s representative Mr. Woo told the court that another attorney was scheduled to appear at the October conference but due to unforeseen circumstances did not appear. According to the MOH, Mr. Na was involved in this conversation to some extent. (MOH, 2/11/2026, 2:4-6.) At any point in these proceedings, Mr. Na could have corrected the record but did not. As such, the record reflects no appearance on October 9, 2025 contrary to Mr. Na’s

allegation in his Petition. Future compliance with the WCAB Rules is expected, and failure to do so will subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

The WCJ has broad authority to issue orders to ensure proper adjudication of each claim, including “any interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case.” (Cal. Code Regs., tit. 8, § 10330.) This may include orders that a party appear at a given hearing, should same be warranted. Recently, the Appeals Board issued an en banc decision in *Perez v. Chicago Dogs*, 2025 Cal. Wrk. Comp. LEXIS 29. In that decision, the Appeals Board made clear that “the due process right to a fair hearing and a determination based on the merits is good cause to allow the electronic testimony of the witness.” (*Id.* at * 17, (emphasis in original).) Here, the purpose of Mr. Na’s presence is not as a witness, but apparently to ensure that defendant complies with WCAB Rule 10752(b), which states: “Each required party shall have a person available with settlement authority at all hearings.” (Cal. Code Regs., tit. 8, § 10752(b).) If a testifying party may appear remotely, and in the interests of providing due process to all parties, it would logically flow that a non-testifying party may also appear remotely upon request.

At this juncture, it is unclear that Mr. Na’s in person appearance would affect the issues at hand. Applicant’s petition for penalties is against defendant insurance carrier and would therefore be negotiated on their behalf and with authority from Liberty not Mr. Na. Further, if the law firm and/or Mr. Na are subject to sanctions by the court, they are not generally negotiated with the court and thus Mr. Na would not need to be available with authority. While defendant’s attorney sought reconsideration of Orders 1 and 2, in the interest of consistency, we will rescind all seven Orders. Upon return, the WCJ can then determine how to proceed, and issue such orders as he sees fit.

Accordingly, we grant the Petition for Reconsideration, rescind the seven Orders, and return the matter to the trial level for further proceedings consistent with this opinion.

IT IS ORDERED that defendant’s Petition for Reconsideration of the Orders issued by the WCJ on February 11, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the WCJ's Orders 1 through 7 issued on February 11, 2026 in the Minutes of Hearing/Summary of Evidence are **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 15, 2026

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

**KENNETH ELDER
CENTRAL VALLEY
DAVID JANE & ASSOCIATES**

TF/md

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