

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

MIGUEL BRACAMONTES, *Applicant*

vs.

**MULLEADY'S SPORTS PUB AND GRILL;
PREFERRED EMPLOYERS, *Defendants***

**Adjudication Number: ADJ19018827
Anaheim District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Order Dismissing Application (Order), issued by the workers' compensation administrative law judge (WCJ) on July 22, 2025.

Applicant requests reinstatement of his case and contends that he will sign the previously agreed upon Compromise and Release (C&R) when he returns to the country in May.

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration (Petition) be denied for being untimely but is premature or not ripe as to whether there is "good cause" to vacate or set aside the Order. The WCJ recommends the Petition be treated as a "Petition to Vacate" or "Petition to Set Aside" and the matter be returned to the WCJ to hold hearings for a clear record to be created on whether there is "good cause" to vacate or set aside the Order or "good cause" to reinstate the Application.

We have considered the allegations of applicant's Petition and the contents of the Report. Based on our review of the record and for the reasons discussed below, we will dismiss the Petition as one seeking reconsideration. Upon return of this matter to the trial level, the WCJ may treat the Petition as one to set aside the Order.

FACTS

We will briefly review the relevant facts.

On March 20, 2024, applicant filed an Application for Adjudication of Claim (Application) and claimed to have sustained a cumulative injury to his waist and back from July 5, 2021 to February 1, 2023 while employed by defendant as a “cook, preparer and dishwasher.”

On February 10, 2025, defendant filed a Declaration of Readiness to Proceed (DOR) to a status conference on the issue of settlement. In the DOR, defendant stated, “[p]arties reached settlement on 12/16/2024 and Compromise and Release sent to AA but not returned despite multiple follows up. WCAB assistance requested.” (Declaration of Readiness to Proceed, dated February 10, 2025.)

At the status conference on April 23, 2025, the WCJ continued the hearing to a mandatory settlement conference (MSC) to June 4, 2025 and noted that applicant and applicant’s attorney were not present. The WCJ also noted that applicant’s attorney emailed defendant that they were having connectivity issues during the conference and that the C&R had not been returned. (Minutes of Hearing, dated April 23, 2025.)

At the MSC on June 4, 2025, the WCJ took the matter off calendar and again, noted that both applicant and applicant’s attorney were not present. The WCJ further noted that “defendant requested NOI to dismiss for failure to appear at MSC. NOI to issue. Trial date was also offered to defendant as well.” (Minutes of Hearing, dated June 4, 2025.)

On June 10, 2025, the WCJ issued a Notice of Intention to Dismiss Case for Failure to Appear at MSC (NIT) and noted “that an Order Dismissing the above entitled case will issue in 10 days from service on applicant unless good cause to the contrary is filed in writing within said time.” (Notice of Intention to Dismiss Case for Failure to Appear at MSC, dated June 10, 2025.)

On July 22, 2025, the WCJ subsequently issued an Order Dismissing Application and dismissed the case.

On April 23, 2026, applicant filed a Petition for Reconsideration.

On May 4, 2026, applicant filed an Amended Application to add additional body parts of psyche, internal, and sleep.

DISCUSSION

I.

Preliminarily, former Labor section 5909¹ 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 May 1, 2026, and 60 days from the date of transmission is June 30, 2026, which is a Tuesday. This decision was issued by or on June 30, 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.

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

Here, according to the proof of service for the Report, it was served on May 1, 2026, and the case was transmitted to the Appeals Board on May 1, 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 May 1, 2026.

II.

We now turn to the merits of the Petition. Pursuant to section 5803, “[t]he appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4]” and “[a]t any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.” (Lab. Code, § 5803.)

WCAB Rule 10755 provides in relevant part that:

Where a required party, after notice, fails to appear at a mandatory settlement conference in the case in chief:

- (a) If good cause is shown for failure to appear, the workers’ compensation judge may take the case off calendar or may continue the case to a date certain.
- (b) If no good cause is shown for failure to appear, the workers’ compensation judge may issue a notice of intention pursuant to rule 10832, take the case off calendar or continue the case to a date certain.

(Cal. Code Regs., tit. 8, § 10755.)

Article XIV, section 4 of the California Constitution mandates that the workers’ compensation law shall be carried out “...to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character...” Based on the constitutional mandate to accomplish substantial justice, the Board has a duty to develop an adequate record. (*Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1120 [63 Cal.Comp.Cases 261].) Moreover, “[t]he Board ‘is bound by the due process clause of the Fourteenth Amendment to the United States Constitution to give the parties before it a fair and open hearing...All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents

and to offer evidence in explanation or rebuttal.” (*Rucker v. Workers’ Comp Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805], citing *Kaiser Co. v. I.A.C.* (1952) 109 Cal.App.2d 54, 58.) It is also well established that procedural dismissals are disfavored and there is a strong public policy favoring disposition of cases on their merits rather than on procedural grounds. (*Bland v. Workers Comp. Appeals Bd.* (1970) 3 Cal.3d 324 [35 Cal.Comp.Cases 513]; *Fox v. Workers’ Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196, 1205 [57 Cal.Comp.Cases 149].)

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) (*Hamilton*)). The “WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Id.* at p. 475.) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*Id.* at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) “For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Ibid.*)

Applying the legal principles above, in the instant case, while applicant has filed a Petition for Reconsideration, it appears that in substance, applicant seeks to set aside the WCJ’s Order dismissing his case because he was out of the country until recently. However, no hearing was held, no testimony was heard, and no documents were admitted into evidence before the WCJ issued the July 22, 2025 Order. Notably, there was no evidence admitted regarding applicant’s assertion that he was out of the country, nor evidence about whether applicant had actually received notice of the April 23, 2025 status conference, the June 4, 2025 mandatory settlement conference, the NIT, or Order. The Order was not based on “admitted evidence in the record” as required. (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.) In the absence of an evidentiary record, we are unable to evaluate the basis for the WCJ’s Order.

Accordingly, we will dismiss the Petition. Upon return to the trial level, we recommend that the WCJ treat the Petition as a petition to set aside the Order and set a hearing as there is currently no evidence admitted into the record regarding applicant’s contentions. At the hearing, the parties will have an opportunity to create a record, raise all relevant issues, and submit evidence upon which a decision can be made by the WCJ. After the WCJ issues a decision, any aggrieved person party may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Order issued by the WCJ on July 22, 2025 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

PAUL F. KELLY, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 30, 2026

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

**MIGUEL BRACAMONTES
MAING & CO
MICHAEL SULLIVAN & ASSOCIATES**

JL/abs

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