WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

PAUL JONATHAN SALOMON GUIAO, ***Applicant***

vs.

SAVAGE CHEF AND CO.;
PIE INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ20601868
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Order for Dismissal of Inactive Case without Prejudice (Order of Dismissal) of July 21, 2026, wherein the workers' compensation judge (WCJ) ordered the case dismissed without prejudice unless there was a written objection filed within 25 days of service of the Order. Applicant contends that his Petition for Reconsideration is a written objection filed within 25 days of service of the Order of Dismissal and therefore dismissal should be vacated and the matter restored to active status.

We have not received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted and the Order of Dismissal be vacated.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. Based on our review of the record and for the reasons discussed below, we will grant the Petition for Reconsideration, vacate the Order of Dismissal, and return this matter to the WCJ for further proceedings.

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909, 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) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code 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 September 11, 2026, and 60 days from the date of transmission is November 10, 2026. This decision is issued by or on November 10, 2026, so that we have timely acted on the Petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on September 11, 2026, and the case was transmitted to the Appeals Board on September 11, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section

5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 11, 2026.

II.

The WCJ provided the following discussion in his Report:

The Applicant filed an Application for Adjudication on March 4, 2025, alleging an injury DOI: 12/21/20[2]4 to the pelvis, back, abdomen and digestive system as a result of a slip and fall at work.

On March 11, 2026, Defendants sent the Applicant and Applicant's Attorney a Notice of Intention to file a Petition to Dismiss an Inactive case and Applicant's Attorney objected thereto on March 27, 2026. Thereafter, Defendants filed a Petition for Dismissal of an Inactive Case on April 15, 2026, requesting dismissal based on their assertion that the Applicant was not participating in the case and had not appeared at a Panel QME evaluation or at a deposition set in the case.

An Order to Dismiss the case without prejudice was served on the parties on July 21, 2026, and it was dated April 30, 2026. The Order stated that "This Order is null and void if a written objection was filed within 25 days of service."

Applicant's Attorney filed a Petition for Reconsideration on August 14, 2026, and in that Petition, among other assertions stating the Applicant's position that he does want to pursue his case, he objected to the Order to Dismiss in a timely manner and stated the following:

> Applicant, Paul Salomon Guiao, through counsel, hereby files this written objection to the Order for Dismissal of Inactive Case served on July 21, 2026, and requests that the dismissal be vacated and the matter restored to active status.
>
> This objection is made because the dismissal order states that it is "null and void if a written objection is filed within 25 days of service."
>
> (Petition for Reconsideration, August 14, 2026, pp. 1-2.)

The Petition for Reconsideration was filed while the undersigned was out on vacation and therefore, I could not address the issue until I returned. This Report and Recommendation is in response to the above Petition for Reconsideration.

III

DISCUSSION

Decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d);[1] *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312 [35

Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

In this case, the Applicant did file a timely objection to the Order to Dismiss without prejudice and in their Petition for Reconsideration, Applicant's Attorney clearly stated his objection to the Order and the reasons in support of that objection. In pertinent part, he stated the following objection:

> Applicant, Paul Salomon Guiao, through counsel, hereby files this written objection to the Order for Dismissal of Inactive Case served on July 21, 2026, and requests that the dismissal be vacated and the matter restored to active status.
>
> This objection is made because the dismissal order states that it is "null and void if a written objection is filed within 25 days of service."\
>
> (Id.)

Based on the above, by operation of law the Order to Dismiss without Prejudice become null and void upon Applicant's Attorney's filing of the written objection within 25 days of service of the Order.

While filing the Petition for Reconsideration may not have been necessary, as a written objection was sufficient to render the Order null and void, the Petition for Reconsideration serves as a de facto written objection to the Order to Dismiss without prejudice. Further, based on the representations made in the Petition for Reconsideration, and statements that the Applicant wants to pursue his case, dismissal of this matter is not warranted.

III.

"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*." (Cal. Code Regs., tit. 8, § 10550(a), emphasis added.) The WCJ may issue a notice of intention for any proper purpose. (Cal. Code Regs., tit. 8, § 10832 (a).) A proper purpose includes, but is not limited to, (1) Allowing, disallowing or dismissing a lien; (2) Granting, denying or dismissing a petition; (3) Sanctioning a party; (4) Submitting the matter on the record; or (5) Dismissing an application. (*Id*.) If an objection is filed within the time provided, the Appeals Board, in its discretion may: (1) Sustain the objection; (2) Issue an order consistent with the notice of intention together with an opinion on decision; or (3) Set the matter for hearing. (Cal. Code Regs., tit. 8, § 10832 (c).) However, an "order with a clause rendering the order null and void if an objection is received is not a Notice of Intention…" (Cal. Code Regs., tit. 8, § 10832(e).)

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].) The "essence of due process is simply notice and the opportunity to be heard." *(San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (McKernan) (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986].) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties' rights to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584], citing *Rucker*, *supra*, at pp. 157-158.) Due process requires "a 'hearing appropriate to the nature of the case.'" (*In re James Q.* (2000) 81 Cal.App.4th 255, 265, quoting *Mullane v. Cent. Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 313.) Although due process is "a flexible concept which depends upon the circumstances and a balancing of various factors," it generally requires the right to present relevant evidence. (*In re Jeanette V.* (1998) 68 Cal.App.4th 811, 817.)

Here, the Order of Dismissal is dated April 30, 2026, but it appears that it issued on July 21, 2026, and the parties were given 25 days after service of the Order of Dismissal to object in writing. Applicant filed the Objection on August 14, 2026, within the deadline to object.[1] Therefore, the Order of Dismissal is void by operation of law as applicant complied with filing an objection within the required time period. However, this case illustrates why the use of self destruct orders is disfavored because it is often difficult to determine when the order "self destructed." Thus, applicant's choice to file a Petition for Reconsideration was proper, as the Order should be vacated so that the record is clear, rather than presuming that the Order no longer exists.

Further, the Order of Dismissal was not a proper notice of intention as set forth in WCAB Rule 10888(e) because it stated that the Order of Dismissal would only become final if there was no written objection within 25 days of service of the Order of Dismissal (a "self destruct" order). Therefore, there was no proper notice of intention to dismiss as required by WCAB Rule 10888, subdivisions (c) and (e), and the language of the Order of Dismissal is not based on a proper evidentiary record.

[1] The proof of service for the Order of Dismissal showed service on at least one out of state address. When any document is served by mail, fax, or email, the period of time to act or respond is extended by 10 days if service includes an address that is out of state but within the United States. (Cal. Code Regs., tit. 8, § 10605(a)(2).) Therefore, applicant had 35 days to respond or object to the Order of Dismissal.

In any event, we note that if the Order of Dismissal was not void by operation of law, we would have rescinded it and returned the matter to the WCJ to issue a proper notice of intention, hold a hearing and admit evidence, and then determine based on the record whether the matter should be dismissed. In that case, there also would have been a complete record for our review.

Accordingly, we grant applicant's Petition for Reconsideration, vacate the Order of Dismissal, and return the matter to the WCJ. Upon return, we recommend that the WCJ consider setting a status conference to discuss next steps.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the July 21, 2026 Order for Dismissal of Inactive Case without Prejudice is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the July 21, 2026 Order for Dismissal of Inactive Case without Prejudice is **VACATED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 10, 2026

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

PAUL GUIAO
LAW AT YOUR SIDE
ALBERT AND MACKENZIE

JMR*/pm*

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