WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ROSA AGUILAR, *Applicant*

vs.

BROADVIEW, INC.;
STATE COMPENSATION INSURANCE FUND;
CORVEL, *Defendants*

Adjudication Numbers: ADJ133371 ADJ1275355
Los Angeles District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION

Lien claimant Gilberto Gomez, D.C., seeks reconsideration of the Order Dismissing Lien (Order) issued by the workers' compensation administrative law judge (WCJ) on May 21, 2026, wherein it states that there was no objection to the Notice of Intention (NIT) issued on April 29, 2026, so that the lien is dismissed.

Lien claimant contends in pertinent part that he timely objected to the NIT and that the WCJ refused to consider the objection.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

Subsequently, lien claimant submitted a supplemental response, and although he did not seek permission, we have accepted and considered the Supplemental Response. (Cal. Code Regs., tit. 8, § 10964.)

We have considered the allegations of the Petition, the Answer, and the Supplemental Response and the contents of the WCJ's Report. Based on our review of the record, and for the reasons stated below, we will dismiss the Petition for Reconsideration, so that the WCJ can treat the Petition as one to set aside the Order Dismissing.

FACTS

We will briefly review the relevant facts.

According to Hearing Case in the Electronic Adjudication Management System (EAMS), a lien trial was rescheduled on March 11, 2026, and again on April 8, 2026. According to Communications in EAMS, a "Notice of Hearing Reschedule" was served through EAMS on March 13, 2026.

On April 29, 2026, at a lien trial, the Minutes are completed in handwriting. They list the appearances as: SCIF, Dabbah/Corvel, "[illegible] by Patrick Petronella," "Cal Physician – N/A," and "[illegible] Pharmacy." Under Comments, it states that: "No appearance by California Physician Network – Motion for Virtual Granted." The box is checked for "NOI/Order to Dismiss Lien Issued." The WCJ continued the lien trial.

That same day, the WCJ issued an NIT against California Physician Network for a failure to appear, with 10 days to respond. The NIT was served by the WCAB on defendant SCIF and California Physician Network on April 30, 2026. The WCJ also issued an NIT against Gilberto Gomez, D.C., for a failure to appear, with 10 days to respond. The NIT was served by the WCAB on lien claimant, its representative and SCIF on May 4, 2026.

On May 21, 2026, the WCJ issued the Order.

On July 1, 2026, the WCJ issued an order taking the matter off calendar, and according to the Minutes, lien claimant objected to the order.

FileNet in EAMS reflects that there is a proof of service dated July 18, 2026, for the Petition for Reconsideration filed on August 10, 2026.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026, are subject to Labor Code section[1] 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] All further statutory references are to the Labor Code, unless otherwise noted.

> (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 August 18, 2026, and 60 days from the date of transmission is Saturday, October 17, 2026. The next business day, 60 days from the date of transmission, is Monday, October 19, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, October 19, 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 be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 18, 2026, and the case was transmitted to the Appeals Board on August 19, 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 August 19, 2026.

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[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.

II.

All parties in workers' compensation proceedings retain their 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 guarantees all parties the right to notice and an 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].)

With respect to notice, "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. [Citations.]" (*Armstrong v. Manzo* (1965) 380 U.S. 545, 550.) 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.)

Under WCAB Rule 10750, notices of hearing shall be served by the WCAB. (Cal. Code Regs., tit. 8, § 10750.) Here, the only notice of hearing in the record is the March 13, 2026, EAMS notice of reschedule. There is no further notice after the April 8, 2026, reschedule of the trial. Thus, we are unable to discern whether notice was provided to lien claimant of the April 29, 2026, lien trial.

Under WCAB Rule 10305(c), "'[a]ppear' means to act on behalf of any party." (Cal. Code Regs., tit. 8, § 10305(c).) Under WCAB Rule 10875(a): "All defendants and lien claimants shall appear at all lien conferences, *either* in person *or* by attorney or non-attorney representative. . ." (Cal. Code Regs., tit. 8, § 10875(a), emphasis added.) Here, the April 29, 2026, Minutes are silent with respect to lien claimant or his representative. That is, there is no record that they did not appear, in contrast to the clear statement that California Physician Network did not appear.

We are unable to provide meaningful review due to the lack of a record. No record was created to support the Order, and without an ability to review the evidentiary record, we are not able to complete a meaningful review of the Petition for Reconsideration. (See Lab. Code, § 5313; see also *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc); *Rucker, supra*, at pp. 157-158; *Gangwish, supra*, at p. 1295.)

We agree with the WCJ that lien claimant's objection does not appear to have been contained in the record at the time that he issued the Order, and that lien claimant's Petition for Reconsideration was not timely filed. However, lien claimant asserts that the relevant documents were filed, and it is not clear from our review why the documents were not contained in the record.

We are unable to determine whether lien claimant had notice of the hearing, and there is no record that lien claimant did not appear. Consequently, there is no basis for the NIT, and any order issued based on the NIT is invalid.

"The appeals board is vested with full power, authority and jurisdiction to try and determine finally all the matters specified in Section 5300 subject only to the review by the courts as specified in this division." (Lab. Code, § 5301, see § 5300.) "The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division . . . . At any time, upon notice and after an 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; see *Mayor v. Workers' Comp. Appeals Bd.* (2026) 20 Cal.5th 874, 892.)

Thus, upon return, the WCJ may treat the Petition as a petition to set aside the Order. He may conduct further proceedings as appropriate, including setting aside the Order.

Accordingly, we dismiss the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that lien claimant's Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 19, 2026

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

GILBERTO GOMEZ, D.C., LIEN CLAIMANT
MICHELE TCHOROUKIAN, LIEN CLAIMANT REPRESENTATIVE
STATE COMPENSATION INSURANCE FUND, LEGAL
DABBAH HADDAD SULEMAN APC

AS/mc

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