

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

**FREDY LARA PORTILLO (DEC'D); LORENA LARA, *Applicant***

**vs.**

**NORMAN ETCHISON;  
ZENITH INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ12602375  
Bakersfield District Office**

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

Applicant seeks reconsideration of the March 2, 2022 Findings of Fact & Orders (F&O), wherein the presiding workers' compensation administrative law judge (PWCJ) found that applicant had not shown that the March 18, 2021 order dismissing the case for inactivity was the result of her attorney's mistake, surprise, or excusable neglect. Accordingly, the PWCJ denied applicant's petition to set aside the Order dismissing her case.

Applicant contends that the attorney fault provisions of Code of Civil Procedure section 473, subd. (b), provide mandatory relief from the order of dismissal.

We have received an Answer from defendant. The PWCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the petition for reconsideration, rescind the order denying the petition to set aside the case dismissal, and substitute findings that applicant has shown good cause to set aside the order of dismissal.

## FACTS

Applicant Lorena Lara claims that decedent/spouse Fredy Lara Portillo sustained injury to the respiratory system while employed as a machine operator by defendant Norman Etchison, from January 1, 1996 to July 27, 2019. The Application for Adjudication was filed on September 26, 2019, claiming a date of death of August 21, 2019.

On December 4, 2019, defendant denied all liability for the claim. (Ex. 14, Notice Regarding Dependency Benefits – Denial, dated December 4, 2019.)

On October 15, 2020, defendant sent a letter to applicant and applicant's counsel, advising applicant of its intention to seek dismissal of the case pursuant to WCAB Rule 10550 (Cal.Code Regs., tit. 8 § 10550). (Ex. 17, Letter from Zenith, dated October 15, 2020.)

On February 23, 2021, defendant filed a Petition to Dismiss for Failure to Prosecute, attaching a copy of the 30-letter sent to applicant and applicant's counsel on October 15, 2020, and further averring no receipt of any objection thereto. (Ex. 12, Petition to Dismiss, dated February 23, 2021, at 2:14.)

On February 24, 2021, the PWCJ issued a Notice of Intention (NIT) to dismiss the case pursuant to WCAB Rule 10550 absent timely written objection. (Ex. 11, Notice of Intention to Dismiss, dated February 24, 2021.)

On March 3, 2021, applicant obtained and served a panel of QMEs in internal medicine. (Ex. 8, QME Panel, dated March 3, 2021.) On the same day, applicant's counsel further proposed agreed medical evaluators to defendant. (Ex. 9, letter from applicant's counsel, dated March 3, 2021.) On March 5, 2021, applicant struck a doctor from the QME list. (Ex. E, letter from applicant's counsel, dated March 5, 2021.) On March 8, 2021, defendant made their corresponding strike from the QME panel. (Ex. 10, letter from Zenith, dated March 8, 2021.) On March 9, 2021, applicant sent notice to defendant that a QME evaluation had been scheduled with the remaining physician after the parties' respective strikes.

On March 18, 2021, the PWCJ issued an order dismissing the case, noting therein no timely objection to the NIT of February 24, 2021.

On April 1, 2021, applicant transmitted a proposed QME joint letter to defendant. (Ex. 6, Proposed Joint Letter, dated April 1, 2021.) On April 19, 2021, defendant objected to the proposed QME letter, noting the case dismissal of March 18, 2021. (Ex. 5, Letter from Zenith, dated April 19, 2021.)

On May 15, 2021, applicant filed a Petition to Set-aside Order of Dismissal of Applicant's Death Claim and Objection to Order of Dismissal, dated May 15, 2021. (Ex. 4, Petition to Set Aside, dated May 15, 2021.) The petition, verified by applicant's counsel, sought relief under Code of Civil Procedure section 473(b), as follows:

Under C.C.P. section 473(b), the Court has the authority to "relieve a party of 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." Here, Applicant Attorney's failure to serve an objection to the NOI to dismiss the death application was based on mistake and inadvertence. Due to personnel changes within Applicant Attorney's office, the NOI objection was not served despite Applicant Attorney having every intention to continue prosecuting the case. (*Id.* at 3:14.)

On May 18, 2021, the PWCJ noticed his intent to vacate the dismissal. (Ex. 3, Notice of Intent to Vacate Dismissal, dated May 18, 2021.) On June 2, 2021, defendant filed an objection to the May 18, 2021 NIT, averring applicant's failure to object to the NIT was not the only reason for case dismissal. Defendant asserted that applicant failed to object to the 30-day letter of October 15, 2020, the petition for dismissal of February 23, 2021, and further failed to seek reconsideration of the March 18, 2021 order of dismissal. (Ex. 2, Defendant's Objection to Notice of Intention to Vacate Dismissal, dated June 2, 2021.) Defendant further asserted that because applicant was able to "navigate" the PQME selection process at the same time the dismissal process was underway, applicant's failure to timely object to case dismissal was tantamount to "inexplicable" neglect. (*Id.* at 3:23.) The PWCJ rescinded the NIT to rescind the dismissal order, and set the matter for hearing on applicant's petition. (Ex. 1, Rescission of Notice of Intention to Vacate Dismissal, dated June 8, 2021.)

The parties proceeded to trial on January 5, 2022 on the issue of applicant's petition to set aside the order of dismissal, filed May 17, 2021. (January 5, 2022 Minutes of Hearing (Minutes), at 2:18.)<sup>1</sup> Defendant further sought costs and pursuant to Labor Code section 5813, and penalties pursuant to Code of Civil Procedure section 473(c)(1). (Minutes, at 2:18.) The parties submitted the matter for decision on the evidentiary record.

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<sup>1</sup> The Minutes of Hearing/Summary of Evidence lists an incorrect date of January 5, 2021. The PWCJ signed the Minutes on January 13, 2022. (Minutes, at 4:18.)

The PWCJ issued the F&O on March 2, 2022, determining in pertinent part that applicant had not established the March 18, 2021 case dismissal was the result of mistake, surprise, or excusable neglect. (F&O, Findings of Fact No. 4.) In his Opinion, the PWCJ wrote:

Applicant’s petition to set aside the dismissal appears to address only the failure to object to the Notice of Intention. The petition to set-aside appears to be silent regarding the failure to react to the warning letter or the petition to dismiss itself as well as the failure to seek reconsideration within the time allowed by law. Moreover, the failure of litigation case management resulting from “personnel changes in Applicant Attorneys office” resulting in the failure to object to the Notice of Intention was not shown to be mistake, surprise or excusable neglect. [Citations.] The burden of proof on the pending petition to set aside has not been met such that the balance of public policy interests between adjudication of claims on their substantive merits and orderly adjudication of claims via procedural compliance has been resolved in favor of the [latter]. The petition to set-aside has been denied. (F&O, Opinion on Decision, p. 5, para. 5.)

Applicant’s March 22, 2022 Petition for Reconsideration (Petition) asserts that rescission of the order of dismissal was mandated by Code of Civil Procedure section 473(b). Noting that the section contains provisions for mandatory relief where an attorney timely seeks relief from “dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect,” applicant asserted:

Applicant’s verified petition further states that the failure to object to the NIT was due to attorney fault (i.e., failure to file/serve the objection) despite Applicant’s clear intention to prosecute the case as evidenced by the panel QME process that was taking place simultaneous with defendant’s efforts to dismiss the case. Applicant’s failure to respond to the NIT, and the warnings that preceded it, are undisputed. Applicant’s failure to respond was due to counsel’s neglect, as outlined in Applicant’s verified petition to set-aside the dismissal order. Based on these facts, the mandatory attorney fault provision of CCP 473(b) should apply, the dismissal order reversed, and the matter returned to the WCJ for further proceedings on Applicant’s dependency claim. (*Id.* at 4:7; 5:26.)

Defendant’s Answer responds that mandatory relief under section Code of Civil Procedure section 473(b) was not available because applicant did not file a sworn affidavit, as specified in the statute. (Answer, at 7:2.) Defendant asserted, “because [applicant’s attorney] Mehr has never submitted an affidavit of fault acknowledging that the actual dismissal of this matter was due to their mistake, surprise, inadvertence, or excusable neglect, mandatory relief under Code of Civil Procedure §473(b) would be improper and the WCJ’s decision to deny the Petition to Set-Aside

the Dismissal was proper and should be upheld.” (*Id.* at 9:15.) Defendant further asserted that discretionary relief under section 473(b) was unavailable because applicant’s attorney’s failure to object at multiple points during the dismissal process was not excusable neglect:

In short, save for the cryptic statement that a personnel change resulted in the failure of an objection to the Notice of Intention to issue, there has been no explanation from [applicant’s counsel] Mehr as to how and why they could not object to the Notice of Intention, but could initiate the PQME process. Moreover, no adequate explanation as to how and why they repeatedly failed to lodge an objection at any number of points in this process has ever been presented. Lastly, no explanation of any sort as to why Mehr did not timely file a Petition for Reconsideration once the dismissal was entered, or why they chose to not present any evidence as to virtually any of these omissions at the time of trial, has been presented to the Court to consider. Taking all facts, circumstances, and evidence into consideration here, there has been virtually no showing that would support a finding that the dismissal was issued due to the mistake, surprise, inadvertence, or excusable neglect of Mehr. (*Id.* at 12:18.)

The PWCJ’s Report recommended denial of the petition. The Report noted that the indirect application of Code of Civil Procedure section 473(b) to workers’ compensation proceedings and the required exercised of judicial discretion in weighing the public interest favoring disposition on the merits, versus the parties’ interests in finality in workers’ compensation proceedings.

## DISCUSSION

Code of Civil Procedure section 473, subd. (b) provides, in relevant part:

The 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. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken...Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney’s sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any (1) resulting default entered by the clerk against his or her client, and which will result in entry of a default judgment, or (2) resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney’s

mistake, inadvertence, surprise, or neglect. The court shall, whenever relief is granted based on an attorney's affidavit of fault, direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties. However, this section shall not lengthen the time within which an action shall be brought to trial pursuant to Section 583.310.

Section 473 permits the trial court to relieve a party from a judgment, order or other proceeding taken against him through his mistake, inadvertence, surprise or excusable neglect. A motion seeking relief under section 473 is addressed to the sound discretion of the trial court; its decision will not be overturned on appeal absent a clear showing of abuse of discretion. (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478 [243 Cal. Rptr. 902, 749 P.2d 339]; *Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233 [211 Cal. Rptr. 416, 695 P.2d 713].) "That discretion, however, "is not a capricious or arbitrary discretion, but an impartial discretion, guided and controlled in its exercise by fixed legal principles. It is not a mental discretion, to be exercised *ex gratia*, but a legal discretion, to be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice." (*Rivercourt Co. Ltd. v. Dyna-Tel, Inc.* (1996) 41 Cal.App.4th 1477, 1480 [49 Cal.Rptr.2d 279].)

Applicant contends that section 473(b) mandates the rescission of the order dismissing this case, while defendant avers applicant's pleadings do not meet the requirements for either mandatory or discretionary relief. (Petition at 5:26; Answer at 12:18.) The Report of the PWCJ notes that section 473(b) is applicable in these proceedings only indirectly and by analogy, and that the dismissal for inactivity is appropriate. (Report, at p. 7.)

We have previously held that "[p]roceedings before the Workers' Compensation Appeals Board are governed by the specific provisions of the Labor Code and of the Board's Rules of Practice and Procedure adopted pursuant to the authority conferred by § 5307 of the Labor Code, not by the Code of Civil Procedure...Although the specific provisions of the Code of Civil Procedure relating to discovery do not govern proceedings before us, however, we must give force to the declaration of public policy implicit in those provisions and in the decisional law interpreting them..." (*Hardesty v. McCord* (1976) 41 Cal.Comp.Cases 111 [1976 Cal. Wrk. Comp. LEXIS 2406] (Appeals Bd. en banc).)

Thus, as was correctly noted by the PWCJ in the Report, certain provisions of the Code of Civil Procedure may find application by analogy in workers' compensation proceedings. For example, defendants in workers' compensation proceedings who fail to appear or answer, or

subsequently contend that no service was made upon them, or claim to be aggrieved in any other manner by want of notice of the pendency of the proceedings, “may apply to the appeals board for relief *substantially in accordance* with the provisions of Section 473 of the Code of Civil Procedure.” (Labor Code § 5506, *emphasis added*.) The court of appeal confirmed that the aegis of section 473(b) covered other parties to workers’ compensation proceedings in *Fox v. Workers’ Comp. Appeals Bd.* (1992) 4 Cal.App.4th 1196 [57 Cal.Comp.Cases 149], which stated:

Given the lack of any express language in the Labor Code or Board's rules providing relief to lien claimants, we hold that lien claimants may seek relief from the consequences of a failure to appear by utilizing a procedure substantially similar to Code of Civil Procedure section 473, until such time as the matter is more specifically addressed by statutory provision or Board rule.

Thus, as with Labor Code section 5506, we apply a procedure that is substantially in accordance with that set forth in Code of Civil Procedure section 473(b), taking into account the many differences between civil and workers’ compensation proceedings generally.

It has been held generally that courts do have inherent power to regulate their workload, including dismissal of stale claims absent statutory authorization. (*Blue Chip Enterprises, Inc. vs. Brentwood Savings & Loan Assn.* (1977) 71 Cal.App.3d 706, 712–713 [139 Cal. Rptr. 651], *Feingerish vs. Lutheran Hosp. Society* (1977) 66 Cal.App.3d 406, 411 [136 Cal. Rptr. 155].) In *Crawford vs. Workers Comp. Appeals Bd.* (1989) 213 Cal. App. 3d 156, 164 [54 Cal.Comp.Cases 198], the court stated:

[T]he WCAB is authorized to exercise judicial power in all disputes arising under the Workers' Compensation Act as a constitutional court subject to general legal principles which circumscribe and regulate the judgments of all judicial tribunals and in general has inherent power to control its practice and procedure to prevent frustration, abuse, or disregard of its processes.

Pursuant to this authority, WCAB Rule 10550 provides for administrative dismissal of inactive cases not 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, after notice and opportunity to be heard. Although WCAB Rule 10550 authorizes dismissal of an inactive case upon demonstration of the conditions that allow dismissal under the rule, and after affording the applicant notice and an opportunity to be heard, dismissal is discretionary, not mandatory. (*Roth v. Workers' Comp. Appeals Bd.* (1971) 20 Cal.App.3d 452 [36 Cal.Comp.Cases 604].) 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]; *Marino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485 [67 Cal.Comp.Cases 1273]; *Moore v. Waste Management* (2014) 2014 Cal. Wrk. Comp. P.D. LEXIS 621 (panel decision).) Moreover, in determining whether to dismiss a case for lack of prosecution, the WCJ may balance the equities of the respective parties. (*Gutierrez v. Ramirez AG Service* (2010) Cal. Wrk. Comp. P.D. LEXIS 410.)

Thus, we analyze applicant's request for relief using procedures substantially similar to Code of Civil Procedure section 473(b), taking into account both the purposes and limitations of an administrative dismissal for inactivity, as well as the public policy considerations present in workers' compensation proceedings generally.

Here, applicant's counsel filed the petition to set aside the March 18, 2021 order dismissing on May 15, 2021, within six months of case dismissal. The verified pleading states, "Applicant Attorney's failure to serve an objection to the NOI to dismiss the death application was based on mistake and inadvertence. Due to personnel changes within Applicant Attorney's office, the NOI objection was not served despite Applicant Attorney having every intention to continue prosecuting the case." (Petition to Set-aside, dated May 15, 2021, at 3:19.) Thus, applicant's counsel has filed a timely pleading averring attorney mistake and inadvertence, resulting in the case being dismissed for inactivity.

Defendant responds that the requested relief, however, is not available because applicant's counsel's admission of mistake and inadvertence was not contained in a sworn affidavit. Defendant cites to *State Farm Fire & Casualty Co. v. Pietak* (2001) 90 Cal.App.4th 600, 609 [109 Cal.Rptr.2d 256] (*Pietak*), wherein the attorney seeking relief for their client under section 473 failed to file a separate affidavit, merely affirming the contents of the memorandum of points and authorities filed in support of the section 473 motion. Defendant avers this "is almost identical to the function of the verification in the instant matter." (Answer, at 8:15.) However, the *Pietak* decision (which granted section 473 relief on other grounds) was clear that *mandatory* relief was unavailable because neither of the two declarations submitted by counsel contained "*any* sworn admission of mistake, inadvertence, surprise, or error that resulted in a dismissal of claims." (*Pietak, supra*, at 609, *emphasis added*.) Here, applicant's counsel has been clear that the failure to object to the February 24, 2021 NIT to dismiss was the result of attorney mistake and inadvertence. (Petition to

Set-aside the Order of Dismissal of Applicant’s Death Claim and Objection to Order of Dismissal, dated May 15, 2021, at 3:19; Petition, at 5:26.)

Moreover, the Appeals Board is accorded generous flexibility by sections 5708 and 5709 to achieve substantial justice with relaxed rules of procedure and evidence. (*Barr v. Workers’ Compensation Appeals Bd.*, 164 Cal.App.4th 173, 178 [73 Cal.Comp.Cases 763].) Labor Code section 5708 states:

All hearings and investigations before the appeals board or a workers’ compensation judge are governed by this division and by the rules of practice and procedures adopted by the appeals board. In the conduct thereof they shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division. All oral testimony, objections, and rulings shall be taken down in shorthand by a competent phonographic reporter.

Labor Code section 5709 further provides:

No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division. No order, decision, award, or rule shall be invalidated because of the admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure.

“[T]aken together, sections 5708 and 5709 allow the WCAB considerable discretion to conduct its business in a manner quite unlike civil litigation; in fact, the WCAB is unencumbered by formality or traditional rules of evidence and procedure.” (*Barr v. Workers’ Compensation Appeals Bd.*, *supra*, at 178.)

Given the procedural flexibility afforded workers’ compensation proceedings, and pursuant to the holding in *Fox v. Workers’ Comp. Appeals Bd.*, *supra*, 4 Cal.App.4th 1196 requiring substantially similar procedure to that of Code of Civil Procedure section 473, we find the verified pleadings of applicant’s counsel, which specifically admit mistake and inadvertence in failing to object to the NIT to dismiss, sufficient to warrant the requested relief.

Moreover, “[s]ection 473 is often applied liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted...In such situations ‘very slight evidence will be required to justify a court in setting aside

the default.” (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233 [211 Cal.Rptr. 416, 695 P.2d 713].) Here, defendant’s Petition to Dismiss for Failure to Prosecute was filed one year and four months after the filing of the application, and one year following the most recent discovery order. The parties were actively engaged in the QME selection process set forth under Labor Code section 4062.2 as recently as 10 days before the case was dismissed. (Ex. 10, letter from Zenith, dated March 8, 2021; Ex. F, letter from applicant’s counsel, dated March 9, 2021.) Defendant knew of the active and ongoing QME selection process at the time of the dismissal, and was therefore aware of applicant’s active participation in the case. However, defendant made no additional representations to the court beyond its original petition for dismissal, which states, “it appears that applicant has failed and refuses to prosecute this matter to a conclusion.”<sup>2</sup> (Petition to Dismiss for Failure to Prosecute, dated February 23, 2021, at 2:15.) Accordingly, we discern no undue prejudice to defendant in the rescission of the order of dismissal in favor of a determination on the merits.

The PWCJ also raised the issue of applicant’s counsel’s failure to object at multiple points in the administrative dismissal process under WCAB Rule 10550. The F&O notes that in addition to failing to object to the court’s February 24, 2021 NIT to dismiss, applicant’s counsel failed to object to the 30-day notice of intention letter required under WCAB Rule 10550(b), failed to object to the February 23, 2021 petition for dismissal, and further failed to seek reconsideration of the March 18, 2021 order of dismissal. (F&O, Opinion on Decision, p. 5.) We share the PWCJ’s concern at this troubling lack of diligence on the part of applicant’s counsel. However, “it is settled that the law favors a trial on the merits...and therefore liberally construes section 473. Doubts in applying section 473 are resolved in favor of the party seeking relief from default...and if that party has moved promptly for default relief only slight evidence will justify an order granting such relief. It is the policy of the law to favor, whenever possible, a hearing on the merits. Appellate courts are much more disposed to affirm an order when the result is to compel a trial on the merits than when the default judgment is allowed to stand. [Citations.] Therefore, when a party in default

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<sup>2</sup> An evaluation of an attorney's neglect under section 473 involves a consideration of the reasonableness of the defaulting attorney’s conduct (see *Dockter v. City of Santa Ana*, 261 Cal.App.2d 69, 75 [67 Cal.Rptr. 686]) and of the conduct of the attorney taking the default (e.g., *Smith v. Los Angeles Bookbinders Union*, 133 Cal.App.2d 486, 500 [284 P.2d 194]). The law looks with disfavor upon a party who, regardless of the merits of his case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary. Thus, the “quiet speed” of a plaintiff’s counsel in seeking a default has been deemed a sufficient ground for setting aside a default under section 473. (*Robinson v. Varela* (1977) 67 Cal.App.3d 611, 615-616 [136 Cal.Rptr. 783].)

moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.” (*Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1474, 1477-1478 [25 Cal.Rptr.2d 278].)

Additionally, we are guided by the overarching constitutional mandate to provide substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character. . .” (Cal.Const., art XIV, § 4.) Based on the facts of this case, and applicant’s evident willingness to prosecute her claim, we believe that substantial justice is best served in this matter by adjudication on the merits, rather than by administrative dismissal.

For the foregoing reasons,

**IT IS ORDERED** that applicant’s Petition for Reconsideration of the March 2, 2022 Findings of Fact & Orders is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers’ Compensation Appeals Board, that the Findings of Fact and Orders are **RESCINDED**, and the following substituted therefor:

#### **FINDINGS OF FACT**

1. Decedent Fredy Lara Portillo is claimed by applicant Lorena Lara to have sustained a fatal injury to his respiratory system arising out of and in the course of his employment as a Machine Operator during the period from January 1, 1996 to July 27, 2019 in Lamont, California by Defendant-Employer Norman Etchison.
2. During the period from January 1, 1996 to July 27, 2019, Defendant-Employer Norman Etchison was insured for worker’s compensation liability by Defendant-Carrier Zenith Insurance Company.
3. Case ADJ12602375 was dismissed by Order dated March 18, 2021.
4. Applicant has met the burden of demonstrating that the dismissal of her case arose out of her attorney’s mistake, inadvertence, surprise, or neglect.
5. The litigation of Applicant’s petition to set aside the Dismissal Order of March 18, 2021 was not frivolous or intended to cause unnecessary delay.
6. Defendants were not shown to have sustained quantified costs as a result of the Dismissal Order of March 18, 2021 or Applicant’s petition to set aside the Dismissal Order.

**ORDERS**

- a. Applicant’s Petition to Set-aside Order of Dismissal of Applicant’s Death Claim, dated May 15, 2021, is GRANTED.
- b. The Order of Dismissal, dated March 18, 2021 is RESCINDED.
- c. Defendant’s petition for costs and sanctions pursuant to Lab.C. §5813 is denied.
- d. Defendant’s petition for costs pursuant to CCP §473 is denied.

**WORKERS’ COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**MAY 23, 2022**

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

**LORENA LARA  
MEHR & ASSOCIATES  
CHERNOW & LIEB**

**SAR/abs**

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