



IN RE: DANIEL ESCAMILLA,

WCAB Misc. No. 254, 76 Cal. Comp. Cases ____, 2012 Cal. Wrk. Comp. Lexis 1 (En Banc)

Provided by Steven P. Sanghera from the Stockton Office

The WCAB dismissed a lien representative's Petition for Reconsideration of a Notice of Hearing which was set to determine whether to remove or suspend his privilege to appear as a representative of any party before the WCAB. This case demonstrates that when Board records reflect that a party has been repeatedly sanctioned for engaging in frivolous bad-faith actions or tactics, some of which seemed solely intended to cause unnecessary delay, the WCAB is willing to take action, up to and including total removal of the privilege to appear.

The lien representative, Daniel Escamilla, raised a number of arguments challenging the Notice of Hearing, including lack of jurisdiction, due process and equal protection violations, and lack of evidentiary support. The Labor Code provides that a Petition for Reconsideration can be filed in relation to a final Order, Decision, or Award. (Labor Code §§5900,5903.) The WCAB found that no Order, final or interlocutory, had issued. The action challenged was merely a notice that a hearing had been set, at which time the Appeals Board would determine whether to suspend or remove the petitioner's privilege to appear.

The Appeals Board also held that Mr. Escamilla's petition was untimely. Under §5903, any aggrieved person has 20 days after service of a final order, decision or award to file a Petition for Reconsideration. The time for filing is extended by five calendar days when service of the order is made by mail on a party with a physical address in California. The Notice of Hearing was served by mail on September 21, 2011. The petition for reconsideration was filed on November 7, 2011. The Appeals Board held that even if a final Order had issued, it would not have jurisdiction to hear the challenge to the Order as it was untimely filed. The Appeals Board ultimately accepted the petition as a response to the Notice of Hearing and will consider Escamilla's arguments when determining whether to remove or suspend his privilege to appear before the WCAB or WCJ.