

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **Case No. AHM 0057674**

5 **JULIE GARCIA,**

6 *Applicant,*

7 **vs.**

8
9 **THE VONS COMPANY, INC., Permissibly
Self-Insured,**

10 *Defendant(s).*

11
12
13 **OPINION AND DECISION
AFTER REMOVAL
AND ORDER AWARDING SANCTIONS
(EN BANC)**

14 The Board, on its own motion, previously removed this matter to itself under Labor Code
15 section 5310. Removal was ordered so the Board could consider whether the filing of a seriously
16 untimely petition for reconsideration by Valley Subrogation and Associates (Valley Subrogation)
17 on behalf of lien claimant, La Mirada Chiropractic Group (La Mirada), was sanctionable conduct
18 resulting from "bad-faith actions or tactics that are frivolous or solely intended to cause
19 unnecessary delay," within the meaning of Labor Code section 5813 and Board Rule 10561 (Cal.
20 Code Regs., tit. 8, §10561). Valley Subrogation's petition for reconsideration had been filed on
21 April 12, 2000, over six months after the October 6, 1999 decision of the workers' compensation
administrative law judge (WCJ) disallowing La Mirada's lien.

22 In our March 14, 2001 opinion following removal, we held that the petition for
23 reconsideration filed by Valley Subrogation on La Mirada's behalf was a "pleading, petition or
24 legal document" within the meaning of Board Rule 10561. We also issued a notice of intention
25 to award sanctions against Valley Subrogation because, based upon our review of the record, it
26 appeared that Valley Subrogation had no "reasonable justification" for filing the significantly
27 untimely petition for reconsideration and because it appeared that its act of filing the untimely

1 petition for reconsideration without adequate explanation or justification was “indisputably
2 without merit.”

3 In stating our belief that Valley Subrogation had no “reasonable justification” for filing a
4 petition for reconsideration over six months after the WCJ's October 6, 1999 decision and that its
5 act of filing the very untimely petition for reconsideration was “indisputably without merit,” our
6 March 14, 2001 opinion observed in substance: (1) that La Mirada itself had been timely served
7 with the WCJ's October 6, 1999 decision; (2) that the October 6, 1999 decision had expressly
8 apprised La Mirada that Valley Subrogation was *not* being served only because the Board's
9 previous mailing to Valley Subrogation had been returned as undeliverable (a situation that
10 resulted from Valley Subrogation's breach of its duty to apprise the Board of its correct address
11 (Cal. Code of Regs., tit. 8, §10396)); (3) that, in any event, Kurt Flanagan (a hearing
12 representative employed by Valley Subrogation) had gained personal knowledge of the October
13 6, 1999 decision on October 20, 1999, when he reviewed the Board's file at the district office;
14 and (4) that, when Valley Subrogation's petition for reconsideration was filed some six months
15 after the WCJ's October 6, 1999 decision, the only explanation offered for the petition's lateness
16 was that the Board's service of the October 6, 1999 decision had been “defective,” yet, there was
17 no reference to the facts that service of the decision had been timely and properly made on La
18 Mirada itself, that service was not made on Valley Subrogation only because it had breached its
19 duty to provide the Board with its correct address, and that Valley Subrogation (through Mr.
20 Flanagan) had reviewed the Board's file (including the October 6, 1999 decision) on October 20,
21 1999.

22 In issuing our March 14, 2001 notice of intention, we gave Valley Subrogation fifteen
23 (15) days to file an objection in writing.

24 Valley Subrogation has now filed its response.¹ In its response, Valley Subrogation

25 ¹ Although Valley Subrogation's response was not filed until April 6, 2001 (i.e. more than 15 days after our notice
26 of intention), Mr. Flanagan (who prepared the response) has asserted excusable neglect under Code of Civil
27 Procedure section 473. (See *Fox v. Workers' Comp. Appeals Bd. (Hudson)* (1992) 4 Cal.App.4th 1196 [57
Cal.Comp.Cases 149].) For the personal reasons set forth by Mr. Flanagan in the response, we will excuse the late
response and will consider it timely.

1 acknowledges that its actions were “inappropriate.” It argues, however, “it was merely
2 attempting to represent their [sic] client in an attempt to collect expenses believed to be owed by
3 the defendants.” It also argues that, rather than issuing the October 6, 1999 decision, the WCJ
4 “could have or should have issued a Notice of Intention To Submit this matter for decision.”

5 This response offers no reason whatsoever for Valley Subrogation’s failure to file its
6 petition for reconsideration until April 12, 2000, over six months after the WCJ’s October 6,
7 1999 decision. In light of Valley Subrogation’s utter failure to explain why its petition for
8 reconsideration was egregiously untimely (and in light of the reasons set forth in our March 14,
9 2001 opinion), we will now award sanctions against Valley Subrogation in accordance with our
10 March 14, 2001 notice of intention.

11 For the foregoing reasons,

12 **IT IS ORDERED** as the Decision After Removal of the Workers’ Compensation
13 Appeals Board (en banc) that (1) Valley Subrogation and Associates shall forthwith pay
14 sanctions of \$300.00 to Dennis J. Hannigan, Secretary, Workers’ Compensation Appeals Board,
15 P.O. Box 429459, San Francisco, CA 94142, ATTENTION: Rehearing Unit, for transmission to
16 the General Fund; and (2) Valley Subrogation and Associates shall pay reasonable attorney’s fees
17 and costs to defendant, The Vons Company, Inc., for responding to Valley Subrogation’s petition
18 for reconsideration, with the amount of the reasonable attorney’s fees and costs to be informally

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

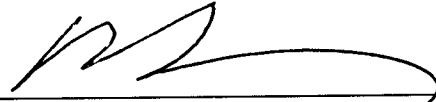
25 ///

26 ///

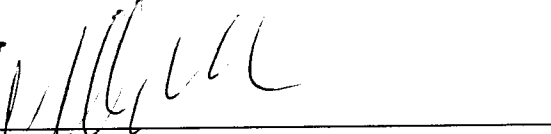
27 ///

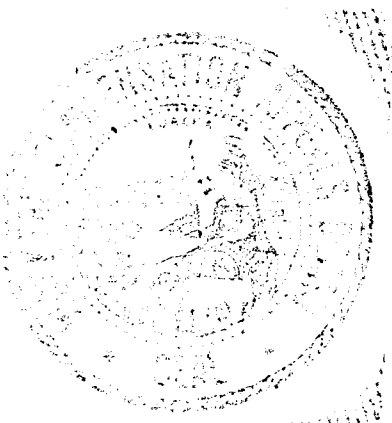
1 adjusted by the parties or, failing informal adjustment, to be determined by the workers'
2 compensation administrative law judge following the filing of a declaration of readiness to proceed
3 at the trial level.

4 **WORKERS' COMPENSATION APPEALS BOARD (EN BANC)**

5 
6 **MERLE C. RABINE, Chairman**

7
8 
9 **ROBERT N. RUGGLES, Commissioner**

10
11 
12 **WILLIAM K. O'BRIEN, Commissioner**

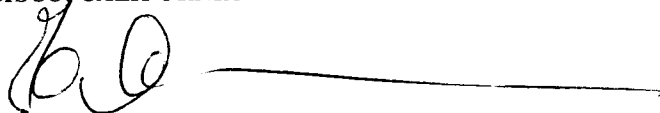


13
14 **I DISSENT. (See attached Dissenting Opinion.)**

15
16 
17 **COLLEEN S. CASEY, Commissioner**

18
19 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

20 **APR 30 2001**

21 

22 **SERVICE BY MAIL ON SAID DATE TO ALL PARTIES AS SHOWN ON THE OFFICIAL ADDRESS**
23 **RECORD EXCEPT LIEN CLAIMANTS, BUT INCLUDING PETITIONING LIEN CLAIMANT LA MIRADA**
24 **CHIROPRACTIC GROUP, AND ITS REPRESENTATIVE, VALLEY SUBROGATION AND ASSOCIATES.**

25
26
27 **tab**

DISSENTING OPINION

I dissent. I would accept the explanation offered in Valley Subrogation's response to our notice of intention. This response notes that, when Valley Subrogation filed its petition for reconsideration, it believed the WCJ "could have or should have issued a Notice of Intention To Submit this matter for decision," rather than issuing his October 6, 1999 decision. The response explains that in filing the petition for reconsideration, therefore, Valley Subrogation "was merely attempting to represent their [sic] client in an attempt to collect expenses believed to be owed by the defendants."

I believe that this response provides "reasonable justification" for Valley Subrogation's petition for reconsideration and demonstrates that the petition's filing was not the result of "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay," within the meaning of Labor Code section 5813 and Board Rule 10561 (Cal. Code Regs., tit. 8, §10561).

Accordingly, I would not award sanctions in this matter.

Colleen S. Casey

COLLEEN S. CASEY, Commissioner

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APR 30 2001

[Signature]

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES AS SHOWN ON THE OFFICIAL ADDRESS RECORD EXCEPT LIEN CLAIMANTS, BUT INCLUDING PETITIONING LIEN CLAIMANT LA MIRADA CHIROPRACTIC GROUP, AND ITS REPRESENTATIVE, VALLEY SUBROGATION AND ASSOCIATES.

tab

