

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

WAYNE FIDUCIA, *Applicant*

vs.

HOMEGROCER.COM; ZURICH AMERICAN INSURANCE COMPANY, *Defendants*

**Adjudication Numbers: ADJ2695021 (ANA 0365454), ADJ2130068 (ANA 0365456),
ADJ3474868 (ANA 0358347)
Anaheim District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

We have considered the allegations of applicant's (pro per) Petition for Reconsideration of the April 14, 2021 Opinion and Order Dismissing Petitions for Reconsideration issued by the Appeals Board. Based on our review of the record, the Petition is successive and must be dismissed.

It is well settled that where a party fails to prevail on a petition for reconsideration, the Appeals Board will not entertain a successive petition by that party unless the party is newly aggrieved. (*Goodrich v. Industrial Acc. Com.* (1943) 22 Cal.2d 604, 611 [8 Cal.Comp.Cases 177]; *Ramsey v. Workmen's Comp. Appeals Bd.* (1971) 18 Cal.App.3d 155, 159 [36 Cal.Comp.Cases 382]; *Crowe Glass Co. v. Industrial Acc. Com. (Graham)* (1927) 84 Cal.App. 287, 293-295 [14 I.A.C. 221].) As stated in our en banc opinion in *Navarro v. A & A Framing* (2002) 67 Cal.Comp.Cases 296, 299 (Appeals Board en banc):

The general rule is that where a party has filed a petition for reconsideration with the Board, but the party does not prevail on that petition for reconsideration, the petitioning party cannot attack the [Appeal's] Board's action by filing a second petition for reconsideration; rather, the petitioning party must either be bound by the [Appeals] Board's action or challenge it by filing a timely petition for writ of review.

The only exception to this general rule occurs when, although the petitioning party does not prevail on its original petition for reconsideration, the Appeals Board's decision is based on some new and additional evidence not presented at the time of trial. In this limited circumstance only, the

original petitioner may properly file a second petition for reconsideration because the Appeals Board's decision is based on a new record. (*Pacific Employers Ins. Co. v. Industrial Acc. Com. (Mazzanti)* (1956) 139 Cal.App.2d 22, 25-26 [21 Cal.Comp.Cases 46].)

Here, the petition for reconsideration raises the same issues and arguments that were raised in earlier petitions for reconsideration in which petitioner did not prevail. Furthermore, no new evidence was accepted or considered at the time of the Appeals Board's decision on the original petitions. Accordingly, the current Petition for Reconsideration must be dismissed as successive.

It may be that applicant, who is not a trained representative or attorney, has misunderstood the relative import of various legal issues, or the meaning of the decisions made by the WCJ or the Appeals Board. However, we caution applicant that such repetitive filing of pleadings and petitions gives rise to the appearance that applicant may be a vexatious litigant pursuant to WCAB Rule 10430:

A party who, while acting in propria persona in proceedings before the Workers' Compensation Appeals Board, repeatedly relitigates, or attempts to relitigate, an issue of law or fact that has been finally determined against that party by the Workers' Compensation Appeals Board or by an appellate court...

(Cal. Code Regs., tit. 8, former § 10782(a)(1), now § 10430(a)(1) (eff. Jan. 1, 2020).)

We caution applicant that upon petition by any party or lien claimant, or motion of a WCJ or the Appeals Board, and after notice and opportunity to be heard, applicant could be declared a vexatious litigant. (Cal. Code Regs., tit. 8, former § 10782(b)-(c), now § 10430(b)-(c) (eff. Jan. 1, 2020).) The consequences of being declared a vexatious litigant would include the inability to file any pleading without obtaining leave of the presiding workers' compensation judge of the district office; and the inability to file any petition for reconsideration or removal without first obtaining leave from the Appeals Board. (Cal. Code Regs., tit. 8, former § 10782(d)-(e), now § 10430(d)-(e) (eff. Jan. 1, 2020).)

Therefore, we will dismiss applicant's Petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ AMBER INGELS, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 26, 2021

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

**COHEN & BLITZ
TOBIN LUCKS
WAYNE FIDUCIA**

AI/pc

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