

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

**MA DEL CARMEN GUTIERREZ, *Applicant***

**vs.**

**PACIFIC PAPER TUBE, INC.;**  
**TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants***

**Adjudication Number: ADJ11320330**  
**San Francisco District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

On April 19, 2021, lien Claimant Northern California Occupational Clinic filed correspondence dated April 17, 2021 requesting that the dismissal of its lien be reconsidered. We have treated this correspondence as a Petition for Reconsideration. We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, the petition is untimely and unverified and will be dismissed.

There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail, fax, or email upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, former § 10507(a)(1), now § 10605(a)(1) (eff. Jan. 1, 2020).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, former § 10508, now § 10600 (eff. Jan. 1, 2020).) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, former § 10845(a), now § 10940(a); former § 10392(a), now § 10615(b) (eff. Jan. 1, 2020).)

This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979,

984 [46 Cal.Comp.Cases 1008]; U.S. *Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

In this case, the WCJ issued the Order Dismissing Lien on March 17, 2021, serving petitioner by email, petitioner's designated preferred method of communication in the Electronic Adjudication Management System (EAMS). Based on the authority cited above, petitioner had until Monday, April 12, 2021 to seek reconsideration in a timely manner. Therefore, the Petition for Reconsideration filed on April 19, 2021 is untimely and must be dismissed.

Additionally, Labor Code section 5902 requires that a petition for reconsideration be verified. (Lab. Code, § 5902; see also Cal. Code Regs., tit. 8, former § 10450(e), now § 10510(d) (eff. Jan. 1, 2020).) In *Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425 (Significant Panel Decision), it was held that where a petition for reconsideration is not verified as required by section 5902, the petition may be dismissed if the petitioner has been given notice of the defect (either by the WCJ's report or by the respondent's answer) unless, within a reasonable time, the petitioner either: (1) cures the defect by filing a verification; or (2) files an explanation that establishes a compelling reason for the lack of verification and the record establishes that the respondents are not prejudiced by the lack of verification.

Here, the Petition for Reconsideration is not verified and notice of this defect was specifically given by the WCJ in the April 29, 2021 Report. Moreover, a reasonable period of time has elapsed, but petitioner has neither cured the defect by filing a verification nor offered an explanation of why a verification cannot be filed.

Finally, to the extent that the Petition for Reconsideration may be interpreted as a request for relief pursuant to Code of Civil Procedure section 473, due to inadvertence, surprise, excusable neglect or honest mistake, petitioner has not made the necessary showing.

If we were not dismissing the petition as untimely and unverified, we would have denied it on the merits for the reasons stated in the WCJ's report.

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/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**



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

**June 15, 2021**

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

**NORTHERN CALIFORNIA OCCUPATIONAL CLINIC  
LAURA CHAPMAN**

**PAG/oo**

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