

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

MIRA SEPULVEDA, *Applicant*

vs.

**KNO MC, INC.;
NORGUARD INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ10763593
Los Angeles District Office**

**OPINION AND ORDER
DISMISSING 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 must be dismissed.

Preliminarily, we note that a petition is generally considered denied by operation of law if the Appeals Board does not grant the petition within 60 days after it is filed. (Lab. Code, § 5909.) However, we believe that "it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice" (*Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shipley*, the Appeals Board denied the applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of Labor Code section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant's petition was tolled during the period that the file was misplaced. (*Shipley, supra*, 7 Cal.App.4th at p. 1108.) Like the Court in *Shipley*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Shipley, supra*, 7 Cal.App.4th at p. 1108.)

In this case, the Appeals Board failed to act on lien claimant's petition within 60 days of its filing on August 30, 2022, through no fault of petitioner. Therefore, considering that the Appeals Board's failure to act on the petition was in error, we find that our time to act was tolled.

Nevertheless, while our time to act was tolled, lien claimant's petition was untimely filed and therefore subject to dismissal.

There are 20 days allowed within which to file a petition for reconsideration from a "final" decision. (Lab. Code, §§ 5900(a), 5903.) This time is extended by 5 calendar days if service is made to an address within California and 10 calendar days if service is made to an address outside of California but within the United States. (Cal. Code Regs., tit. 8, § 10605(a)(1).) Defendant was served at an address outside of California.

In this case, the WCJ issued the Order Dismissing Lien (Order) on July 21, 2022, designating defense counsel to serve the order pursuant to WCAB 10629. Defense counsel served the Order on petitioner on July 27, 2022. Based on the authority cited above, petitioner had until Monday, August 21, 2022 or, if the time to file is extended by 10 days, until Friday, August 26, 2022 to seek reconsideration in a timely manner. Even if we were to consider service defective, and calculate the time to file the Petition for Reconsideration based on date petitioner received the Order, it would still be untimely. Where the service of a decision is defective, the 20-day statutory time period for filing a petition for reconsideration begins to run when the decision is actually received. (See *Hartford Acc. & Indem. Co. v. Worker's Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1, 3 [43 Cal.Comp.Cases 1193], *Baker v. Worker's Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 1315, 1318 (writ den.)) In this matter, petitioner asserted that it received the order on August 9, 2022. The record here shows that petitioner filed its petition on August 30, 2022, making it untimely and subject to dismissal.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 3, 2023

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

**CERTIFIED INTERPRETERS
COLLECTIVE RESOURCE
TOBIN LUCKS**

PAG/abs

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