

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

***ROSA BANDERAS, Applicant***

**vs.**

**WALMART STORES, INC.; AMERICAN HOME ASSURANCE, *Defendants***

**Adjudication Number: ADJ1407512 (MON 0356873)  
Marina del Rey District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We granted applicant's and defendant's Petitions for Reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

On April 23, 2021, the workers' compensation administrative law judge (WCJ) issued a decision in this case. On May 13, 2021, defendant timely filed a Petition for Reconsideration. On May 14, 2021, applicant timely filed a Petition for Reconsideration. Through no fault of the parties, the matter was not transmitted to the Appeals Board for consideration until more than 90 days later. (See Lab. Code, § 5909.)

We believe that "it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice ...." (*Shiple v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shiple*, the Appeals Board denied applicant's petition for reconsideration because the Appeals Board had not acted on the petition within the statutory time limits of Labor Code section 5909. The Appeals Board did not act on applicant's petition because it 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. (*Shiple, supra*, 7 Cal.App.4th at p. 1108.) Like the Court in *Shiple*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Shiple, supra*, 7 Cal.App.4th at p. 1108.) Both parties timely filed their Petitions for Reconsideration on May 13 and 14, 2021, less than 25 days after the decision issued on April 23, 2021. Therefore, considering that the failure to act was due to a clerical error by the

WCAB, we conclude that our time to act on the Petitions for Reconsideration was tolled and that reconsideration was properly granted on September 13, 2021.

We have considered the allegations of the Petitions for Reconsideration and the contents of the report of the WCJ with respect thereto. In her report, the WCJ recommends that the Petitions for Reconsideration be granted. Based on our review of the record, and for the reasons stated in the WCJ's report, we rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision. This is not a final decision on the merits of any issues raised in the Petitions, and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the WCJ's decision of April 23, 2021 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



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

**February 2, 2022**

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

**ROSA BANDERAS  
GRAIWER & KAPLAN  
STANDER REUBENS THOMAS KINSEY  
EMPLOYMENT DEVELOPMENT DEPT.**

**AS/ara**

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