

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

**KRISTOPHER SHAW, *Applicant***

**vs.**

**BLUECREW, INC./VENSURE EMPLOYER SERVICES, INC.; STATE NATIONAL  
INSURANCE COMPANY, administered by, CANNON COCHRAN MANAGEMENT  
SERVICES, INC., *Defendants***

**Adjudication Number: ADJ11292929  
Sacramento District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Applicant, in pro per<sup>1</sup>, filed a Petition for Reconsideration (Petition) on January 24, 2024, apparently<sup>2</sup> challenging the Findings & Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on December 9, 2022, wherein the WCJ found in pertinent part that applicant sustained an industrial injury on October 6, 2017, to his ribs, neck and back; and was entitled to permanent disability of 21%.

We received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, the petition is untimely and must be dismissed.

As a preliminary matter, applicant's Petition is untimely. There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on

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<sup>1</sup> On June 19, 2023, applicant filed a Notice of Dismissal of Attorney and a Substitution of Attorney and both documents are dated June 2, 2023. Applicant substituted himself in pro per.

<sup>2</sup> The Petition does not specifically reference what applicant seeks to have reconsidered.

a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) 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, §§ 10940(a), 10615(b).)

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].)

Here, the petition in this matter was filed on January 24, 2024. This was more than 25 days after the service of the WCJ's decision on December 9, 2022, and beyond whatever extension of time, if any, the petitioner might have been entitled to under WCAB Rule 10600.

Moreover, the Labor Code<sup>3</sup> requires that:

The petition for reconsideration shall set forth **specifically and in full detail the grounds** upon which the petitioner considers the final order, decision or award made and filed by the appeals board or a workers' compensation judge to be unjust or unlawful, and every issue to be considered by the appeals board. The petition shall be verified upon oath in the manner required for verified pleadings in courts of record and shall contain a general statement of any evidence or other matters upon which the applicant relies in support thereof. (emphasis added) (Lab. Code, § 5902.)

The Appeals Board Rules provide in relevant part: (1) that “[e]very petition for reconsideration ... shall fairly state all the material evidence relative to the point or points at issue [and] [e]ach contention contained in a petition for reconsideration ... shall be separately stated and clearly set forth” (Cal. Code Regs., tit. 8, § 10945) and (2) that “a petition for reconsideration ... may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved.” (Cal. Code Regs., tit. 8, § 10972.)

In accordance with section 5902 and WCAB Rules 10945 and 10972, the Appeals Board may dismiss or deny a petition for reconsideration if it is skeletal (e.g., *Cal. Indemnity Ins. Co. v. Workers' Comp. Appeals Bd. (Tardiff)* (2004) 69 Cal.Comp.Cases 104 (writ den.); *Hall v.*

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<sup>3</sup> All further statutory references are to the Labor Code unless otherwise stated.

*Workers' Comp. Appeals Bd.* (1984) 49 Cal.Comp.Cases 253 (writ den.); *Green v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 564 (writ den.)); if it fails to fairly state all of the material evidence, including that not favorable to it (e.g., *Addecco Employment Services v. Workers' Comp. Appeals Bd. (Rios)* (2005) 70 Cal.Comp.Cases 1331 (writ den.); *City of Torrance v. Workers' Comp. Appeals Bd. (Moore)* (2002) 67 Cal.Comp.Cases 948 (writ den.); or if it fails to specifically discuss the particular portion(s) of the record that support the petitioner's contentions (e.g., *Moore*, supra, 67 Cal.Comp.Cases at p. 948; *Shelton v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 70 (writ den.).)

Additionally, the Appeals Board Rules provide:

Where reconsideration is sought on the ground of **newly discovered evidence** that could not with reasonable diligence have been produced before submission of the case or on the ground that the decision had been procured by fraud, the petition must contain an offer of proof, specific and detailed, providing: . . .

(c) A description of any documentary evidence to be offered.

(d) The effect that the evidence will have on the record and on the prior decision; and

(e) As to **newly discovered evidence**, a full and accurate statement of the reasons why the testimony or exhibits could not reasonably have been discovered or produced before submission of the case. (emphasis added) (Cal. Code Regs, tit. 8, § 10974.)

Here, applicant failed to sufficiently identify and attach the additional records that he contends are “newly discovered” nor has applicant provided a full and accurate statement of the reasons why the testimony could not have reasonably been discovered before submission of the case. The petition filed herein fails to state grounds upon which reconsideration is sought or to cite with specificity to the record. Therefore, even if it was timely, it is subject to dismissal.

Accordingly, we dismiss the petition for reconsideration.

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/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



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

**March 18, 2024**

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

**KRISTOPHER SHAW  
RATTO LAW  
SCHLOSSBERG UMHOLTZ  
WILLIAM GREEN**

**DLM/oo**

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