

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

ANTONIO ALVARADO, *Applicant*

vs.

**NANCY PRESS;
NORGUARD INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ13111665
Anaheim District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

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 . . .” (*Shiple v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shiple*, 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. (*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.)

In this case, the Appeals Board failed to act on defendant’s petition within 60 days of its filing on June 10, 2022, through no fault of defendant. 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, the Petition for Reconsideration of the Findings and Award and Order decision issued on May 20, 2022 has been withdrawn by defendant. Therefore, it will be dismissed.

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/ MARGUERITE SWEENEY, COMMISSIONER



/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 24, 2022

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

**ANTONIO ALVARADO
PARKER LAW
HANNA BROPHY**

PAG/abs

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