

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

**KATIA ESCOBEDO, *Applicant***

**vs.**

**SOUTHERN CALIFORNIA HEALTHCARE SYSTEM/PROSPECT MEDICAL  
HOLDINGS, *Permissibly Self-Insured, Administered by CORVEL, Defendants***

**Adjudication Number: ADJ13528847  
Marina del Rey District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
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, and for the reasons stated in the WCJ's report, which we adopt and incorporate, except as noted below, we will grant reconsideration, 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 petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

Ordinarily, a party has twenty-five days within which to file a petition for reconsideration from a final decision that has been served by mail on an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605.) 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, 656]; *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, 1011]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73, 75-76].)

Where, however, the service of a decision is defective, the statutory time period for filing a petition for reconsideration does not begin to run until 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 case, we agree with the WCJ that service of the November 8, 2021 Findings of Fact and Order was defective. In the verified Petition for Reconsideration, applicant's attorney asserts that the WCJ's decision was discovered on December 8, 2021. Therefore, based on the authority cited above, the Petition for Reconsideration filed on December 15, 2021 is timely.

While we agree with the WCJ that the Petition for Reconsideration is timely and that it appears applicant met her burden of proof on the issue of injury arising out of and occurring in the course of employment (AOE/COE), the WCJ did not explain the reasons for her recommended finding as to the issue of defendant's post-termination defense. Therefore, we will grant reconsideration, rescind the November 8, 2021 Findings of Fact and Order, and return this matter to the trial level for the WCJ to reissue her decision addressing all issue in the first instance.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the November 8, 2021 Findings of Fact and Order is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the November 8, 2021 Findings of Fact and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**MARGUERITE SWEENEY, COMMISSIONER**  
**PARTICIPATING NOT SIGNING**



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

**February 14, 2022**

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

**KATIA ESCOBEDO  
CALIFORNIA WORKER'S COMPENSATION LAWYERS, APC  
DORMAN SUAREZ  
EMPLOYMENT DEVELOPMENT DEPT.**

**PAG/ara**

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

**REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**I**  
**INTRODUCTION**

1. Applicant's Occupation: certified nurse's assistant (CNA)
2. Applicant's Age: 20
3. Date of injury: 2/16/2020
4. Parts of Body alleged: bilateral upper extremities, cervical spine, thoracic spine, lumbar spine, right shoulder, right leg, right knee and psyche
5. Manner in which injuries have Occurred: specific injury
6. Identity of Petitioner: Applicant
7. Timeliness: The WCJ believes the petition was timely filed in light of the service issues raised by petitioner.
8. Verification: A verification is attached.
9. Date of Findings of Fact and Order: 11/8/2021
10. Petitioner's contentions:
  1. The Petition for Reconsideration was timely filed due to the service issues raised by Petitioner.
  2. The decision made by the WCJ was in excess of her powers.
  3. The evidence does not justify the Findings of Fact.
  4. The findings of fact do not support the order or decision that Applicant failed to meet her burden of proof in establishing injury AOE/COE.

**II**  
**FACTS**

Applicant, Katia Escobedo, while employed on 2/16/2020, as a certified nurse's assistant (CNA), Occupational Group No. deferred, claims to have sustained injury arising out of and in the course of her employment to her bilateral upper extremities, cervical spine, thoracic spine, lumbar spine, right shoulder, right leg, right knee and psyche.

The matter commenced trial and was submitted on 8/19/2021. The only issues set for trial were AOE/COE, attorney fees and Post-Termination defense pursuant to Labor Code Section 3600(a) (10). The Applicant and a defense witness, Menchie Dasalla testified at trial. On the trial date, the parties submitted their exhibits into the evidence without objection. Both the Applicant and the defense witness were subject to direct and cross-examination. At the conclusion of testimony, the parties both indicated they were ready for submission and so the matter was submitted for decision on 8/19/2021.

A Findings of Fact and Order issued on 11/8/2021. The Findings of Fact concluded Applicant did not meet her burden of proof regarding injury AOE/COE. The Board received a copy of Applicant's Petition for Reconsideration dated 12/15/2021 on the same date. Defendant filed an Answer to Petition for Reconsideration on 12/21/2021. Defendant contends that Applicant's Petition for Reconsideration is untimely. According to Applicant's petition, Applicant was not served with a copy of the Findings and Award at the correct email address. Applicant is correct that the incorrect email address for Applicant's counsel was listed on the proof of service attached to the Findings of Fact and Order dated 11/8/2021. Based on this service issue, the WCJ believes the Petition was timely and will address the Petition on the merits.

Applicant's Petition for Reconsideration takes issue with the fact that the WCJ determined Applicant did not meet her burden of proof that she sustained injury AOE/COE with regard to her orthopedic injuries on 2/16/2020. The WCJ has had an opportunity to reconsider the evidence in light of the arguments made in the Petition and Defendant's Answer and now agrees that the Petition for Reconsideration should be granted. The WCJ now opines that the Applicant did in fact meet her burden of proof that she sustained injury arising out of and in the course of her employment to her cervical spine, thoracic spine, lumbar spine, right shoulder and right knee as a result of her injury on 2/16/2020. These are the only body parts that are determined industrial and supported by substantial medical evidence. As the Petition failed to take issue with the finding that Applicant did not meet her burden of proof that she sustained injury arising out of and in the course of her employment with regard to her psyche, then this finding is final and should stand.

For the following reasons the Petition for Reconsideration should be granted in part and a new decision should replace the previous Findings of Fact.

### **III** **DISCUSSION**

The original decision by this WCJ on 11/8/2021 was based in large part upon the discrepancy between the Applicant's testimony that she sustained her injuries on 2/16/2020 and some of the medical reports admitted into evidence that reflected a 4/11/2020 date of injury. However, after a more careful review of the record, the Applicant provided a reasonable explanation for this discrepancy at trial. She testified that she gave the injury date of April 2020 to someone in HR based on her and Dr. Bady's mistake. She explained that she had called Dr. Bady's office to ask for the date she had first gone to see him and instead the office provided her with the date that she had last been examined. She then estimated her date of injury based on the date given to her by Dr. Bady's office and provided this incorrect date to HR. (See Minutes of Hearing and Summary of Evidence dated 8/19/2021 page 6 lines 13 to 18) This explanation was corroborated by

applicant's deposition testimony which was reviewed by the Panel QME in his report dated 2/24/2021. (See Exhibit 1 page 28, 30 and 35) The WCJ found the Applicant's testimony at trial credible and her explanation of the date discrepancy to be reasonable.

Another reason for altering the opinion in favor of Finding injury AOE/COE is that Applicant testified that she reported her injury to her supervisor Menchie Dasalla. The Applicant testified that she reported her pain a few days after the incident to Menchie Dasalla, who was the night shift supervisor. (See Minutes of Hearing and Summary of Evidence dated 8/19/2021 page 4, lines 22 to 23) The Applicant's testimony regarding this was definitive. The witness, Ms. Dasalla's testimony was not definitive and did not rebut Applicant's credible testimony. Ms. Dasalla testified that did not remember that Applicant reported to her that she got injured. Based on the arguments made in the Petition for Reconsideration and another review of the entire record, a finding of injury AOE/COE regarding Applicant's cervical spine, thoracic spine, lumbar spine, right shoulder and right knee is the only opinion that can be supported by substantial medical evidence. Therefore, the Petition for Reconsideration should be granted in part based on the reasons set forth above.

### **RECOMMENDATION**

As the Petition for Reconsideration demonstrates good cause upon which to base the setting aside of the Findings and Award dated 118/2021, it is respectfully recommended that the Petition for Reconsideration be granted and a new Findings of Fact and Award be issued as set forth below. The Findings of Fact and Order should be amended to read as follows:

### **FINDINGS OF FACT**

1. Applicant, Katia Escobedo, while employed on 2/16/2020 as a CNA, at Los Angeles, California, by Southern California Healthcare System/Prospect Medical Holdings, sustained injury arising out of and occurring in the course of employment to her cervical spine, thoracic spine, lumbar spine, right shoulder and right knee.
2. Applicant did not meet her burden of proof that she sustained injury to her bilateral upper extremities, right leg and psyche.
3. Defendant failed to establish the affirmative defense of post-termination.

**AWARD**

**AWARD IS MADE** in favor of KATIA ESCOBEDO, against SOUTHERN CALIFORNIA HEALTHCARE SYSTEM/PROSPECT MEDICAL HOLDINGS, permissibly self-insured, administered by, as follows:

- (a) Injury as provided in Finding number 1.

Respectfully submitted,

**CIRINA A. ROSE**  
Workers' Compensation Judge

Date: 1/18/2022