

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

**ROSARIO MEJIA, Applicant**

**vs.**

**MARMALADE CAFÉ; CALIFORNIA RESTAURANT MUTUAL BENEFIT  
CORPORATION, *Defendants***

**Adjudication Numbers: ADJ8494732, ADJ8494735, ADJ8494782  
Los Angeles District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We granted reconsideration in this matter to further study the factual and legal issues presented. This is our Opinion and Decision After Reconsideration.

**I.**

As a preliminary matter, we note that a petition for reconsideration 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 ....” (*Shiplely v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shiplely*, 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. (*Shiplely*, supra, 7 Cal.App.4th at p. 1108.) Like the Court in *Shiplely*, “we are not convinced that the burden of the system’s inadequacies should fall on [a party].” (*Shiplely*, supra, 7 Cal.App.4th at p. 1108.) In this case, the Appeals Board failed to act on the Petition for Reconsideration within 60 days of its filing through no fault of the parties. Therefore, we find that our time to act on defendant’s petition was tolled.

**II.**

Applicant, Rosario Mejia, petitioned for reconsideration of the Findings and Award issued by the workers’ compensation administrative law judge (WCJ) in this matter on February 18, 2020. In that decision, the WCJ found that applicant sustained injuries arising out of and in the course of

his employment as a food runner by defendant, Marmalade Cafe, on June 12, 2012, resulting in permanent disability of 15% (case ADJ8494782) and during a cumulative period ending on July 8, 2012, resulting in permanent disability of 12% (case ADJ8494732.)

Applicant contends in his petition for reconsideration that the WCJ erred in not finding that the development of a cystic mass on applicant's thoracic spine and internal conditions are industrially-related.

Defendant, California Restaurant Mutual Benefit Corporation, which insured the employer for workers' compensation liability at the time of the injuries, filed an answer contending that the petition for reconsideration should be denied.

Subsequently, at our request the parties participated in a commissioners' settlement conference and agreed to resolve this matter by Compromise and Release.

The Compromise and Release, which was filed on June 2, 2021, provides for a settlement of \$200,000, less credit to defendant for \$2,917.40 previously paid, less \$12,533 to fund a self-administered Medicare set-aside trust and less an attorneys' fee of \$30,000, leaving \$154,549.60 payable to applicant in a lump sum. The Compromise and Release also provides that defendant will pay or adjust liens of record with jurisdiction reserved.

### III.

Labor Code section 5001 states in pertinent part that "[n]o release of liability or compromise agreement is valid unless it is approved by appeals board or referee."

WCAB Rule 10700 states that:

"The Workers' Compensation Appeals Board shall inquire into the adequacy of all compromise and release agreements and stipulations with request for award, and may set the matter for hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved, or issue findings and awards." (Cal. Code Regs., tit. 8, § 10700.)

Labor Code section 5002 states that:

"A copy of the release or compromise agreement signed by both parties shall forthwith be filed with the appeals board. Upon filing with and approval by the appeals board, it may, without notice, of its own motion or on the application of either party, enter its award based upon the release or compromise agreement."

After considering the compromise and release in light of the entire record, we conclude that the settlement amount is adequate and that the agreement is in the best interest of applicant.

We have considered that any potential right to death benefits is being released. In addition, we conclude that the attorneys' fee requested is reasonable and should be allowed.

Therefore, we will rescind the Findings and Award issued on February 18, 2020. and approve the Compromise and Release.

Finally, we commend the parties for engaging in good faith negotiations and successfully resolving this matter without the need for further litigation.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued in this matter on February 18, 2020, be **RESCINDED**.

**IT IS FURTHER ORDERED** that the Compromise and Release filed June 2, 2021, be **APPROVED**.

**AWARD IS MADE** in favor of **ROSARIO MEJIA** against **CALIFORNIA RESTAURANT MUTUAL BENEFIT CORPORATION** as specified in the Compromise and Release.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ DEIDRA E. LOWE, COMMISSIONER**



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

**JULY 6, 2021**

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

**ROSARIO MEJIA  
BRADFORD & BARTHEL  
LAW OFFICES OF RAMIN R. YOUNESSI**

**DH/pc**

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