

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

JORGE NEGRETE, *Applicant*

vs.

C.D. LYON, INC.;
ZURICH AMERICAN INSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ13689694
Oakland District Office**

**OPINION AND DECISION
AFTER 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 July 22, 2021, 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 and we granted this matter for further study on October 14, 2021.

It has now come to the attention of the Appeals Board that, while this matter has been pending on reconsideration, the parties have reached a proposed settlement.

Since the District Office is precluded from acting on a case while it is pending on reconsideration (Cal. Code Regs., tit. 8, § 10961), in order to permit review by the workers' compensation administrative law judge (WCJ) of the proposed settlement, we will rescind the decision from which reconsideration is sought and return this matter to the trial level for the WCJ to consider the proposed settlement. If the WCJ does not approve the settlement, the WCJ may issue an order reinstating the original decision and any aggrieved person may timely seek reconsideration from the reinstated decision. This is not a final decision on the merits of any of the issues pending on reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the WCJ's decision of July 7, 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/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 23, 2022

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

**JORGE NEGRETE
LAW OFFICE OF DAVID WELTIN
ALLECIA & MITANI**

AS/abs

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