

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

FRANCISCO ROSALES, *Applicant*

vs.

VIA BUILDERS; STARSTONE NATIONAL INSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ10750446
San Francisco District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

We have considered the allegations of applicant's Petition for Reconsideration (filed in pro per) and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, the petition is untimely and must be dismissed.

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, former § 10507(a)(1), now § 10605(a)(1) (eff. Jan. 1, 2020).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, former § 10508, now § 10600 (eff. Jan. 1, 2020).) 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, former § 10845(a), now § 10940(a); former § 10392(a), now § 10615(b) (eff. Jan. 1, 2020).)

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].)

The petition in this matter was filed on March 8, 2021. This was more than 25 days after the service of the WCJ's February 5, 2021¹ decision and beyond whatever extension of time, if any, the petitioner might have been entitled to under WCAB Rule 10600.

If the petition had been timely, we would have denied it on the merits for the reasons stated in the WCJ's report.

¹ The decision was dated February 4, 2021, but was not served until February 5, 2021.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 5, 2021

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

**COLANTONI COLLINS MARREN PHILLIPS & TULK
DE ITA LOWE & WALD
FRANCISCO ROSALES**

AI/pc

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