

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

**JERRY THOMAS, *Applicant***

**vs.**

**CITY OF LOS ANGELES, permissibly self-insured, administered by,  
ACCLAMATION INTEGRATED MANAGEMENT SYSTEMS, *Defendants***

**Adjudication Number: ADJ9662282  
Van Nuys District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Defendant filed a Petition for Reconsideration of the Findings, Award & Order issued by the workers' compensation administrative law judge (WCJ) on December 28, 2020.

Labor Code section 5909 provides that a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within 60 days of filing. (Lab. Code, § 5909.) However, "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 applicant's petition for reconsideration because the Appeals Board had not acted on the petition within the statutory time limits of Labor Code section 5909. The Appeals Board did not act on applicant's petition because it 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. (*Id.* 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.) Defendant's Petition was timely filed on January 7, 2021. Our failure to act was due to a procedural error and our time to act on defendant's Petition was tolled.

The Petition for Reconsideration of the decision issued on December 28, 2020 has been withdrawn by defendant. Therefore, it will be dismissed.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**May 13, 2021**

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

**JERRY THOMAS  
LEWIS MARENSTEIN WICKE SHERWIN & LEE  
OFFICE OF THE CITY ATTORNEY**

*AI/pc*

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