

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

PAUL PRONOVOST, *Applicant*

vs.

**JJJ FLOORING; INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,
*Defendants***

**Adjudication Numbers: ADJ7995990, ADJ8118159, ADJ9376844, ADJ10183206
Sacramento District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

We have considered the allegations of defendant's 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, 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 29, 2021. This was more than 25 days after the service of the WCJ's February 8, 2021 decision and beyond whatever extension of time, if any, the petitioner might have been entitled to under WCAB Rule 10600.

The WCJ in his Report requested that the petition be dismissed as untimely and the matter returned to the trial level so he may set a hearing on defendant's motion to set aside the Order Approving the Compromise & Release. The WCJ may conduct further proceedings upon return of this matter to the trial level pursuant to the Appeals Board's continuing jurisdiction over its orders, decisions, and awards. (Lab. Code, § 5803.)

For the foregoing reasons,

IT IS ORDERED that the 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 28, 2021

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

**AIG CLAIMS
CURTIS WINTER
PAUL PRONOVOST
STATE COMPENSATION INSURANCE FUND**

AI/pc

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

CS