

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

JAMES VESSELS, *Applicant*

vs.

**CRUZ MODULAR, INC.;
LABOR READY; ENSTAR US; ESIS, *Defendants***

**Adjudication Number: ADJ6672465, ADJ11997989, ADJ3372314 (VNO 0554016),
ADJ2534190 (VNO 0554017), ADJ470082 (VNO 0553993)
Los Angeles District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Pursuant to our authority, we accept applicant's multiple supplemental pleadings filed on November 28, 2022.¹ (Cal. Code Regs., tit. 8, § 10964.) 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, § 10605(a)(1).) 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, § 10600.) 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, §§ 10940(a), 10615(b).)

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.*

¹ While we accept applicant's supplemental pleading, we caution applicant that "[a] party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading." (Cal. Code Regs., tit. 8, § 10964.)

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].)

In this case, the WCJ issued the Joint Findings and Order on September 6, 2022. Based on the authority cited above, applicant had until Monday, October 3, 2022 to seek reconsideration in a timely manner. Therefore, the Petition for Reconsideration filed on October 24, 2022 was untimely and must be dismissed.

If the petition had been timely, we would have denied it on the merits for the reasons stated in both the WCJ's Report and Opinion on Decision, adding the following clarification. The Appeals Board has continuing jurisdiction to rescind, alter, or amend any order, decision and award under Labor Code² section 5803. (*Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 297 [56 Cal.Comp.Cases 476] (following award Appeals Board lacked jurisdiction to award new period of temporary total disability indemnity where surgery causing disability and petition for continuing jurisdiction more than five years from date of injury).) The Appeals Board's authority to enforce the order, decision or award under section 5803 is different from continuing jurisdiction to alter or amend the order, decision or award limited by sections 5804. (*Barnes v. Workers' Comp. Appeals Bd.* (2000) 23 Cal.4th 679, 686–687 [65 Cal.Comp.Cases 780] (no jurisdiction to terminate lifetime medical award based on petition filed more than five years from date of injury); *Nickelsberg, supra*, 54 Cal.3d at p. 297.) Sections 5804 and 5410 require filing of petitions within five years of the date of injury for the WCAB to have continuing jurisdiction to rescind, alter or amend an order, decision or award more than five years from the date of injury. (*Barnes, supra*, 23 Cal.4th at pp. 686–687; *Nickelsberg, supra*, 54 Cal.3d at pp. 300–301.)

² All further statutory references are to the Labor Code, unless otherwise noted

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 23, 2022

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

**JAMES VESSELS
GRIFFIN, LOTZ & HOLZMAN
WCD LAW GROUP**

PAG/cs

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