

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

JAIME GONZALEZ BAUTISTA, *Applicant*

vs.

GOLDEN STATE AG SERVICES, INC.;
STAR INSURANCE COMPANY, *adjusted by*
MEADOWBROOK INSURANCE GROUP, *Defendants*

Adjudication Number: ADJ12810255
Bakersfield District Office

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

On January 10, 2022, the workers' compensation administrative law judge (WCJ) issued Findings, Orders and Award in this matter. Thereafter, defendant filed a timely Petition for Reconsideration on January 18, 2022. Pursuant to his authority under Appeals Board rule 10961, the WCJ rescinded the Findings, Orders and Award on January 21, 2022. (Cal. Code Regs., tit. 8, § 10961.) When a WCJ timely exercises his authority pursuant to WCAB rule 10961, the Petition for Reconsideration is rendered moot, the District Office retains jurisdiction, and the filing of a Report and Recommendation on Petition for Reconsideration (Report) is not necessary. However, in this case, the WCJ issued a Report on January 24, 2022 and transferred jurisdiction to us, thereby requiring us to act on the Petition for Reconsideration. However, we did not act on the petition within 60 days of its filing.

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" (*Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shipley*, 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. (*Shipley, supra*, 7 Cal.App.4th at p. 1108.) Like the Court in *Shipley*, “we are not convinced that the burden of the system’s inadequacies should fall on [a party].” (*Shipley, 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 January 18, 2022, through no fault of applicant. Therefore, considering that the Appeals Board’s failure to act on the petition was in error, we find that our time to act on the Petition for Reconsideration was tolled.

However, while our time to act is tolled, we will dismiss the petition as moot based on the WCJ’s January 21, 2022 Order Rescinding Findings, Orders and Award. Pursuant to the WCJ’s Report, this matter will be set for hearing.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR



/s/ DEIDRA E. LOWE, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 28, 2022

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

**JAIME GONZALEZ BAUTISTA
LAW AT YOUR SIDE
BRADFORD & BARTHEL**

PAG/abs

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