

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

ANJA FREEMAN, *Applicant*

vs.

CITY OF SAN DIEGO, Permissibly Self-Insured, *Defendant*

**Adjudication Number: ADJ118647
San Diego District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order (F&O) issued on June 24, 2025 by a workers' compensation administrative law judge (WCJ), wherein the WCJ found, in pertinent part, that there is no credible evidence that defendant withheld medical records in their possession from applicant and/or her attorneys prior to the February 8, 2016 Mandatory Settlement Conference; applicant has not met her burden in showing that a service dog is reasonable and necessary medical treatment for her industrial neck and bilateral shoulder injury; and applicant has not met her burden of showing that she is entitled to a penalty for any alleged late mileage reimbursement for her industrial neck and bilateral shoulder injury.

Applicant contends that defendant has acted in bad faith regarding the service of medical treatment records, she is entitled to reimbursement for service dog expenses and reimbursement for mileage from 2008-2012.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition, and the Answer, and the contents of the report of the WCJ with respect thereto. Based on our review of the record, and for the reasons

stated in the WCJ's report, which we adopt and incorporate, and for the reasons discussed below, we will deny reconsideration.¹

I.

Only the Appeals Board is statutorily authorized to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.) The Appeals Board must conduct de novo review as to the merits of the petition and review the entire proceedings in the case. (Lab. Code, §§ 5906, 5908; see Lab. Code, §§ 5301, 5315, 5701, 5911.) Once a final decision by the Appeals Board on the merits of the petition issues, the parties may seek review under Labor Code² section 5950, but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951.)

Former section 5909 provided that a petition was denied by operation of law if the Appeals Board did not “act on” the petition within 60 days of the petition’s filing. However, the Appeals Board cannot “act on” the petition if it has not received it, and if it has not received the case file. Transmission of the case to the Appeals Board is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.” When the Appeals Board does not receive the case file and does not review the petition within 60 days due to irregularities outside the petitioner’s control, and the 60-day period lapses through no fault of the petitioner, the Appeals Board must then consider whether circumstances exist to allow an equitable remedy, such as equitable tolling.

It is well-settled that the Appeals Board has broad equitable powers. (*Kaiser Foundation Hospitals v. Workers’ Compensation Appeals Board* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] citing *Bankers Indem. Ins. Co. v. Indus. Acc. Com.* (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719]; see *Truck Ins. Exchange v. Workers’ Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers’ Comp. Appeals Bd. (Lutz)* (2013) 218 Cal.App.4th 258, 268 [78 Cal.Comp.Cases 758]; *Dyer v. Workers’ Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96].) It is an issue of fact whether an equitable doctrine such as laches applies. (*Kwok, supra*, 2 Cal.App.5th at p. 402.)

¹ Commissioner Brass, who was on the panel that issued a previous decision in this matter on August 8, 2016, no longer serves on the Appeals Board. Another panelist was appointed in his place.

² All further references are to the Labor Code unless otherwise stated.

The doctrine of equitable tolling applies to workers' compensation cases, and the analysis turns on the factual determination of whether an opposing party received notice and will suffer prejudice if equitable tolling is permitted. (*Elkins v. Derby* (1974) 12 Cal.3d 410, 412 [39 Cal.Comp.Cases 624].) As explained above, only the Appeals Board is empowered to make this factual determination.³

In *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], the Appeals Board denied applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of 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. (*Id.* at p. 1108.) Pursuant to the holding in *Shipley* allowing equitable tolling of the 60-day time period in section 5909, the Appeals Board acts to grant, dismiss, or deny such petitions for reconsideration within 60 days of receipt of the petition, and thereafter issues a decision on the merits.

"[I]t is a fundamental principle of due process that a party may not be deprived of a substantial right without notice...." (*Shipley, supra*, 7 Cal.App.4th at p. 1108.) All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 635, fn. 22 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].)

If a timely filed petition is never acted upon and considered by the Appeals Board because it is "deemed denied" due to an administrative irregularity and not through the fault of the parties, the petitioning party is deprived of their right to a decision on the merits of the petition. (Lab. Code, §5908.5; see *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754-755 [33 Cal.Comp.Cases 350]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35

³ Section 5952 sets forth the scope of appellate review, and states that: "Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence." (Lab. Code, § 5952; see Lab. Code, § 5953.)

Cal.Comp.Cases 16].) Just as significantly, the parties' ability to seek meaningful appellate review is compromised, raising issues of due process. (Lab. Code, §§ 5901, 5950, 5952; see *Evans, supra*, 68 Cal.2d 753; see also *Rea, supra*, 127 Cal.App.4th at p. 643.)

On December 11, 2024, the California Supreme Court granted review in *Mayor v. Workers' Compensation Appeals Bd.* (2024) 104 Cal.App.5th 713 [2024 Cal.App. LEXIS 531] ("*Mayor*"). One issue granted for review is the same issue present in this case, i.e., whether section 5909 is subject to equitable tolling. The Supreme Court noted the conflict present in the published decisions of the Courts of Appeal, and in its order granting review of *Mayor*, stated as follows:

Pending review, the opinion of the Court of Appeal, which is currently published at 104 Cal.App.5th 1297, may be cited, not only for its persuasive value, but also for the limited purpose of establishing the existence of a conflict in authority that would in turn allow trial courts to exercise discretion under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, to choose between sides of any such conflict. (See *Standing Order Exercising Authority Under California Rules of Court, Rule 8.1115 (e)(3)*, *Upon Grant of Review or Transfer of a Matter with an Underlying Published Court of Appeal Opinion*, Administrative Order 2021-04-21; Cal. Rules of Court, rule 8.1115(e)(3) and corresponding Comment, par. 2.)

(Order Granting Petition for Review, S287261, December 11, 2024.)

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.) The touchstone of the workers' compensation system is our constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) "Substantial justice" is not a euphemism for inadequate justice. Instead, it is an exhortation that the workers' compensation system must focus on the *substance* of justice, rather than on the arcana or minutiae of its administration. (See Lab. Code, § 4709 ["No informality in any proceeding . . . shall invalidate any order, decision, award, or rule made and filed as specified in this division."].) When a litigant is deprived of their due process rights based upon the administrative errors of a third party, for which they bear no blame and over whom they have no control, substantial justice cannot be compatible with such a draconian result.

In keeping with the WCAB's constitutional and statutory mandate, all litigants before the WCAB must be able to rely on precedential authority, and all litigants must have the expectation that they will be treated equitably on issues of procedure and be accorded same or similar access to the WCAB. The Appeals Board has relied on the *Shipley* precedent for over thirty years, by

continuing to consider all timely filed petitions for reconsideration on the merits, consistent with due process. Treating all petitions for reconsideration in the same or similar way procedurally promotes judicial stability, consistency, and predictability and safeguards due process for all litigants. We also observe that a decision on the merits of the petition protects every litigant's right to seek meaningful appellate review after receiving a final decision from the Appeals Board.

Consequently, as discussed below, we apply the doctrine of equitable tolling pursuant to *Shiple* to this case. Here, the WCJ issued the F&O on June 24, 2025. Applicant timely filed her Petition on the WCAB on July 17, 2025. However, for reasons that are not entirely clear from the record, the Appeals Board did not actually receive notice of and review the petition until April 9, 2026. Accordingly, the Appeals Board failed to act on the petition within 60 days, through no fault of the parties.

II.

In addition to the analysis set forth in the WCJ's Report, we observe the following.

There were five issues for trial:

1. Permanent disability for the neck and bilateral shoulders.
2. Apportionment for the neck and bilateral shoulders.
3. Penalty on late mileage for treatment for the neck and bilateral shoulders.
4. Need for a service dog for the neck and bilateral shoulders on an industrial medical basis.
5. Applicant contends the Defendant withheld medical reports that they had in their possession prior to February 8, 2016, and did not serve them on Applicant until after the trial with Judge Ellison was completed...

(Minutes of Hearing and Summary of Evidence, July 30, 2024, at pp. 2-3.)

Here, the WCJ adequately addressed the issues presented for determination at the trial level. Extraneous claims made by the applicant in her Petition are inappropriate and will not be considered.

Next, the burden of proof rests on the party holding the affirmative of an issue. (Lab. Code, § 5705.) To meet her burden, applicant was required to prove each fact supporting her claim by a preponderance of the evidence. "Preponderance of the evidence' means that evidence that when weighed with that opposed to it, has more convincing force and the greater probability of truth."

(Lab. Code, § 3202.5.) In this case, the affirmative on the issues of late mileage reimbursement, need for a service dog and defendant's allegedly deficient service of records before February 8, 2016, was applicant's burden. We agree with the WCJ, applicant failed to prove any of the foregoing issues for trial through credible or substantial evidence.

Accordingly, we deny the Petition for Reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 8, 2026

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

**ANJA FREEMAN
MULLEN, PLUMMER & CASTIGLIONI**

SL/abs

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

**REPORT AND
RECOMMENDATION ON PETITION
FOR RECONSIDERATION**

INTRODUCTION

Applicant, in pro per, has filed a timely, verified, Petition for Reconsideration from the trial court's June 24, 2025 Findings of Fact and Order. Defendant has filed an Answer.

FACTS

Applicant, age 35 at time of injury, while employed on August 22, 2000, as an EMT, Occupational Group No. 460, at San Diego, California, by City of San Diego, permissibly self-insured for workers' compensation insurance, sustained injury to her right shoulder, left shoulder, and neck.

Applicant had a prior trial in front of Judge Ellison. Judge Ellison issued a Findings and Award on May 16, 2016. The trial in front of Judge Ellison was on multiple issues which included disputed body parts, temporary disability, and need for further medical care. Applicant filed multiple Petitions for Reconsideration on the Findings and Award issued by Judge Ellison and all her petitions were dismissed. Permanent disability was not at issue at that trial. Judge Ellison has since retired.

The issues for the trial before the undersigned were permanent disability and apportionment for her industrial injury to her neck and bilateral shoulders, penalty on late mileage for treatment for the neck and bilateral shoulders, and a need for a service dog on an industrial medical basis for Applicant's injury to her neck and bilateral shoulders. The final issue was Applicant's contention that the Defendant withheld medical reports that they had in their possession prior to the February 8, 2016 and did not serve them on Applicant until after the trial with Judge Ellison had completed. Applicant contended that these reports would have affected the outcome of her trial with Judge Ellison. Defendant strongly disagreed with Applicant's contentions.

After reviewing all the evidence presented, including the testimony of the current claims adjuster and the Applicant, the undersigned determined there was no substantial medical evidence on the issue of Applicant's permanent disability for her admitted injuries and ordered that parties to undergo the Panel Qualified Medical process. Although admittedly it is unclear, Applicant does

not appear to be appealing that determination and order. Applicant does appear to be appealing the other issues decided by the undersigned.

It appears that Applicant has indicated that every ground available under Labor Code section 5903 in the Petition for Reconsideration as she has not crossed out any of them as being not applicable. However, Applicant failed to state with any clarity or specificity the facts upon which these grounds are based as required in Title 8, California Code of Regulations section 10945.

It should be noted that the undersigned at trial, after multiple failed attempts to get Applicant to identify, list, and correctly present her exhibits, the undersigned decided to admit Applicant's proposed exhibits, which was box of disorganized and incorrectly labeled documents, in groups of approximately 50 pages. The pages were kept in the same order that they were received by Applicant. Applicant's proposed exhibits were admitted in to evidence and labeled as Applicant's Exhibits 63-78 and each page of the exhibit was numbered in order for parties to be able to clearly identify the pages they were referencing in Applicant's exhibits. Although Petitioner does reference some pages of her exhibits correctly, for the most part the Petition for Reconsideration fails to comply with Title 8, California Code of Regulations section 10945.

DISCUSSION

Service Dog

Applicant referenced some documents in her Petition for Reconsideration that she believed showed that she needed a service dog on a medical basis for her industrial injury. One document was identified on page 7 of the Petition for Reconsideration as a "2011 PTP order for a service dog" (Applicant's Exhibit 65, page 44). This document appears to be a prescription from Coast Pain Management with an illegible date. It stated "Pt requires service dog due to Ms. Freeman having significant functional limitations." After reviewing all the evidence, the Workers' Compensation Administrative Law Judge "WCJ" noted that there was no Request for Authorization form or RFAs in the exhibits by a treating physician requesting that Applicant be provided with a service dog for her industrial injury. There was no medical report in evidence that constituted substantial medical evidence that outlined why a service dog would be needed on an industrial medical basis for Applicant's bilateral shoulder and neck injury. For the above reasons, Applicant did not meet her burden of showing that her service dogs were needed on a medical basis for her industrial injury to her neck and bilateral shoulders.

Penalties on Mileage Reimbursement

Applicant did not meet her burden of showing that she should be awarded a penalty on late mileage for treatment for her neck and bilateral shoulders. She did not identify any particular mileage reimbursement request that was late. She did not indicate when they were sent to Defendant or when she received payment. Teri Thompson, program coordinator for the City of San Diego and current adjuster for Applicant's claim, credibly testified that she had issues with Applicant's mileage reimbursement requests. The issues varied but sometimes the requests were not legible, or had dates of service that were cut off, or were requesting mileage for treatment for body parts that were not industrial body parts, or were requesting mileage where the location where treatment occurred was not clear. When problems with mileage requests were noted, applicant would receive in writing why there was a problem with her mileage requests (May 22, 2025 Summary of Evidence, page 2, lines 10-22). For the reasons stated above, applicant did not meet her burden of showing that she should be awarded a penalty for late mileage reimbursement.

Withholding Medical Reports

Applicant failed to produce any credible evidence that Defendant withheld medical reports that were in their possession prior to February 8, 2016 but were not served until after the trial with Judge Ellison was completed. Nor has she shown that any alleged withheld records would have made a difference in the outcome of her trial with Judge Ellison.

Applicant made contentions in her Petition for Reconsideration without actual evidence to back up her contentions. For example, on page 11 of Applicant's Petition for Reconsideration, Applicant referred to an allegedly withheld by Defendant order for surgery requested by Dr. Sam Maywood, who she indicated was her "AME/PTP". Applicant stated on page 11 of her Petition for Reconsideration the following:

"HAD THE BOARD AND APPLICANTS ATTORNEY KNOWN ABOUT THE AME PTP'S ORDERS FOR SURGERY TO THE RIGHT SHOULDER THE BOARD WOULD NOT HAVE ALLOWED TRIAL AND DEMANDED THE INSURER ALLOW FOR SURGERY EXTEND TO TD UNTIL THE P&S REPORT WAS COMPLETED."

There was no such request or order for additional surgery from Dr. Maywood. Dr. Maywood was asked by the parties in a May 4, 2010 deposition if Applicant needed an

additional surgery to her right shoulder (Defendant's Exhibit D, admitted into evidence in the 2016 trial). He answered that she did not need additional surgery (Defendant's Exhibit D, page 7, lines 10-15). The May 4, 2010 deposition of Dr. Maywood is the last record from Dr. Maywood in this matter. Dr. Maywood saw the Applicant for the last time in 2009 when he found her to be MMI. (Defense Exhibit D, page 7, lines 5-9). Dr. Maywood also gave his opinions of Applicant in that deposition. He stated the following:

I honestly believe that this patient is a troublemaker. I think that she is-- has an agenda and that agenda is to go to as many doctors as she can and to try to get as much treatment as possible to have this case go on forever and not to be settled. I don't believe that she's honest at all. I think that she is-- -and I'll say it and I've never said this in a deposition---I think she is a malingerer." (Defendant's Exhibit D. page 14, lines 4-11)

Defendant argued during trial that Applicant appeared to be merely attempting to relitigate the issues that were decided by Judge Ellison in his May 16, 2016 Findings of Fact, Opinion on Decision and Award. This appears to be true. It is noted that Applicant made similar arguments in her prior Petitions for Reconsideration of Judge Ellison's Finding of Fact, Award, and Opinion on Decision that were ultimately dismissed. The contentions in Applicant's Petition for Reconsideration are without merit.

RECOMMENDATION

It is respectfully recommended that reconsideration be denied.

Dated 8/1/25

Michelle M. Utter
WORKERS' COMPENSATION JUDGE