

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

**ALDAIR CLEMENTE, *Applicant***

**vs.**

**CUCINA MIA RESTAURANT GROUP/NONNA RESTAURANT; EMPLOYERS  
PREFERRED INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ12360470  
Van Nuys District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

Robert Ozeran, attorney for applicant, Aldair Clemente, petitioned for reconsideration of the Order Approving Compromise and Release issued by the workers' compensation administrative law judge (WCJ) in this matter on January 11, 2021. We granted reconsideration to further study the factual and legal issues presented. Subsequently, Mr. Ozeran filed a petition seeking to withdraw the Petition for Reconsideration because the issue raised in the Petition for Reconsideration has been resolved by agreement of the parties.

As a preliminary matter, we note that a petition for reconsideration 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 ...." (*Shiple v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shiple*, 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. (*Shiple, supra*, 7 Cal.App.4th 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.) In this case, the Appeals

Board failed to act on the Petition for Reconsideration within 60 days of its filing through no fault of the parties. Therefore, we find that our time to act on the petition was tolled.

In light of the request of Mr. Ozeran to permit the withdrawal of the Petition for Reconsideration, we will rescind the Order Approving Compromise and Release issued by the WCJ and remand this matter to her to consider the new agreement resolving the issue raised in the Petition for Reconsideration. The WCJ may conduct such further proceedings as she deems appropriate.

Our decision should not be construed as a ruling on the merits of the Petition for Reconsideration filed by Mr. Ozeran. If the WCJ decides not to approve the new agreement, she can reinstate the original Order Approving Compromise and Release and any aggrieved party may timely seek reconsideration from the reinstated order.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Approving Compromise and Release issued in this matter on January 11, 2021, be **RESCINDED**, and that this matter be **REMANDED** to the workers' compensation administrative law judge to consider the new settlement to be submitted by the parties and for such further proceedings as she deems appropriate.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**DEIDRA E. LOWE, COMMISSIONER**  
**PARTICIPATING NOT SIGNING**



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

**AUGUST 3, 2021**

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

**ALDAIR CLEMENTE  
THE LAW OFFICES OF ROBERT OZERAN  
PEARLMAN BROWN & WAX**

**DH/ara**

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