

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

**JOSE JOAQUIN CUESTA HERRERA (DEC), *Applicant***

**vs.**

**SOMBRERO; CORREA MANAGEMENT, INC.; REPUBLIC UNDERWRITERS  
INSURANCE COMPANY, administered by AMTRUST, *Defendants***

**Adjudication Number: ADJ11254323  
San Bernardino District Office**

**OPINION AND ORDER  
DISMISSING PETITIONS FOR  
RECONSIDERATION**

Applicant filed a Petition for Reconsideration in two documents separately filed on July 9, 2021. We will treat the two documents as one 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. 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].)

In this case, the WCJ issued the Findings and Order on June 10, 2021. Based on the authority cited above, applicant had until Tuesday, July 6, 2021 to file a timely Petition for Reconsideration. Therefore, the Petition for Reconsideration filed on July 9, 2021 is untimely and must be dismissed.

If the petition had been timely, we would have denied it on the merits for the reasons stated in the WCJ's report.

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/ KATHERINE A. ZALEWSKI, CHAIR**



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

**September 7, 2021**

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

**CARIDAD CUESTA  
FLETCHER F. BOUYER  
GILSON DAUB**

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