

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

FELIPE LOZANO, *Applicant*

vs.

**ADP TOTALSOURCE/MISSION HILLS SENIOR LIVING; HELMSMAN FOR
NATIONAL UNION FIRE INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ8761853
Riverside 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. 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. 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, defendant filed proof of service of the WCJ's decision on applicant on May 2,

2022.¹ Based on the authority cited above, applicant had until Friday, May 27, 2022 to seek reconsideration in a timely manner. Therefore, the Petition for Reconsideration filed on June 23, 2022 is untimely and will be dismissed.

If we were not dismissing the petition because it was untimely, we would have dismissed it as skeletal. (Lab. Code, § 5902; Cal. Code Regs., tit. 8, §§ 10972, 10945.)

¹ While WCAB Rule 10628 requires the Workers' Compensation Appeals Board to serve all final orders, decisions, or awards and not designate such service to any party (Cal. Code Regs., tit. 8, § 10628(a)), we accept defendant's proof of service.

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/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 22, 2022

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

**FELIPE LOZANO
STOCKWELL, HARRIS, WOOLVERTON & HELPHREY**

PAG/pc

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