

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

JULIE SANTUCCI, *Applicant*

vs.

**KAISER FOUNDATION HEALTH PLAN, Permissibly Self-Insured; Administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ11137938
Oakland District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

It has come to the attention of the Appeals Board that, while this matter has been pending on reconsideration, the parties have reached a proposed settlement.

We first note that defendant's petition was verified and timely filed on April 7, 2021. Although we did not act upon the petition by June 7, 2021 as required by section 5909, it was through no fault of defendant. We believe that "it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice" (*Shiplely v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shiplely*, the Appeals Board denied applicant's petition for reconsideration because the Appeals Board had not acted on the petition within the statutory time limits of Labor Code section 5909. The Appeals Board did not act on applicant's petition because it 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. (*Shiplely, supra*, 7 Cal.App.4th at p. 1108.) Like the Court in *Shiplely*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Shiplely, supra*, 7 Cal.App.4th at p. 1108.) Therefore, considering that defendant filed a timely petition and that the WCAB's failure to act was due to a clerical error by the district office, we find that our time to act on the petition is tolled.

Since the District Office is precluded from acting on a case while it is pending on reconsideration (Cal. Code Regs., tit. 8, § 10961), in order to permit review by the workers' compensation administrative law judge (WCJ) of the proposed settlement, we will rescind the decision from which reconsideration is sought and return this matter to the trial level for the WCJ to consider the proposed settlement. If the WCJ does not approve the settlement, the WCJ may issue an order reinstating the original decision and any aggrieved person may timely seek reconsideration from the reinstated decision. This is not a final decision on the merits of any of the issues pending on reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the WCJ's decision of March 29, 2021 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 20, 2022

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

**JULIE SANTUCCI
GEARHEART & SONNICKSEN
MULLEN & FILIPPI**

AS/ara

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