

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

LORNA FARNUM, *Applicant*

vs.

**ANAHEIM UNION HIGH SCHOOL DISTRICT;
PIPS 7, PIPS 8, PIPS 9, administered by
KEENAN & ASSOCIATES, self-insured; ACE/ESIS;
CIGA, administered by INTERCARE, for
FREMONT INSURANCE COMPANY, in liquidation, *Defendants***

**Adjudication Numbers: ADJ4211152 (ANA0366912) (MF), ADJ8609230,
ADJ8608298, ADJ8621939, ADJ8622043, ADJ8609077,
ADJ2435095 (ANA0366913), ADJ1113600 (ANA0366914),
ADJ8605365, ADJ2099103
Anaheim District Office**

**OPINION AND ORDER
DISMISSING PETITIONS FOR
RECONSIDERATION**

Although still represented by an attorney of record, on March 28, 2022, applicant filed correspondence, in pro per, addressed to the workers' compensation administrative law judge (WCJ), requesting additional time to respond to the Joint Findings and Award issued by the WCJ on February 14, 2022. We will treat this correspondence as a Petition for Reconsideration.¹ The WCJ issued an Amended Joint Findings and Award on March 2, 2022, which made substantive changes to the earlier decision, rendering the February 14, 2022 Joint Findings and Award void. On June 23, 2022, applicant filed a Petition for Reconsideration, again in pro per, challenging the voided February 14, 2022 Joint Findings and Award. We have considered the allegations of the Petitions 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 correspondence/Petition for Reconsideration filed on March 28, 2022 is dismissed because

¹ Commissioner Snellings, who was on the panel that issued a prior decision in this matter is unavailable to participate further in this decision. Another panel member was assigned in his place.

applicant failed to allege therein that she was aggrieved by February 14, 2022 Joint Findings and Award. We dismiss the Petition for Reconsideration filed on June 23, 2022 as moot, illegible, and skeletal.

Preliminarily, 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” (*Shipley v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shipley*, 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 Code² 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. (*Shipley, supra*, 7 Cal.App.4th at p. 1108.) 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.)

In this case, the WCJ issued the original Joint Findings and Award on February 14, 2022. However, the February 14, 2022 Joint Findings and Award was not served on applicant herself as required by WCAB rule 10628. Therefore, service was defective and time to file a petition for reconsideration did not begin to run until the date the decision was actually received. (See *Hartford Acc. & Indem. Co. v. Worker’s Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1, 3 [43 Cal.Comp.Cases 1193], *Baker v. Worker’s Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 1315, 1318 (writ den.)) Pursuant to applicant’s correspondence/petition filed on March 28, 2022, she received the February 14, 2022 Joint Findings and Award from her attorney on March 10, 2022. Therefore, the petition was timely filed. Thereafter, the Appeals Board failed to act on the petition within 60 days through no fault of applicant. Accordingly, we find that our time to act on applicant’s petition was tolled. While we find that our time to act was tolled, we dismiss the petition because it failed to state the grounds upon which applicant was aggrieved. (Lab. Code, §§ 5902, 5903.)

Finally, we turn to the petition filed on June 23, 2022. In *Nestle Ice Cream Co., LLC v. Workers’ Comp. Appeals Bd. (Ryerson)* (2007) 146 Cal.App.4th 1104 [72 Cal.Comp.Cases 13],

² All further statutory references are to the Labor Code, unless otherwise noted.

the Court of Appeal held that an amended decision making a substantive correction to an original decision triggered a new 20-day filing period because the substantive change involved a judicial function rather than a clerical one. In this case, the March 2, 2022 Amended Joint Findings and Award made substantive changes to the earlier decision, rendering the February 14, 2022 Joint Findings and Award void. Accordingly, the petition filed on June 23, 2022 is moot.

It is also subject to dismissal as illegible and skeletal. The Labor Code requires that:

The petition for reconsideration shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order, decision or award made and filed by the appeals board or a workers' compensation judge to be unjust or unlawful, and every issue to be considered by the appeals board. The petition shall be verified upon oath in the manner required for verified pleadings in courts of record and shall contain a general statement of any evidence or other matters upon which the applicant relies in support thereof.

(Lab. Code, § 5902, emphasis added.)

Moreover, the Appeals Board Rules provide in relevant part: (1) that “[e]very petition for reconsideration ... shall fairly state all the material evidence relative to the point or points at issue [and] [e]ach contention contained in a petition for reconsideration ... shall be separately stated and clearly set forth” (Cal. Code Regs., tit. 8, former § 10842, now § 10945 (eff. Jan. 1, 2020) and (2) that “a petition for reconsideration ... may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved” (Cal. Code Regs., tit. 8, former § 10846, now § 10972 (eff. Jan. 1, 2020)).

In accordance with section 5902 and WCAB Rules 10945 and 10972, the Appeals Board may dismiss or deny a petition for reconsideration if it is skeletal (e.g., *Cal. Indemnity Ins. Co. v. Workers' Comp. Appeals Bd. (Tardiff)* (2004) 69 Cal.Comp.Cases 104 (writ den.); *Hall v. Workers' Comp. Appeals Bd.* (1984) 49 Cal.Comp.Cases 253 (writ den.); *Green v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 564 (writ den.)); if it fails to fairly state all of the material evidence, including that not favorable to it (e.g., *Addecco Employment Services v. Workers' Comp. Appeals Bd. (Rios)* (2005) 70 Cal.Comp.Cases 1331 (writ den.); *City of Torrance v. Workers' Comp. Appeals Bd. (Moore)* (2002) 67 Cal.Comp.Cases 948 (writ den.); or if it fails to specifically discuss the particular portion(s) of the record that support the petitioner's contentions (e.g., *Moore, supra*, 67 Cal.Comp.Cases at p. 948; *Shelton v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 70 (writ den.)). The petition filed herein fails to state grounds upon

which reconsideration is sought or to cite with specificity to the record. Accordingly, we will dismiss it.

For the foregoing reasons,

IT IS ORDERED that the Petitions for Reconsideration are **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ MARGUERITE SWEENEY, 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.

**LORNA FARNUM
BENJUMEA & ASSOCIATES
PERONA, LANGER, BECK, SERBIN & HARRISON
PATRICO, HERMANSON & GUZMAN
LANSFORD & CARBONARA
TESTAN LAW
CALLAS & HEISE**

PAG/abs

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