

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

PATRICIA GAITAN, *Applicant*

vs.

**ST. JOSEPH'S MEDICAL CENTER OF STOCKTON, permissibly self-insured, as
adjusted by SEDGWICK;
*Defendants***

**Adjudication Number: ADJ13430791
Stockton District Office**

**OPINION AND
DECISION AFTER RECONSIDERATION**

We granted reconsideration in order to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Defendant St. Joseph's Medical Center of Stockton, permissibly self-insured, as adjusted by Sedgwick (defendant), seeks reconsideration of the Award against E.M. Pizza, Inc./St. Joseph's Medical Center of Stockton (PSI) administered by Sedgwick, issued by a workers' compensation administrative law judge (WCJ) on January 11, 2023. By that Award, the WCJ approved the parties' Stipulations with Request for Award of January 11, 2023. Defendant contends that the Award improperly names "E.M. Pizza Inc." and requests that this error be corrected.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the WCJ's Award and return the matter to the WCJ to issue a new Award.

FACTUAL BACKGROUND

On January 9, 2023, applicant and defendant St. Joseph's Medical Center of Stockton entered in Stipulations. On January 11, 2023, the WCJ approved the Stipulations; the Award also listed E.M. Pizza Inc., as a defendant, despite this discrepancy, the WCJ issued the Award approving. According to the proof of service, the WCJ only served the Award on defendant's attorneys and did not serve applicant.

On January 12, 2023, defendant filed a petition requesting that the WCJ correct the Award. Defendant also submitted an amended proposed Award, which corrected the error to omit E.M. Pizza, Inc.

Receiving no response from the WCJ, defendant filed the instant Petition for Reconsideration on February 10, 2023.

DISCUSSION

I.

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, § 10507(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, § 10508.) To be timely, however, a petition for reconsideration must be *filed* with (i.e., received by) the Appeals Board within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10845(a), 10392(a).)

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, 656]; *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, 1011]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73, 75-76].)

Where an order can be shown to have been defectively served, the time limit begins to run as of the date of receipt of the order. (*Hartford Accident & Indemnity Co. v. Workers' Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1 [43 Cal.Comp.Cases 1193].) Here, service of the

Award was defective because the WCJ failed to serve applicant. Thus, defendant's Petition for Reconsideration was timely filed.

II.

Labor Code section 5702 states:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

When presented with stipulations with request for award, the WCJ "shall inquire into the adequacy of all...Stipulations with Request for Award, and may set the matter for hearing to take evidence when necessary to determine whether the agreement should be approved or disapproved..." (Cal. Code Regs., tit. 8, § 10700(b).) "The Appeals Board or a Workers' Compensation Judge may correct a clerical error at any time and without necessity for further hearings, notwithstanding the lapse of the statutory period for filing a petition for reconsideration." (*Toccalino v. Workers' Comp. Appeals Bd.* (1982) 128 Cal.App.3d 543, 558, internal citation omitted.)

Here, in comparing the Stipulations to the Award, the Stipulations signed by the parties stipulate that applicant was employed as a technician by St. Joseph's Medical Center of Stockton. There is no mention of E.M. Pizza, Inc., in the Stipulations. Thus, it is evident that the inclusion of E.M. Pizza Inc., on the Award is a clerical error, and that the Award should not have issued as to E.M. Pizza, Inc.

Accordingly, we rescind the Award and return the matter to the WCJ so that a new Award may be issued that conforms to the Stipulations.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Award of January 11, 2023 issued by the WCJ is **RESCINDED** and matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 13, 2024

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

**PATRICIA GAITAN
SEDGWICK
ST JOSEPHS MEDICAL CENTER
SHANNON LOVE ASSOCIATES**

AS/mc

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