

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

SHANNON MURPHY, *Applicant*

vs.

**OAKLAND UNIFIED SCHOOL DISTRICT
AND JT2 INTEGRATED RESOURCES, *Defendants***

**Adjudication Number: ADJ3370297
Oakland 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 presiding workers' compensation administrative law judge (PWCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, and the reasons stated below, we will dismiss the petition.

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].)

The petition in this matter was filed on November 20, 2023. This was more than 25 days after the service of any prior decision in this case and beyond whatever extension of time, if any, the petitioner might have been entitled to under WCAB Rule 10600.

We advise applicant that repetitive, meritless, and ineffectual filings may lead to proceedings for the purpose of declaring applicant as a vexatious litigant pursuant to WCAB rule 10430. WCAB Rule 10430 states in its totality as follows:

(a) For purposes of this rule, “vexatious litigant” means:

(1) A party who, while acting in propria persona in proceedings before the Workers' Compensation Appeals Board, repeatedly relitigates, or attempts to relitigate, an issue of law or fact that has been finally determined against that party by the Workers' Compensation Appeals Board or by an appellate court;

(2) A party who, while acting in propria persona in proceedings before the Workers' Compensation Appeals Board, repeatedly files unmeritorious motions, pleadings or other papers, repeatedly conducts or attempts to conduct unnecessary discovery, or repeatedly engages in other tactics that are in bad faith, are frivolous or are solely intended to cause harassment or unnecessary delay; or

(3) A party who has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction(s) or occurrence(s) that are the subject, in whole or in substantial part, of the party's workers' compensation case.

For purposes of this rule, the phrase finally determined" shall mean:

(i) That all appeals have been exhausted or the time for seeking appellate review has expired; and

(ii) The time for reopening under Labor Code sections 5410 or 5803 and 5804 has passed or, although the time for reopening under those sections has not passed, there is no good faith and non-frivolous basis for reopening.

(b) Upon the petition of a party, or upon the motion of any workers' compensation judge or the Appeals Board, a presiding workers' compensation judge of any district office having venue or the Appeals Board may declare a party to be a vexatious litigant.

(c) No party shall be declared a vexatious litigant without being given notice and an opportunity to be heard. If a hearing is requested, the presiding workers' compensation judge or the Appeals Board, in their discretion, either may take and consider both oral and documentary evidence or may take and consider solely documentary evidence, including affidavits or other written declarations of fact made under penalty of perjury.

(d) If a party is declared to be a vexatious litigant, a presiding workers' compensation judge or the Appeals Board may enter a prefiling order," i.e., an order which prohibits the vexatious litigant from filing, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness to Proceed, petition or other request for action by the Workers' Compensation Appeals Board without first obtaining leave of the presiding workers' compensation judge of the district office where the request for action is proposed to be filed or, if the matter is pending before the Appeals Board on a petition for reconsideration, removal or disqualification, without first obtaining leave from the Appeals Board. For purposes of this rule, a petition" shall include, but not be limited to, a petition to reopen under Labor Code sections 5410, 5803 and 5804, a petition to enforce a medical treatment award, a penalty petition or any other petition seeking to enforce or expand the vexatious litigant's previously determined rights.

(e) If a vexatious litigant proposes to file, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness to Proceed, petition or other request for action by the Workers' Compensation Appeals Board, the request for action shall be conditionally filed. Thereafter, the presiding workers' compensation judge, or the Appeals Board if the petition is for reconsideration, removal or disqualification, shall deem the request for action to have been properly filed only if it appears that the request for action has not been filed in violation of subdivision (a). In determining whether the vexatious litigant's request for action has not been filed in violation of subdivision (a), the presiding workers' compensation judge, or the Appeals Board, shall consider the contents of the request for action and the Workers' Compensation Appeals Board's existing record of proceedings, as well as any other documentation that, in its discretion, the presiding workers' compensation judge or the Appeals Board asks to be submitted. Among the factors that the presiding workers' compensation judge or the Appeals Board may consider is whether there has been a significant change in circumstances (such as new or newly discovered evidence or a change in the law) that might materially affect an issue of fact or law that was previously finally determined against the vexatious litigant.

(f) If any in propria persona Application for Adjudication of Claim, Declaration of Readiness to proceed, petition or other request for action by the Workers' Compensation Appeals Board from a vexatious litigant subject to a prefiling order is inadvertently accepted for filing (other than conditional filing in accordance with subdivision (e) above), then any other party may file (and shall concurrently serve on the vexatious litigant and any other affected parties) a notice stating that the request for action is being submitted by a vexatious litigant subject to a prefiling order as set forth in subdivision (d). The filing of the notice shall automatically stay the request for action until it is determined, in accordance with subdivision (e), whether the request for action should be deemed to have been properly filed.

(g) A copy of any prefiling order issued by a presiding workers' compensation judge or by the Appeals Board shall be submitted to the Secretary of the Appeals Board, who shall maintain a record of vexatious litigants subject to those prefiling orders and who shall annually disseminate a list of those persons to all presiding workers' compensation judges.

(Cal. Code Regs., tit. 8, § 10430.)

Upon this matter's return to the trial level, the PWCJ may consider beginning proceedings to determine whether applicant is a vexatious litigant. We note that among the documents applicant filed on December 6, 2023, there appears to be an August 24, 2012 Superior Court Order Granting Motion for Prefiling Order for Vexatious Litigant and Motion to Require Security that may be relevant.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 19, 2024

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

**SHANNON MURPHY
LAW OFFICES OF PULLEY & COHEN**

PAG/abs

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

REPORT AND RECOMMENDATION

STATEMENT OF FACT

Applicant, in pro per, filed Petition for Reconsideration on November 17, 2023. Applicant requests review of “WCAB case judge’s unfair decision “contending in substance that he was never properly relieved from active military duty and therefore, constitutes good cause excusing the untimely filing of his Petition and that the trial erred in finding no violation of Labor Code 132a.

Defendant filed Answer to Petition for Reconsideration. Defendant asserts the Petition for Reconsideration is not timely filed, that the claims raised by applicant were addressed by the Appeals Board in applicant’s prior Petitions which were dismissed and that applicant’s remedy was to seek writ of review to the district Court of Appeals.

The case in chief settled by Compromise and Release for \$1,000.00 on April 4, 2004, and Order Approving Compromise and Release issued on April 16, 2004, noting Labor Code 132a remained on calendar. Trial on Labor Code 132a took place on August 8, 2006, before WCJ Rodger Lippa. Applicant and defense witness, Terri Ellis, testified.

In his Findings & Order and Opinion on Decision served on September 23, 2005, WCJ Lippa found defendant did not discriminate against applicant for terminating his employment because of applicant’s claim of an industrial injury. WCJ Lippa found the employer was justified in concluding applicant provided falsified medical record relating to the injury claim and not because the applicant claim of an industrial injury.

Applicant filed the original Petition for Reconsideration on November 4, 2005. The document had Oakland file stamp of October 5, 2005. In his Report and Recommendation on Petition for Reconsideration, WCJ Lippa recommended the Petition be denied on Appeals Board’s own motion noting the Petition was not timely filed on November 4, 2005. He reiterated that no evidence that the termination was based on any grounds other than the three given by defendant.

The Appeals Board issued its Order Dismissing Petition for Reconsideration for the reasons stated in the Report and Recommendation on August 29, 2014. It noted applicant did not file his Petition within 25 days of the decision and therefore, untimely.

On April 10, 2015, applicant petitioned for reconsideration of the Order Dismissing Petition for Reconsideration contending in substance that his continued active duty service established good cause to excuse his untimely filing from the determination made by WCJ Lippa. On June 8, 2015, the Appeals Board dismissed applicant’s Petition as untimely and an improper remedy under the law. The Appeals Board found no good excuse from timely filing requirement where the evidence in the record supported finding applicant entered the army after termination from employment and after he filed his claim. The Appeals Board noted applicant did not file his Petition within 25 days of the Order Dismissing issued on August 29, 2014, and therefore, not timely filed. Lastly, the Appeals Board emphasized that successive petitions for reconsideration dismissing petitions for reconsideration are not proper under the law. The only proper remedy is to file a timely petition for writ of review with appropriate district Court of Appeals.

The matter was on calendar for Status Conference on July 23, 2014. The matter was ordered off calendar on July 23, 2014. It was noted in the Minutes of Hearing that “A decision issued by Judge Lipa 9/23/05 and a Petition for Reconsideration was filed and denied 11/2005. No new issues are before WCJ.”

The case has been inactive since the July 23, 2014. There has been no order issued or action taken from which reconsideration may be sought.

RECOMMENDATION

It is recommended that the Petition be dismissed as untimely and not properly before the Appeals Board. Applicant’s appeal from the Findings and Order was dismissed as untimely on August 29, 2014, and the Appeals Board found no good cause to excuse the untimely appeal from the Findings and Order when it dismissed his Petition for Reconsideration from the August 29, 2014, dismissal. No order or determination subject to a Petition for Reconsideration has issued.

DATE: 12/6/2023

Gene Lam
PRESIDING WORKERS’ COMPENSATION
ADMINISTRATIVE LAW JUDGE