

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

TONY PAEZ, *Applicant*

vs.

**SAN FRANCISCO CHRONICLE;
TRAVELERS INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ9053858, ADJ9053853
Oakland District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant, in pro per, seeks reconsideration of the Findings of Fact issued on July 30, 2021 by a workers' compensation administrative law judge (WCJ). The WCJ found that defendant did not violate Labor Code section 132(a),¹ and in the decision, she denied applicant's petition for benefits against his former employer, defendant San Francisco Chronicle.

No answer was received. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be dismissed as untimely, or, alternatively, denied on its merits.

We have considered applicant's Petition for Reconsideration and the contents of the Report with respect thereto. Based on our review of the record, we will dismiss the petition as untimely. We note that if the petition had been timely, we would have denied it as recommended by the WCJ in her Report.

FACTS

On August 16, 2013, applicant filed a workers' compensation claim, alleging injury sustained while employed by the San Francisco Chronicle (defendant) to his internal system (bladder cancer) and psyche through June 19, 2012. (ADJ9053858).² On December 18, 2016, we

¹ All further statutory references are to the Labor Code unless otherwise stated.

² Applicant had another claim adjudicated that is not at issue (ADJ9053853).

issued our Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (Opinion), concluding that applicant sustained injury in the form of bladder cancer.³

Ten days prior to filing his workers' compensation claim, applicant had been terminated from his employment with defendant. (Application for Adjudication, 8/16/13; Applicant's Exhibit 3, 1/8/20, p. 3, Termination Letter from Cathy Rommelfanger, San Francisco Chronicle Human Resources, 8/6/13].) In September 2013, applicant filed a petition for penalties for discrimination against defendant under section 132(a). In the petition, applicant asserted that defendant terminated him for having filed his workers' compensation claim.

Applicant's section 132(a) petition went to trial on June 15, 2021. On July 30, 2021, the WCJ issued a decision denying applicant's petition. The WCJ found that defendant did not violate section 132(a). In her Opinion, she noted that even though applicant may have been treated unfairly by defendant, he failed to demonstrate that he was treated differently by defendant because of his work-related injuries. Therefore, he could not show that he was discriminated against within the meaning of section 132(a).

On September 2, 2021, applicant filed his Petition for Reconsideration of the WCJ's July 30, 2021 decision.

DISCUSSION

To be timely, a petition for reconsideration must be filed and received by the Appeals Board within twenty days of the service of the order or decision plus an additional five days if service of the decision is by any method other than personal service, including by mail, upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, former § 10507(a)(1), now § 10605(a)(1) (eff. Jan. 1, 2020).) 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, former § 10508, now § 10600 (eff. Jan. 1, 2020).) 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, former § 10845(a), now § 10940(a); former § 10392(a), now § 10615(b) (eff. Jan. 1, 2020).)

³ Deputy commissioner Newman, who previously served as a panelist in this matter, is unavailable to participate further. Another panel member was assigned in his place.

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.* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

In this case, the WCJ issued the Decision on July 30, 2021. Based on the authority cited above, applicant had until August 24, 2021 to file a Petition for Reconsideration in a timely manner. However, applicant's petition was not received until September 2, 2021. Because the issue of timeliness is jurisdictional, we must dismiss the petition as untimely.

If applicant's petition had been timely, we would have denied it on the merits for the reasons stated in the WCJ's report. Here, the record supports the WCJ's conclusion that applicant could not have been discharged in retaliation for filing a workers' compensation claim, when no such claim had been filed at the time that he was discharged. (Report, p. 4.) The record also shows that, prior to his termination, applicant informed defendant that he was "never returning back to work." (Minutes of Hearing, 6/15/21, p. 9.) This evidence provides additional support for the WCJ's decision that applicant was not treated differently than other employees because of his industrial injury.

While we are sympathetic to applicant's position, the record does not support applicant's claim that defendant failed to timely produce exhibits in support of its case prior to the June 15, 2021 trial on the section 132(a) issue. Specifically, applicant claims that, prior to trial, he did not receive a report issued by one of the Agreed Medical Evaluators (AME), Dr. Matthew W. Duncan, who opined that applicant's employment was a contributing cause to his bladder cancer. (Petition, p. 3.) From this, it appears that applicant believes that Dr. Duncan's report constitutes new, material evidence that applicant could not, with reasonable diligence, have discovered and produced at trial, i.e., one of the five grounds for granting reconsideration under section 5903. (Lab. Code, § 5903(d).) However, the record shows that applicant placed Dr. Duncan's report into evidence prior to testifying during a hearing on his workers' compensation claims on July 19, 2016. (Minutes of Hearing and Summary of Evidence, 7/19/16, p. 4; Applicant's Exhibit 1, Reports of Dr. Duncan, p. 19.) Furthermore, Dr. Duncan's report was the basis for our December 2016 determination that applicant's bladder cancer arose out of and occurred in the course of his

employment (AOE/COE). (Opinion, pp. 3 & 6-7.) We observe that the WCJ and the Appeals Board must take into account all evidence that is properly admitted into the record when considering the merits of a petition. (See Lab. Code, §§ 5313, 5900(a).) Accordingly, we see no basis to support applicant's contention with respect to the evidentiary record.

In closing, we also note that, along with his Petition for Reconsideration, applicant submitted a letter and a negative COVID test result in support of a request to extend the time to file his petition. In the letter, applicant claimed that he was unable to meet the petition's August 24, 2021 filing deadline because he was sick during the previous three weeks and was required to quarantine for 14 days. While we are certainly sympathetic to applicant's illness, there is nothing in the Labor Code, the Governor's COVID-related Executive Orders, or other authority that extends the filing deadline for a Petition for Reconsideration, and as explained above, we are unable to do so.

Accordingly, we dismiss the Petition.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the July 30, 2021 decision is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 1, 2021

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

**TONY PAEZ
HANNA BROPHY**

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