

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

MARTHA GOMEZ DE ARIAS, *Applicant*

vs.

PACIFIC SNACK INC.; STATE COMPENSATION INSURANCE FUND, *Defendants*

**Adjudication Number: ADJ16803237
Van Nuys District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the August 8, 2024 Order wherein the workers' compensation administrative law judge (WCJ) dismissed without prejudice applicant's cumulative injury claim. Applicant claims she was employed by defendant as a general worker when she sustained a cumulative injury during the period from October 1, 2016 through May 25, 2022 to the eye(s), neck, back, upper extremities, hips, psyche, and dental (bruxism).

Applicant contends that due to communications with applicant's attorney indicating her "desire to continue with her case" and her agreement to "attend all necessary exams and Court hearings," there is good cause to "rescind the Dismissal order." (Petition, pp. 1-2.)

We have not received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be dismissed as untimely or denied due to lack of proper grounds for reconsideration and returned to the trial level so that the Petition for Reconsideration (Petition) may be considered as one to reopen.

We have considered the Petition, the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will dismiss the Petition and return the matter to the trial level so that the WCJ may consider the Petition as a petition to reopen.

FACTS

Applicant claimed that, while employed by defendant as a general worker, she sustained an industrial injury during the period from October 1, 2016 through May 25, 2022 to the eye(s), neck, back, upper extremities, hips, psyche, and dental (bruxism).

On May 21, 2024, defendant issued a letter to applicant and applicant's attorney providing notice that defendant would be seeking dismissal of the cumulative injury claim.

On July 11, 2024, defendant filed a petition for dismissal of the cumulative injury claim, alleging no response to the May 21, 2024 letter. According to the proof of service, applicant and applicant's attorney were properly served with the petition.

On July 16, 2024, the WCJ issued a fifteen-day notice of intent to dismiss the cumulative injury claim. According to the proof of service, applicant and applicant's attorney were properly served with the notice. No objection was received, and an order of dismissal was issued on August 8, 2024 and served August 13, 2024. According to the proof of service, applicant and applicant's attorney were properly served with the order.

DISCUSSION

I.

Former Labor Code section¹ 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

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

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected under the Events tab in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on September 23, 2024, and 60 days from the date of transmission is November 22, 2024. This decision was issued by or on November 22, 2024, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report, it was served on September 23, 2024, and the case was transmitted to the Appeals Board on September 23, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 23, 2024.

II.

As a preliminary matter, applicant’s Petition is untimely. 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, [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 September 11, 2024. This is more than 25 days after the service of the WCJ's August 8, 2024 Order, and beyond whatever extension of time, if any, applicant might have been entitled to under WCAB Rule 10600. (Cal. Code Regs., tit. 8, § 10600.)

Pursuant to section 5803, however, "The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor."

As the California Supreme Court discussed in *Department of Rehabilitation v. Workers' Comp. Appeals Bd. (Lauher)* (2003) 30 Cal. 4th 1281, 1290–1291 [68 Cal. Comp. Cases 831], pursuant to section 3202, issues of compensation for injured workers "shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment." Further, "the informality of pleadings in workers' compensation proceedings before the Board has been recognized." (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd.* (1973) 9 Cal. 3d 848, 852 [38 Cal.Comp.Cases 500, 512]; *Bland v. Workmen's Comp. App. Bd.* (1970) 3 Cal. 3d 324, 328–334 [35 Cal.Comp.Cases 513].) The courts have indicated that claims should be adjudicated based on substance rather than form. (*Bland, supra*, at pp. 328–334; *Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal.App.3d 1102, 1116 [53 Cal.Comp.Cases 502]; *Rivera v. Workers' Comp. Appeals Bd.* (1987) 190 Cal.App.3d 1456 [52 Cal.Comp.Cases 141]; *Beveridge v. Industrial Acc. Com.* (1959) 175 Cal.App.2d 592, 598 [24 Cal.Comp.Cases 274].) Moreover, section 5709 states that "[n]o informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this division . . ." (Lab. Code, § 5709.)

Further, all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [97 Cal Rptr. 2d 852, 65 Cal.Comp.Cases 805].) A fair hearing is "... one of 'the rudiments of fair play' assured to every litigant ..." (*Id* at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916)

172 Cal. 572, “the commission ... must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law.” (*Id.* at p. 577.) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157- 158 citing *Kaiser Co. v. Industrial Acc. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers’ Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

It is also well known the Appeals Board has the discretionary authority to develop the record when appropriate to provide due process or fully adjudicate the issues. (Lab. Code §§ 5701, 5906). As explained in *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924], “The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers’ compensation claims.” Full development of the evidentiary record also ensures that the decision is based upon substantial evidence. Pursuant to *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and supported by substantial evidence. (§§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Aside from providing assurance that due process is being provided, this "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Accordingly, to the extent applicant’s Petition seeks reconsideration, we dismiss the Petition. Upon return of this matter to the trial level, we recommend that the WCJ treat applicant’s Petition as a timely petition to reopen.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the August 8, 2024 Order is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 14, 2024

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

**MARTHA GOMEZ DE ARIAS
LAW OFFICES OF ROBERT OZERAN
STATE COMPENSATION INSURANCE FUND**

RL/cs

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