

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

JOSE BANDA, JR., *Applicant*

vs.

**BARON HR WEST; CLEAR SPRING PROPERTY AND CASUALTY COMPANY,
*Administered by CCMSI, Defendants***

**Adjudication Numbers: ADJ14111819, ADJ14111818
Los Angeles District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION AND
PETITION FOR REMOVAL**

We have considered the allegations of the Petition for Reconsideration and in the Alternative Petition for Removal 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 petition is untimely and must be dismissed.

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, 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).) In addition, a Petition for Reconsideration filed via EAMS¹ is deemed filed on the date received by the Appeals Board if it is received prior to 5:00 p.m. on a court day. (Cal. Code Regs.,

¹ EAMS is an acronym for Electronic Adjudication Management System, a computerized system used by the Division of Workers' Compensation (DWC) to store and maintain Appeals Board electronic case files. (See Cal. Code Regs., tit. 8, §§ 10269(p), 10215 et seq.)

tit. 8, former § 10392, now § 10615(b) (eff. Jan. 1, 2020).) Any Petition for Reconsideration “received after 5:00 p.m. of a court day shall be deemed filed as of the next court day.” (Cal. Code Regs., tit. 8, former § 10392, now § 10615(b) (eff. Jan. 1, 2020).)

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].)

In this case, the WCJ’s decision was served on September 21, 2021. Based on the authority cited above, petitioner had until Monday, October 18, 2021 to file a timely petition. Therefore, the Petition filed on October 19, 2021 is untimely and will be dismissed.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 20, 2021

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

**JOSE BANDA, JR.
GARRETT LAW GROUP, PC
FABIANO CASTRO & CLEM, LLP**

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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