

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

MAUREEN AVENDANO, *Applicant*

vs.

**BANK OF AMERICA; CHARTIS/AIG;
ACE AMERICAN INSURANCE COMPANY
administered by CORVEL CORPORATION, *Defendants***

**Adjudication Numbers: ADJ174134 (VNO0546148) MF,
ADJ4205201 (VNO0548142)
Los Angeles District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
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 below, we find our time to act in this matter is tolled. Based on the recommendation made in the PWCJ's report, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the PWCJ for reassignment to a new WCJ and for further proceedings. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

A petition is generally considered denied by operation of law if the Appeals Board does not grant the petition within 60 days after it is filed. (Lab. Code, § 5909.) However, we believe that "it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice" (*Shiple v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].) In *Shiple*, the Appeals Board denied the applicant's petition for reconsideration because it had not acted on the petition within the statutory time limits of Labor Code section 5909. This occurred because the Appeals Board had misplaced the file, through no

fault of the parties. The Court of Appeal reversed the Appeals Board's decision holding that the time to act on applicant's petition was tolled during the period that the file was misplaced. (*Shipley, supra*, 7 Cal.App.4th at p. 1108.) Like the Court in *Shipley*, "we are not convinced that the burden of the system's inadequacies should fall on [a party]." (*Shipley, supra*, 7 Cal.App.4th at p. 1108.)

In this case, the Appeals Board failed to act on defendant's petition within 60 days of its filing on September 10, 2021, through no fault of defendant. Therefore, considering that the Appeals Board's failure to act on the petition was in error, we find that our time to act was tolled.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the August 23, 2021 Joint Findings, Award and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the August 23, 2021 Joint Findings, Award and Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 25, 2022

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

**MAUREEN AVENDANO
LAW OFFICES OF ROBERT LEE
GOLDMAN MAGDALIN & KRIKES**

PAG/abs

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