

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

HUMBERTO ARDILA, *Applicant*

vs.

**ADAM ASKARI, DDS;
ZENITH INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ7723014; ADJ9642174
San Francisco 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 workers' compensation administrative law judge (WCJ) with respect thereto. In addition, we will treat the Petition for Judicial Notice filed on June 12, 2023 as supplemental pleading and accept it as such pursuant to our authority. (Cal. Code Regs., tit. 8, § 10964.) 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, § 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].)

In this case, the WCJ issued the Order Dismissing Case on April 28, 2023. Pursuant to the authority cited above, applicant had until Tuesday, May 23, 2023 to seek reconsideration on a timely basis. Here, applicant's Petition for Reconsideration is dated May 24, 2023, already one day late, and was filed on May 26, 2023, three days late. Therefore, the petition is untimely and will be dismissed.

Applicant asserts in his Petition for Judicial Notice that “[b]etween May 21 and May 28, EAMS had extended filling [sic] preventing filings.” We have no evidence of EAMS filing issues in the record nor does our independent research of news and announcements by the Division of Workers' Compensation (DWC) reveal any during the stated period of time. We further note that petitioner does not assert that he attempted to e-file the Petition for Reconsideration on May 23, 2023, or prior, and that the e-filing was unsuccessful. The only evidence of an attempted electronic filing of the Petition for Reconsideration in this matter that was attached to the Petition for Judicial Notice is a May 24, 2023 email from TruFile Direct which shows the filing status as “WAITING_FOR_UPLOAD.” However, by May 24, 2023, the date the Petition for Reconsideration was signed by applicant's attorney, the time to seek reconsideration had passed.

Moreover, if the petition had been timely, we would have denied it on the merits for the reasons stated in the WCJ's report. As noted by the WCJ in the Report, a Notice of Intention was properly issued and provided applicant with an opportunity to file a written objection, thus providing notice and the opportunity to be heard.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 25, 2023

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

**HUMBERTO ARDILA
KENNETH D. MARTINSON, ESQ.
CHERNOW, PINE & WILLIAMS**

PAG/abs

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