

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

**ELVIS QUINTANILLA, *Applicant***

**vs.**

**HERNANDEZ ENTERPRISES ROOFING, INC.; STATE COMPENSATION INSURANCE FUND; BAMA AUTO CENTER; PENNSYLVANIA MANUFACTURING ASSOCIATION; MATTES AUTO SALES; MIKE MATTES; GABRIELA MATTES; MATTES 1997 FAMILY TRUST UTD 8/27/97; JAVIER ROMERO; ANTONIO VASQUEZ; UNINSURED EMPLOYERS BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ10616244  
Marina del Rey District Office**

**OPINION AND ORDER  
DISMISSING PETITIONS  
FOR RECONSIDERATION**

Defendants Mattes Auto Sales and Mike Mattes (“Mattes”) and defendant Pennsylvania Manufacturer’s Association Insurance Company for employer Bama Auto Center (“BAMA”) each seek reconsideration of the “Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration” (Opinion) issued by the Appeals Board on April 2, 2024, wherein the Appeals Board rescinded the Findings and Order issued by the workers’ compensation administrative law judge (WCJ) on January 8, 2024, and returned the case to the trial level for further proceedings and decision.

Mattes contends that applicant was not employed by any defendant on September 14, 2016, the date of the alleged injury, and that the Appeals Board erred in so finding.

BAMA contends that the Appeals Board addressed the issue of injury arising out of and in the course of employment (AOE/COE) and erred in so doing, because the matter proceeded to trial on the sole issue of employment. In the alternative, BAMA requests that the matter be returned to the trial level for further proceedings to address the issue of injury AOE/COE.

We have not received an Answer from applicant as to either Petition. Defendant State Compensation Insurance Fund filed an Answer to each Petition.

We have considered the allegations in the Petitions and the Answers. Based on our review of the record, and as discussed below, we will dismiss defendants' Petitions for Reconsideration.

## I.

We would first note that by regulation "Petitions for reconsideration of decisions after reconsideration of the Appeals Board shall be filed with the office of the Appeals Board." (Cal. Code Regs., tit. 8, § 10940(a).) Defendants Mattes and BAMA did not file their petitions with the Appeals Board, but instead filed the petitions with the DWC district office, which in effect, precluded the Appeals Board from reviewing the petitions in a timely manner. The Appeals Board would politely admonish Mattes and BAMA that any such future petitions must be filed directly with the Appeals Board.

Only the Appeals Board is statutorily authorized to issue a decision on a petition for reconsideration. (Lab. Code, §§ 112, 115, 5301, 5901, 5908.5, 5950; see Cal. Code Regs., tit. 8, §§ 10320, 10330.)<sup>1</sup> The Appeals Board must conduct *de novo* review as to the merits of the petition and review the entire proceedings in the case. (Lab. Code, §§ 5906, 5908; see Lab. Code, §§ 5301, 5315, 5701, 5911.) Once a final decision by the Appeals Board on the merits of the petition issues, the parties may seek review under Labor Code section 5950, but appellate review is limited to review of the record certified by the Appeals Board. (Lab. Code, §§ 5901, 5951.)

Former Labor Code section 5909 provided that a petition was denied by operation of law if the Appeals Board did not "act on" the petition within 60 days of the petition's filing with the 'appeals board' and not within 60 days of its filing at a DWC District Office. A petition for reconsideration is initially filed at a DWC District Office, and the District Office must transmit the case to the Appeals Board to act on the petition. (Cal. Code Regs., tit. 8, §§ 10961, 10962.)<sup>2</sup> Once

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<sup>1</sup> The use of the term 'appeals board' throughout the Labor Code refers to the Appeals Board and not a DWC district office. (See e.g., Lab. Code, §§ 110, et. seq. (Specifically, § 110 (a) provides: "'Appeals board' means the Workers' Compensation Appeals Board. The title of a member of the board is 'commissioner.'") Labor Code section 111 clearly spells out that the Appeals Board and DWC are two different entities.

<sup>2</sup> Petitions for reconsideration are required to be filed at the district office and are not directly filed with the Appeals Board. (Cal. Code Regs., tit. 8, § 10995(b); see Cal. Code Regs., tit. 8, § 10205(l) [defining a "district office" as a "trial level workers' compensation court."].) Although the Appeals Board and the DWC district office are separate entities, they do not maintain separate case files; instead, there is only *one case file*, and it is maintained at the trial level by DWC. (Cal. Code Regs., tit. 8, § 10205.4.)

When a petition for reconsideration is filed, the petition is automatically routed electronically through the Electronic Adjudication Management System (EAMS) to the WCJ who is assigned to the case. Thereafter, the entire case file, *including the petition for reconsideration*, is then electronically transmitted, i.e., sent, from the DWC District Office to the Appeals Board for review.

the Appeals Board receives the case file, it also receives the petition in the case file, and the Appeals Board can then “act” on the petition.

If the case file is never sent to the Appeals Board, the Appeals Board does not receive the petition contained in the case file. On rare occasions, due to an administrative error by the district office, a case is not sent to the Appeals Board before the lapse of the 60-day period. When the Appeals Board does not review the petition within 60 days due to irregularities outside the petitioner’s control, and the 60-day period lapses through no fault of the petitioner, the Appeals Board must then consider whether circumstances exist to allow an equitable remedy, such as equitable tolling.

It is well-settled that the Appeals Board has broad equitable powers. (*Kaiser Foundation Hospitals v. Workers’ Compensation Appeals Board* (1978) 83 Cal.App.3d 413, 418 [43 Cal.Comp.Cases 785] citing *Bankers Indem. Ins. Co. v. Indus. Acc. Com.* (1935) 4 Cal.2d 89, 94-98 [47 P.2d 719]; see *Truck Ins. Exchange v. Workers’ Comp. Appeals Bd. (Kwok)* (2016) 2 Cal.App.5th 394, 401 [81 Cal.Comp.Cases 685]; *State Farm General Ins. Co. v. Workers’ Comp. Appeals Bd. (Lutz)* (2013) 218 Cal.App.4th 258, 268 [78 Cal.Comp.Cases 758]; *Dyer v. Workers’ Comp. Appeals Bd.* (1994) 22 Cal.App.4th 1376, 1382 [59 Cal.Comp.Cases 96].) It is an issue of fact whether an equitable doctrine such as laches applies. (*Kwok, supra*, 2 Cal.App.5th at p. 402.) The doctrine of equitable tolling applies to workers’ compensation cases, and the analysis turns on the factual determination of whether an opposing party received notice and will suffer prejudice if equitable tolling is permitted. (*Elkins v. Derby* (1974) 12 Cal.3d 410, 412 [39 Cal.Comp.Cases 624].) As explained above, only the Appeals Board is empowered to make this factual determination.<sup>3</sup>

In *Shipley v. Workers’ Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493], the Appeals Board denied 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

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<sup>3</sup> Labor Code section 5952 sets forth the scope of appellate review, and states that: “Nothing in this section shall permit the court to hold a trial de novo, to take evidence, or to exercise its independent judgment on the evidence.” (Lab. Code, § 5952; see Lab. Code, § 5953.)

petition was tolled during the period that the file was misplaced, especially in light of the fact that the Appeals Board had repeatedly assured the petitioner that it would rule on the merits of the petition. (*Id.*, 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].” (*Ibid.*) The touchstone of the workers’ compensation system is our constitutional mandate to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.” (Cal. Const., art. XIV, § 4.) “Substantial justice” is not a euphemism for inadequate justice. Instead, it is an exhortation that the workers’ compensation system must focus on the *substance* of justice, rather than on the arcana or minutiae of its administration. (See Lab. Code, § 4709 [“No informality in any proceeding . . . shall invalidate any order, decision, award, or rule made and filed as specified in this division.”].) With that goal in mind, 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 [65 Cal.Comp.Cases 805].) If a timely filed petition is never considered by the Appeals Board because it is “deemed denied” due to an administrative irregularity not within the control of the parties, the petitioning party is deprived of their right to a decision on the merits of the petition. (Lab. Code, §5908.5; see *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754-755 [33 Cal.Comp.Cases 350]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) Just as significantly, the parties’ ability to seek meaningful appellate review is compromised, raising issues of due process. (Lab. Code, §§ 5901, 5950, 5952; see *Evans, supra*, 68 Cal.2d 753.)

Substantial justice is not compatible with such a result. A litigant should not be deprived of their due process rights based upon the administrative errors of a third party, for which they bear no blame and over whom they have no control. This is especially true when the petition is filed in response a decision by the Appeals Board. By filing a petition for reconsideration of the Appeals Board’s decision under Labor Code section 5911, the party expects that the Appeals Board will review it. The WCJ merely gives it a cursory review to determine that the case should be sent to the Appeals Board and thereafter is expected to send it to the Appeals Board to act on the petition.

Here, Mattes’ Petition was filed on April 25, 2024, and 60 days from the date of filing is Monday June 24, 2024. BAMA’s Petition was filed on April 26, 2024, and 60 days from the date

of filing is Tuesday June 25, 2024. According to EAMS, the case file was not transmitted to the Appeals Board until August 1, 2024. Accordingly, the Appeals Board failed to act on the petition within 60 days due to a failure by the District Office and not through any fault of the parties.

Under the circumstances, the requirements for equitable tolling have been satisfied in this case. Accordingly, our time to act on defendants' petitions was equitably tolled until 60 days after August 1, 2024.

## II.

A petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Id.*, at 1075 [“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’ ”]; *Rymer, supra*, 211 Cal.App.3d at p. 1180 [“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”]; *Kramer, supra*, 82 Cal.App.3d at p. 45 [“[t]he term [‘final’] does not include intermediate procedural orders”].) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

Here, the Petitions seek reconsideration of the Appeals Board’s decision rescinding an Order and returning the matter to the WCJ for further proceedings and decision. Thus, the Opinion issued by the Appeals Board on April 2, 2024 does not determine any substantive right or liability and does not determine a threshold issue. Accordingly, it is not a “final” decision, and the Petitions will be dismissed.

For the foregoing reasons,

**IT IS ORDERED** that defendant Mattes Auto Sales and Mike Mattes' Petition for Reconsideration is **DISMISSED**.

**IT IS FURTHER ORDERED** that defendant BAMA Auto Center's Petition for Reconsideration is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**September 30, 2024**

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

**ELVIS QUINTANILLA  
REYES & ASSOCIATES  
STATE COMPENSATION INSURANCE FUND  
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK  
ROBERT ROBIN & ASSOCIATES  
LAW OFFICES OF MICHAEL C. HEWITT  
OFFICE OF THE DIRECTOR – LEGAL UNIT  
ANTONIO VASQUEZ**

***JB/pm***

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