

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

KATIA AGUILAR, *Applicant*

vs.

**JUST DESSERTS;
CANNON COCHRAN MANAGEMENT SERVICES for
CHUBB GROUP OF INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ11365946
Oakland District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant filed a Petition for Reconsideration in Case No. ADJ11365946.¹ For the reasons discussed below, we will treat the petition as one seeking reconsideration in Case No. ADJ16046651. Having determined that the petition seeks reconsideration in Case No. ADJ16046651, we have considered its allegations 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, § 10605(a)(1).)² 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

¹ Commissioner Sweeney, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist was appointed in her place.

² While the time for filing for any party would be extended by an additional 5 days if any party was served outside of California (Cal. Code Regs., tit. 8, § 10605(a)(2)), no party receiving service of the WCJ's November 3, 2023 decision was located outside of California.

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].)

The WCJ issued a decision in Case No. ADJ16046651 on November 3, 2023. Based on the authority cited above, applicant had until Tuesday, November 28, 2024. Therefore, the Petition for Reconsideration filed on December 1, 2023 is untimely and will be dismissed.

If the petition had been timely, the pleadings in this case could have been amended according to proof.³ Nevertheless, because the parties stipulated that applicant was employed for

³ The workers' compensation system "was intended to afford a *simple and nontechnical path* to relief. (Italics added.)" (*Elkins v. Derby* (1974) 12 Cal.3d 410, 419 [39 Cal.Comp.Cases 624] citing 1 Hanna, Cal. Law of Employee Injuries and Workmen's Compensation (2d ed. 1973) § 4.01[1], pp. 4-2 to 4-3. Cf. Cal. Const., art. XX, § 21; § 3201.) Generally, "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].) "[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits. (*Martino v. Workers' Comp. Appeals Bd.*, (2002) 103 Cal.App.4th 485, 490 [67 Cal.Comp.Cases 1273].) Informality of pleading in proceedings before the Board is recognized and courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*Rubio v. Workers' Comp. Appeals Bd.* (1985) 165 Cal.App.3d 196, 200-01 [50 Cal.Comp.Cases 160]; *Liberty Mutual Ins. Co. v. Workers' Comp. Appeals Bd.* (1980) 109 Cal.App.3d 148, 152-153 [45 Cal.Comp.Cases 866].) 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.) "Necessarily, failure to comply with the rules as to details is not jurisdictional." (*Rubio, supra*, at 200-201; see Cal. Code Regs., tit. 8, § 10517.) Additionally, it is the policy of the law to favor, whenever possible, a hearing on the merits. (*Fox v. Workers' Comp. Appeals Bd.*, (1992) 4 Cal.App.4th 1196, 1205; see also *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478, "when a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court's order setting aside a default.") This is particularly true in workers' compensation cases, where there is a constitutional mandate "to accomplish substantial justice in all cases." (Cal. Const., art. XIV, § 4.) Therefore, in workers' compensation proceedings, it is settled law that: (1) pleadings may be informal (*Zurich Ins. Co. v. Workmen's Comp. Appeals Bd. (Cairo)* (1973) 9 Cal.3d 848, 852 [38 Cal.Comp.Cases 500]; *Bland, supra*, at pp. 328-334; *Martino v. Workers' Comp. Appeals, supra*, 103 Cal.App.4th 485, 491; *Rivera v. Workers' Comp. Appeals Bd.* (1987) 190 Cal.App.3d 1452, 1456 [52 Cal.Comp.Cases 151]; *Liberty Mutual Ins. Co. v. Workers' Comp. Appeals Bd. (Aprahamian)* (1980) 109 Cal.App.3d 148, 152-153 [45 Cal.Comp.Cases 866]; *Blanchard, supra*, at pp. 594-595 [40 Cal.Comp.Cases 784]; *Beaida v. Workmen's Comp. Appeals Bd.* (1968) 263 Cal.App.2d 204, 207-210 [35 Cal.Comp.Cases 245]); (2) claims should be adjudicated based on substance rather than form (*Bland, supra*, at pp. 328-334; *Martino v. Workers' Comp. Appeals, supra*, 103 Cal.App.4th 485, 491; *Bassett-McGregor v. Workers' Comp. Appeals Bd.* (1988) 205 Cal.App.3d 1102, 1116 [53 Cal.Comp.Cases 502]; *Rivera, supra*, 190 Cal.App.3d at p. 1456; *Beveridge v. Industrial Acc. Com.* (1959) 175 Cal.App.2d 592, 598 [24 Cal.Comp.Cases 274]); (3) pleadings should liberally construed so as not to defeat or undermine an injured employee's right to make a claim (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151

less than six months, we would have denied the claim on the merits even after amending the pleadings. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 9/21/23, at p. 2:11-12.)

Cal.App.4th 920, at pp. 925–926 [72 Cal.Comp.Cases 778]); *Martino v. Workers' Comp. Appeals*, supra, 103 Cal.App.4th 485, 490; *Rubio v. Workers' Comp. Appeals Bd.*, supra, 165 Cal.App.3d 196, 199–201; *Aprahamian*, supra, 109 Cal.App.3d at pp.152–153; *Blanchard*, supra, 53 Cal.App.3d at pp. 594–595; *Beaida*, supra, 263 Cal.App.2d at pp. 208–209); and (4) technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction. (*Bland*, supra, at pp. 331–332 & see fn. 13; *Rivera*, supra, 190 Cal.App.3d at p. 1456; *Aprahamian*, 109 Cal.App.3d at pp. 152–153; *Blanchard*, supra, at pp. 594–595; *Beaida*, supra, 263 Cal.App.2d at pp. 208–210.)

Reflecting these principles, Rule 10617 of the WCAB's Rules of Practice and Procedure provides:

(a) An Application for Adjudication of Claim, a petition for reconsideration, a petition to reopen or any other petition or other document that is subject to a statute of limitations or a jurisdictional time limitation shall not be rejected for filing solely on the basis that:

- (1) The document is not filed in the proper office of the Workers' Compensation Appeals Board;
 - (2) The document has been submitted without the proper form, or it has been submitted with a form that is either *incomplete* or *contains inaccurate information*; or
 - (3) The document has not been submitted with the required document cover sheet and/or document separator sheet(s), or it has been submitted with a document cover sheet and/or document separator sheet(s) not containing all of the required information.
- (Cal. Code Regs., tit. 8, former § 10397, now § 10617 (eff. Jan. 1, 2020), *emphasis added*.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 30, 2024

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

**KATIA AGUILAR
FLETCHER BROWN
STOCKWELL, HARRIS, WOOLVERTON & HELPHREY**

PAG/abs

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