

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

SILVESTRE HERNANDEZ, *Applicant*

vs.

**NAPA AUTO PARTS; OAK RIVER INSURANCE COMPANY; administered by
BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ8294635
Anaheim District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

On August 13, 2024, we issued our “Opinion and Order Granting Petition For Reconsideration (Opinion) and Notice of Intention (NIT)” to dismiss lien claimant’s petition as untimely. Lien claimant Nogales Psychological Counseling, Inc., (lien claimant) sought reconsideration of the Findings & Orders (F&O) issued on May 20, 2024, by a workers’ compensation administrative law judge (WCJ).

In our NIT, we gave notice to lien claimant that unless it submitted proof of timely filing of its Petition for Reconsideration (Petition) within 15 days, the Petition would be dismissed. Specifically, the NIT ordered lien claimant to produce documentation showing the date and time that it filed the Petition in the Electronic Adjudication Management System (EAMS), including the EAMS Batch ID and/or any other documentation that demonstrates that the Petition was timely filed, and that if lien claimant did not demonstrate that the Petition was timely filed, the Petition would be dismissed as untimely.

Lien claimant filed a timely response to our NIT on August 28, 2024. However, based on our review of the record, and as set forth in our Opinion and NIT, which we adopt and incorporate, and following consideration of lien claimant’s response, as discussed below, the Petition is untimely and must be dismissed. Thus, as our decision after reconsideration, we will vacate the Order Granting the Petition for Reconsideration and dismiss the Petition for Reconsideration.

I.

In our Opinion and NIT, we set forth the relevant facts. As relevant herein, in order to be timely, lien claimant's Petition had to be filed no later than June 14, 2024.

On August 28, 2024, Walter Rio, lien claimant's hearing representative, filed a verified response to the NIT. The response is titled "Information On Upload." The document states that lien claimant "submits the screen print of the batch id and upload time" [Bold in original] and further states that:

"Please note I completed the petition for reconsideration on 6/14/2024 at 4:50pm. I than [sic] completed the proof of service, converted it to PDF, I uploaded it and it failed 3 times until if [sic] finally provided the batch id 40917733 on 6/14/2024 at 5:02:56PM. I am unsure if it was the internet connection or EAMs that caused the upload to fail."

Lien claimant also filed an EAMS document [the EAMS Batch ID] that states: "Submission of this eform through EAMS constitutes service upon any internal DWC unit. Batch ID: 40917733 Date: 06/14/2024 05:02:56 PM."

II.

Under WCAB Rule 10615(b) (Cal. Code Regs., tit. 8, § 10615(b)), a document is deemed filed on the date it is received, if it is received prior to 5:00 p.m. on a court day. A document received after 5:00 p.m. on a court day is deemed filed as of the next court day. That is, documents must be received prior to 5:00 p.m. on a court day to be "filed" on that day. This is consistent with the provisions of Government Code 11020(a), which provides that the business hours of state agencies are "from 8:00 a.m. to 5:00 p.m." Therefore, to be timely, lien claimant's Petition would have had to have been received before 5:00 p.m. on June 14, 2024.

The Batch ID submitted by lien claimant shows that the Petition was filed on June 14, 2024 at "5:02:56 P.M.", which is after the close of business at 5:00 p.m., and consequently, the Petition is "filed" as of the next court day of Monday, June 17, 2024.

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].)

The Petition in this matter was filed on June 17, 2024. This was more than 25 days after the service of the WCJ's May 20, 2024 decision and beyond whatever extension of time, if any, lien claimant might have been entitled to under WCAB Rule 10600.

While we are sympathetic to lien claimant's circumstances, we are without jurisdiction to consider the Petition, and it must be dismissed.

Accordingly, as our decision after reconsideration, we vacate the Order Granting the Petition for Reconsideration and dismiss the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals board that the Order Granting Petition for Reconsideration issued by the Workers' Compensation Appeals Board on August 13, 2024, is **VACATED**.

IT IS FURTHER ORDERED that the Petition for Reconsideration of the Findings & Orders issued by the WCJ on May 20, 2024 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 10, 2024

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

**R AND R SERVICES
HALLETT EMERICK WELLS & SAREEN**

DLM/oo

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