

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

VELEDA BURTON, *Applicant*

vs.

**SEE'S CANDIES;
TRAVELERS PROPERTY CASUALTY CO. OF AMERICA, *Defendants***

**Adjudication Numbers: ADJ13196307, ADJ13196308, ADJ13196309
Oakland District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION
AND DISMISSING
PETITION FOR REMOVAL**

Applicant, in pro per, seeks reconsideration of the Opinion and Order Dismissing Petitions for Reconsideration and Denying Petitions for Removal (Opinion and Order) of August 20, 2024, wherein the Appeals Board dismissed applicant's Petition for Reconsideration as reconsideration could only be taken from a final order and denied removal as substantial prejudice or irreparable harm would not result if removal was denied and/or that reconsideration would not be an adequate remedy if the matter ultimately proceeded to a final decision adverse to petitioner.

Applicant also seeks removal of the defendants.

We have considered the Petition for Reconsideration and the Petition for Removal of Defendant(s) and we have reviewed the record in this matter. For the reasons discussed below, we will dismiss both Petitions.

I.

Former Labor Code¹ section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on September 24, 2024 and 60 days from the date of transmission is Saturday, November 23, 2024. The next business day that is 60 days from the date of transmission Monday, November 25, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, November 25, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to

¹ All further statutory references are to the Labor Code unless otherwise noted.

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:
Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, we did not receive a Report and Recommendation by a workers' compensation administrative law judge because the Petition was filed in response to our decision, and no other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with the notice of transmission required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on September 24, 2024.

II.

We find applicant's Petitions untimely. 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 and 30 days if the decision has been served by mail upon an address outside of California but within the United States. (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 Appeals Board 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).) 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).)

The Opinion and Order was served on August 20, 2024, and applicant's Petition for Reconsideration was received on September 20, 2024, by the San Francisco district office and received on September 23, 2004, by the Appeals Board. The Opinion and Order did not include service on an out of state party.³ Therefore, applicant's Petition for Reconsideration was not timely filed as it was not filed with the Appeals Board within 25 days of service of the Opinion and Order.

³ The previous Findings and Order of May 29, 2024, included service on an out of state party. Therefore, there was an additional five days to file the Petition for Reconsideration from those Findings and Order. (Cal. Code Regs., tit. 8, § 10605(a)(2).) However, even if an out of state party had been served with the Opinion and Order of August 20, 2024, the Petitions would still be untimely as they were not filed within 30 days of the Opinion and Order.

Similarly, to the extent applicant requests removal, we note that there are 25 days allowed within which to file a petition for removal from a “non-final” decision that has been served by mail upon an address in California. (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10955(a).) 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 removal must be filed with (i.e., received by) the Appeals Board within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10615(b), 10940(a).)

The Petition for Removal was filed on September 26, 2004, with the Appeals Board. Therefore, applicant’s Petition for Removal was also not timely filed as it was not filed within 25 days of service of the Opinion and Order. Therefore, we dismiss both of applicant’s Petitions as untimely.

III.

Further, it is well settled that where a party fails to prevail on a petition for reconsideration, the Appeals Board will not entertain a successive petition by that party unless the party is newly aggrieved. (*Goodrich v. Industrial Acc. Com.* (1943) 22 Cal.2d 604, 611 [8 Cal.Comp.Cases 177]; *Ramsey v. Workmen’s Comp. Appeals Bd.* (1971) 18 Cal.App.3d 155, 159 [36 Cal.Comp.Cases 382]; *Crowe Glass Co. v. Industrial Acc. Com. (Graham)* (1927) 84 Cal.App. 287, 293-295 [14 I.A.C. 221].) As stated in our en banc opinion in *Navarro v. A & A Framing* (2002) 67 Cal.Comp.Cases 296, 299 (Appeals Board en banc):

The general rule is that where a party has filed a petition for reconsideration with the Board, but the party does not prevail on that petition for reconsideration, the petitioning party cannot attack the [Appeal’s] Board’s action by filing a second petition for reconsideration; rather, the petitioning party must either be bound by the [Appeals] Board’s action or challenge it by filing a timely petition for writ of review.

The only exception to this general rule occurs when, although the petitioning party does not prevail on its original petition for reconsideration, the Appeals Board’s decision is based on some new and additional evidence not presented at the time of trial. In this limited circumstance only, the original petitioner may properly file a second petition for reconsideration because the Appeals Board’s decision is based on a new record. (*Pacific Employers Ins. Co. v. Industrial Acc. Com. (Mazzanti)* (1956) 139 Cal.App.2d 22, 25-26 [21 Cal.Comp.Cases 46].)

Here, the Petition for Reconsideration raises the same issues and arguments that were raised in an earlier petition for reconsideration in which petitioner did not prevail. Furthermore, no new evidence was accepted or considered at the time of the Appeals Board's decision on the original petition. Accordingly, even if the Petition for Reconsideration was timely, we would dismiss it as successive.

IV.

Finally, even if the Petition for Removal of Defendant(s) was timely filed, we would dismiss it because we are unable to provide the relief sought by applicant. Applicant filed a "Petition For Removal of Defendant(s) Removal Cover Sheet Dated 8/19/2024 Has No Separator (sic) Sheet For Document (sic) Dated 8/27/2024; No Separator Sheet Or Letter Dated 6/24/2024; And No Separator (sic) Sheet For 8/27/2024 Identifying (sic) Letter Dated 6/24/25." It appears that applicant is alleging that mistakes were made in various documents filed by the defendants. However, there is no remedy available to remove defendants. Therefore, we would dismiss the Petition for Removal of Defendant(s) on this basis as well.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration and the Petition for Removal are **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 25, 2024

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

**VELEDA BURTON, IN PRO PER
LAURA G. CHAPMAN & ASSOCIATES**

JMR/mc

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