

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

BRIAN SPALDING, *Applicant*

vs.

**ELITE SHEET METAL AND DRAIN GUTTERS;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ13556297
Van Nuys District Office**

**OPINION AND ORDER
DENYING 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. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

Former Labor Code 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, Labor Code 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 Labor Code 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 April 9, 2025, and 60 days from the date of transmission is Sunday, June 8, 2025. The next business day that is 60 days from the date of transmission is Monday, June 9, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, June 9, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

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

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on April 9, 2025, and the case was transmitted to the Appeals Board on April 9, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 9, 2025.

Accordingly, we deny the Petition for Reconsideration.

¹ 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.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 6, 2025

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

**BRIAN SPALDING
ROBERT OZERAN, ESQ.
STATE COMPENSATION INSURANCE FUND, LEGAL**

AS/mc

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

RECOMMENDATIONS ON PETITION FOR RECONSIDERATION

On February 6, 2025, the parties signed a C&R settling this matter. It was filed in EAMS. The parties requested the OACR. The Compromise and Release agreement, paragraph 6, page 5 indicated that no Permanent Disability Indemnity had been paid. Further in the document, paragraph 7, page 6, stated that "0" had been paid as permanent disability advances. After attorney fees, the applicant was to receive the sum of \$148,750.00. The parties also prepared a proposed order reflecting those sums.

The Judge, after reviewing the matter, signed the proposed order which was submitted with the Compromise and Release agreement. The order was signed on March 12, 2025 and uploaded to EAMS on March 18, 2025. The OACR was filed and served on the designated party, Cressida Roth of State Compensation Insurance Fund, for service on the parties.

On March 26, 2025, SCIF filed a timely, verified Petition for Reconsideration stating that the WCJ acted in excess of her authority, that the evidence did not justify the findings and that the findings of fact did not support the order. The statement of fact merely asserts that SCIF "forgot to take credit in the Compromise and Release for PD advances to date which are \$11,641.42." They asked that the OACR be set aside. No answer was filed by Applicant's counsel.

DETERMINATION OF WCJ

The Appeals Board has continuing jurisdiction over all of its orders, decisions, and awards. At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the Board may rescind, alter, or amend any order, decision, or award for good cause. Good cause includes demonstrating that the C&R was the product of fraud (either intrinsic or extrinsic), mutual mistake, duress, or undue influence (Johnson v. Workmen's Comp. Appeals Bd. (1970)).¹ Herlick, California Workers' Compensation Handbook § 11.11 (2025).

In this case, the Defendant has failed to offer any showing of good cause for setting aside the award. A unilateral mistake is not good cause. They also demonstrate no efforts to resolve this issue with Applicant's counsel. The C&R was signed and witnessed and nowhere in the document is there any indication that PD advances were made. The C&R had been in circulation at least a month prior to it being approved and it was apparently drafted by Defendants who had several opportunities to correct the error prior to it being approved.

Absent some showing of fraud, mutual mistake, duress or undue influence, there is no good cause to set aside the OACR. It is recommended that Reconsideration be denied.

DATE: 4-9-25

Martha Hendersen
WORKERS' COMPENSATION JUDGE