

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

BRUCE SENATOR, *Applicant*

vs.

**HA-PENNY INN; HPI MANAGEMENT;
ZENITH INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ2606119 (ANA 0207364), ADJ2369501 (ANA 0287752)
Anaheim District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Order Dismissing Cases (Dismissal Order) issued by the workers' compensation administrative law judge (WCJ) on May 4, 2017. The Dismissal Order was issued in response to applicant's April 27, 2017 Petition for Dismissal, in which applicant requested an order dismissing his pending cases, with prejudice. In the Dismissal Order, the WCJ dismissed applicant's claims, as required by former WCAB rule 10780.¹ Applicant also seeks reconsideration of the Joint Order Rejecting Declaration of Readiness to Proceed (Order Rejecting DOR) filed April 18, 2025, wherein the WCJ noted that applicant's cases were dismissed with prejudice in 2017, at applicant's request, and the WCJ ordered that applicant's "Declaration of Readiness to Proceed is hereby REJECTED and no hearing will be calendared as there is no case in which to calendar one."

Applicant contends that he was not properly served with the May 4, 2017 Dismissal Order and was unaware of that order until he contacted defendant, who provided a copy of the Order to him on April 17, 2024. He contends that his 2017 Petition for Dismissal should have been

¹ Former WCAB rule 10780 required, in pertinent part, that "Except as provided in Rule 10562 and 10582 and unless good cause to the contrary appears, ... orders of dismissal of applications for adjudication for injuries before January 1, 1990 ... shall issue forthwith when requested by the employee. (Cal. Code Regs., tit. 8, former § 10780.) Effective January 1, 2020, the rule was renumbered as WCAB Rule 10850. (Cal. Code Regs., tit. 8, § 10850(a).)"

understood to be a “protest against injustice.” He requests that the May 4, 2017 Dismissal Order and the April 8, 2025 Order Rejecting DOR be set aside.

We have not received an Answer from defendant.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and as discussed below, the Petition is untimely and must be dismissed.

DISCUSSION

I.

Former Labor Code section 5909² 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 May 23, 2025, and 60 days from the date of transmission is July 22, 2025. This decision is issued by or on July 22, 2025, so that we have timely acted on the petition as required by section 5909(a).

² All section references are to the Labor Code, unless otherwise indicated.

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. 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 May 23, 2025, and the case was transmitted to the Appeals Board on May 23, 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 section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on May 23, 2025.

II.

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].)

Here, the Dismissal Order was filed May 4, 2017, and served upon applicant by email on the same date. Applicant contends that service was defective, and that he did not receive the Dismissal Order when it was served by email in 2017. (Petition, at p. 2.) He concedes, however, that he received a copy of the Dismissal Order when defendant provided it to him by email on

April 17, 2024. (Petition, at p. 3.) Where an order can be shown to have been defectively served, the time limit begins to run as of the date of receipt of the order. (*Hartford Accident & Indemnity Co. v. Workers' Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1 [43 Cal.Comp.Cases 1193].) To ensure that due process is provided, we accept applicant's contention that he was not adequately served on May 4, 2017, and we will treat April 17, 2024 as the service date for the Dismissal Order.

The Petition for Reconsideration in this matter was filed on May 7, 2025. Thus, the filing date of the petition was more than a year after the service of the Dismissal Order on April 17, 2024, and well over the 25 days permitted by law. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) It was also well beyond any extension of time applicant might have been entitled to under WCAB Rule 10600. Therefore, the Petition for Reconsideration is untimely and subject to dismissal. As the time limit for filing a reconsideration petition is jurisdictional, we have no authority to consider or act upon an untimely petition for reconsideration. (*Maranian, supra*, 81 Cal.App.4th at p. 1076; *Rymer v. Hagler, supra*, 211 Cal.App.3d at p. 1182; *Scott, supra*, 122 Cal.App.3d at p. 984; *Hinojoza, supra*, 201 Cal.App.2d at p. 549.)

Because applicant's cases have been dismissed, we have no jurisdiction and we do not disturb the Order Rejecting the DOR.

Accordingly, we dismiss the petition.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Dismissal Order of May 4, 2017 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 15, 2025

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

**BRUCE SENATOR
CHERNOW PINE**

MB/ara

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