

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

**ERIQ FITZPATRICK, *Applicant***

**vs.**

**FAST RETAILING USA, INC.;  
THE HARTFORD, *Defendants***

**Adjudication Number: ADJ13836041 (MF), ADJ13829431  
Long Beach District Office**

**OPINION AND ORDER  
DISMISSING 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 to the extent the petition is successive, it will be dismissed.

**I.**

Preliminarily, we note that former Labor Code<sup>1</sup> 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.

---

<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

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 August 19, 2025 and 60 days from the date of transmission is Saturday, October 18, 2025. The next business day that is 60 days from the date of transmission is Monday, October 20, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, October 20, 2025, so that we have timely acted on the petition as required by 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 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 August 19, 2025, and the case was transmitted to the Appeals Board on August 19, 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 August 19, 2025.

## II.

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

---

<sup>2</sup> 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.

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 again raises the issue of venue. This issue was decided against applicant in our July 17, 2024 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, where we left the Presiding Judge's September 8, 2023 Order denying change of venue undisturbed. Applicant did not file a timely petition for writ of review. Therefore he is bound by our prior decision. Accordingly, the current petition for reconsideration will be dismissed as successive.

If we were not dismissing the petition as successive, we would have denied it on the merits for the reasons stated in the WCJ's report, which we would adopt and incorporate. We agree with the WCJ that the July 21, 2025 Joint Order Dismissing Cases was directly served on applicant by the Workers' Compensation Appeals Board in compliance with WCAB rule 10628(c) (Cal. Code Regs., tit. 8, § 10628) despite the concurrent designation of service.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**PATRICIA A. GARCIA, DEPUTY COMMISSIONER**  
**CONCURRING NOT SIGNING**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**OCTOBER 20, 2025**

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

**ERIQ FITZPATRICK  
LAW OFFICES OF LYDIA B. NEWCOMB**

**PAG/kl**

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