

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

LASHONDA JOHNSON, *Applicant*

vs.

**MACYS, permissibly self-insured, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ13794622
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

Defendant has filed a petition for removal from the “Order Rescinding Decision, Vacating Submission, and Setting Further Proceedings (Rule 10961)” (“Order”) issued on May 14, 2025, by the workers’ compensation administrative law judge (WCJ). In response to applicant’s petition for reconsideration, the WCJ rescinded an order dismissing applicant’s claim, which issued on April 7, 2025.

Defendant contends that applicant’s petition for reconsideration was untimely, which precludes the Appeals Board from exercising jurisdiction of the order of dismissal.

We have not received an Answer from applicant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we grant removal and return the matter to the trial level to treat applicant’s petition for reconsideration as a petition to reopen.

We have considered the allegations of the Petition for Removal and the contents of the WCJ’s Report. Based on our review of the record and for the reasons discussed below, we will deny removal.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers’ Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that

substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is “. . . one of ‘the rudiments of fair play’ assured to every litigant” (*Id.* at 158.) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal. Comp. Cases 584]; *Rucker, supra*, at 157-158; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) Moreover, there is a strong public policy favoring disposition of cases on their merits. (*Litzman v. Workmen's Comp. Appeals Bd.* (1968) 266 Cal.App.2d 203, 205 [33 Cal.Comp.Cases 584]; see *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.) Due process requires that a party be provided with reasonable notice and an opportunity to be heard. (*Katzin, supra* at pp. 711-712.)

It has long been established that “[t]he time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.” (Code Civ. Proc., § 12, italics added.) If the last day falls on a holiday, the period is extended to include “the next day that is not a holiday.” (Code Civ. Proc., § 12a(a).)

WCAB Rule 10605(a) adopts, in part, Code of Civil Procedure, section 1013(a) and states:

(a) When any document is served by mail, fax, e-mail or any method other than personal service, the period of time for exercising or performing any right or duty to act or respond shall be extended by:

(1) Five calendar days from the date of service, if the place of address and the place of mailing of the party, attorney or other agent of record being served is within California;

(2) Ten calendar days from the date of service, if the place of address and the place of mailing of the party, attorney or other agent of record being served is outside of California but within the United States; and

(3) Twenty calendar days from the date of service, if the place of address and the place of mailing of the party, attorney or other agent of record being served is outside the United States.

(Cal. Code Regs., tit. 8, § 10605(a).)

Here, the April 7, 2025 order dismissing applicant's claim was served upon a party in Kentucky. Accordingly, all parties had 30 days (20 days + 10 days service) in order to file a petition for reconsideration. Applicant filed her petition for reconsideration on day 29, which means that it was timely filed. Thus, the WCJ was correct to act upon the petition within 15 days of its filing by rescinding the offending order. Accordingly, defendant has not established that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

Accordingly, we deny removal.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal from the "Order Rescinding Decision, Vacating Submission, and Setting Further Proceedings (Rule 10961)" issued on May 14, 2025, by the WCJ 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

OCTOBER 22, 2025

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

**LASHONDA JOHNSON
BOB NEHORAY LAW
MORGAN LEAHY LAW**

EDL/mt

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