

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

MIMI HTUT, *Applicant*

vs.

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY,
permissibly self-insured, *Defendant***

**Adjudication Number: ADJ12849972
Van Nuys 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, the petition is untimely and must be dismissed.

I.

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 March 19, 2025, and 60 days from the date of transmission is Sunday, May 18, 2025. The next business day that is 60 days from the date of transmission is Monday, May 19, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, May 19, 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 March 19, 2025, and the case was transmitted to the Appeals Board on March 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 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 March 19, 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).) The time is extended to 30 days if a party, attorney, or agent served is outside of California but within the United States. (Cal. Code Regs., tit. 8, § 10605(a)(2).) 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

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.

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].)

The Findings of Fact and Award (F&A) was served on December 31, 2024, and included a recipient in Texas. The Petition in this matter was filed on March 13, 2025. This date was more than 30 days after the service of the F&A and beyond whatever extension of time, if any, the petitioner might have been entitled to under WCAB Rule 10600.²

In her Petition, applicant states that she attempted to file an appeal letter on January 22 and February 11, 2025, but both were rejected. From our review of the matter in EAMS, there is no indication of either of these attempts to file an appeal. Under WCAB Rule 10617, her attempts to file may have allowed her Petition to be timely. (Cal. Code Regs., tit. 8, § 10617.)

However, even if the petition had been timely, we would have denied it on the merits based on the analysis in the WCJ's report. We observe that the only medical reports admitted into evidence are the two reports from the Agreed Medical Evaluator (AME) in psychiatry Dr. Brian Jacks dated July 16, 2020 (Ex. J2) and August 8, 2024 (Ex. J1). The Declaration of Readiness (DOR) was filed by applicant's attorney on September 17, 2024, stating that the case was ready for resolution and that applicant was only relying on the reports of Dr. Jacks. We would not disturb the WCJ's reliance on Dr. Jacks' reports as substantial medical evidence.

² Additionally, we observe that the Petition is not verified. Labor Code section 5902 requires that a petition for reconsideration be verified. (Lab. Code, § 5902; see also Cal. Code Regs., tit. 8, § 10510(d).) In *Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425 (Significant Panel Decision), it was held that where a petition for reconsideration is not verified as required by section 5902, the petition may be dismissed if the petitioner has been given notice of the defect (either by the WCJ's report or by the respondent's answer) unless, within a reasonable time, the petitioner either: (1) cures the defect by filing a verification; or (2) files an explanation that establishes a compelling reason for the lack of verification and the record establishes that the respondents are not prejudiced by the lack of verification.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 19, 2025

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

**MIMI HTUT
LAW OFFICES OF PURINTON, JIMENEZ, LABO & WU**

JMR/abs

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