

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

MONA MURILLO, *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF CORRECTIONS,
INMATE CLAIMS, legally uninsured,
adjusted by STATE COMPENSATION INSURANCE FUND,
*Defendants***

**Adjudication Number: ADJ13901094
Salinas District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant, in pro per, filed a Petition for Reconsideration (Petition) on March 20, 2025, challenging the Findings of Fact, issued by the workers' compensation administrative law judge (WCJ) on December 13, 2024, wherein the WCJ found, in pertinent part, that applicant sustained industrial injury arising out of and in the course of employment (AOE/COE) to her facial bones and left knee as an inmate laborer for defendant on July 30, 2019, and claims to have sustained injury to her back and lower legs. The WCJ further found that applicant may not collect permanent disability benefits while incarcerated and deferred all other issues, with jurisdiction deferred.

We 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 for Reconsideration, the Answer, and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, the Petition is untimely and unverified, and must be dismissed.

I.

Former Labor Code¹ 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

¹ All further statutory references are to the Labor Code, unless otherwise noted.

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 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 22, 2025 and 60 days from the date of transmission is Saturday, June 21, 2025. The next business day that is 60 days from the date of transmission is Monday, June 23, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, June 23, 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. 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 22 2025, and the case

² 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.

was transmitted to the Appeals Board on April 22, 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 February 13, 2025.

II.

There are 20 days allowed within which to file a petition for reconsideration from a “final” decision. (Lab. Code, §§ 5900(a), 5903.) This time is extended by 5 calendar days if service is made to an address within California. (Cal. Code Regs., tit. 8, § 10605(a)(1).)

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].) In this case, the WCJ issued the Findings of Fact on December 13, 2024 and all of the parties served were located in California. Based on the authority cited above, petitioner had until January 7, 2025 to seek reconsideration on a timely basis. Therefore, the Petition for Reconsideration filed on March 20, 2025 is untimely and will be dismissed.

We also note that 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. Here, the Petition for Reconsideration is not verified and notice of this defect was specifically given in both the WCJ’s Report and by the defendant’s Answer. Moreover, a reasonable period of time has elapsed, but petitioner has neither cured the defect by filing a verification nor offered an explanation of why a verification cannot be filed.

Accordingly, we dismiss the Petition as untimely and unverified. However, if the Petition had been timely and verified, we would have denied it on the merits for the reasons stated in the WCJ's report.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 19, 2025

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

**MONA MURILLO
STATE COMPENSATION INSURANCE FUND**

LN/md

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