

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

JOHN WIES, *Applicant*

vs.

STATE OF CALIFORNIA, Legally Uninsured, *Defendant*

**Adjudication Number: ADJ11101301
(Marina Del Rey District Office)**

**OPINION AND ORDER DISMISSING
PETITION FOR RECONSIDERATION**

Applicant seeks reconsideration of our Decision After Reconsideration of June 24, 2024 where we rescinded a workers' compensation administrative law judge's (WCJ) Findings & Award of November 6, 2023, which had found that while employed during a cumulative period ending on November 10, 2017 as an auto tech/mechanic, applicant sustained industrial injury in the form of Parkinson's Disease. We returned the matter to the trial level for further development of the record and decision.

Applicant contends that we erred in issuing our Decision of June 24, 2024 arguing that we had no jurisdiction to issue the decision and arguing that we were incorrect on the merits in finding that the current record did not support a finding of industrial injury in the form of Parkinson's Disease. We have received an Answer from defendant.

As explained below, we dismiss the applicant's Petition because it was not timely filed.

Preliminarily, we note that 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 September 10, 2024, and 60 days from the date of transmission is Saturday, November 9, 2024. The next business day that is 60 days from the date of transmission is Tuesday, November 12, 2024.¹ (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Tuesday, November 12, 2024, so we have timely acted on the petition as required by Labor Code section 5909(a).

Here, according to our review of the record, we did not receive a Report and Recommendation by a workers’ compensation administrative law judge, and no other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with the notice of transmission required by Labor Code section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on September 10, 2024.

Labor Code section 5903 states, in pertinent part, that a petition for reconsideration may only be filed “within 20 days after the service of any final order, decision, or award made and filed by the appeals board or a workers’ compensation judge.” A petition for reconsideration is deemed filed on the day it was actually received at the appropriate WCAB office or filed electronically and not on the date it was deposited in the mail. (Cal. Code Regs., tit. 8, § 10615, sub. (b); *Thermador*

¹ Monday, November 11, 2024 was the Veterans Day holiday.

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.

Waste King v. Workers' Comp. Appeals Bd. (Heine) (1995) 60 Cal.Comp.Cases 450, 451 [writ den.]; *Oliver v. Structural Services* (1978) 43 Cal.Comp.Cases 596, 598 [Appeals Bd. panel.] Labor Code section 5900, for its part, makes clear that the Appeals Board has no discretion to entertain untimely petitions, and mandates that a petition shall be made “only within the time ... specified in [Labor Code § 5903].” (*Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *United States Pipe & Foundry Co. v. Industrial Accident Commission (Hinojoza)* (1962) 201 Cal.App.2d 545, 548-549 [27 Cal.Comp.Cases 73] [“the provisions of [Labor Code §§ 5900 and 5903] are mandatory and jurisdictional”]; *Cavanaugh v. Workmen's Comp. Appeals Bd.* (1967) 255 Cal.App.2d 181 [32 Cal.Comp.Cases 445]; *Northrup Grumman Corp. v. Workers' Comp. Appeals Bd. (Clark)* (1999) 64 Cal.Comp.Cases 1416 [writ denied]; *Cal. Ins. Guarantee Assoc. v. Workers' Comp. Appeals Bd. (Sadeque)* (2003) 68 Cal.Comp.Cases 239, 241 [writ denied] [(time limit set forth in Labor Code § 5903 is jurisdictional].)

In this case, the decision in question was served by email on applicant's attorney on June 24, 2024. Therefore, applicant had the 20 days specified in section 5903 plus a five-day extension specified in WCAB Rule 10605(a)(1) (Cal. Code Regs., tit. 8, § 10605(a)(1).) This period expired on July 19, 2024, which was a Friday. However, the Petition was not received by the Appeals Board until Monday, July 22, 2024.

Since applicant's Petition was not filed within the period established by Labor Code § 5903, we have no jurisdiction to entertain the petition, and the same must therefore be dismissed.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of our Decision After Reconsideration of June 24, 2024 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 12, 2024

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

**JOHN WIES
GOLDSCHID, SILVER & SPINDEL
STATE COMPENSATION INSURANCE FUND**

DW/oo

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