

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

JOSE BALTAZAR, *Applicant*

vs.

**QUAD GRAPHICS, INC.;
TRAVELERS PROPERTY CASUALTY COMPANY, *Defendants***

**Adjudication Number: ADJ9193173
Los Angeles 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 for the reasons stated below, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will dismiss applicant's Petition for Reconsideration as untimely.

Preliminarily, we note that 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 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.

¹ 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 July 31, 2024 and 60 days from the date of transmission is Sunday, September 29, 2024. The next business day that is 60 days from the date of transmission is Monday, September 30, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, September 30, 2024, so that we have timely acted on the petition as required by Labor Code 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 July 31, 2024, and the case was transmitted to the Appeals Board on July 31, 2024. 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 Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 31, 2024.

Next, we turn to the issue of timeliness. 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).) 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 reconsideration must be

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.

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].)

In this case, the WCJ's decision issued on April 16, 2024. Based on the authority cited above, applicant had until Monday, May 13, 2024 to file a timely Petition for Reconsideration. Here, applicant's Petition for Reconsideration was filed on July 17, 2024, making it untimely and subject to dismissal.

In addition, the WCAB Rules provide in relevant part: (1) that “[e]very petition for reconsideration ... shall fairly state all the material evidence relative to the point or points at issue [and] [e]ach contention contained in a petition for reconsideration ... shall be separately stated and clearly set forth” (Cal. Code Regs., tit. 8, § 10945) and (2) that “a petition for reconsideration ... may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved.” (Cal. Code Regs., tit. 8, 10972).

In accordance with section 5902 and WCAB Rules 10945 and 10972, the Appeals Board may dismiss or deny a petition for reconsideration if it is skeletal (e.g., *Cal. Indemnity Ins. Co. v. Workers' Comp. Appeals Bd. (Tardiff)* (2004) 69 Cal.Comp.Cases 104 (writ den.); *Hall v. Workers' Comp. Appeals Bd.* (1984) 49 Cal.Comp.Cases 253 (writ den.); *Green v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 564 (writ den.)); if it fails to fairly state all of the material evidence, including that not favorable to it (e.g., *Addecco Employment Services v. Workers' Comp. Appeals Bd. (Rios)* (2005) 70 Cal.Comp.Cases 1331 (writ den.); *City of Torrance v. Workers' Comp. Appeals Bd. (Moore)* (2002) 67 Cal.Comp.Cases 948 (writ den.); or if it fails to specifically discuss the particular portion(s) of the record that support the petitioner's contentions (e.g., *Moore, supra*, 67 Cal.Comp.Cases at p. 948; *Shelton v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 70 (writ den.)). The petition filed herein fails to cite with specificity to the record. Therefore, it is subject to dismissal and denial.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the April 16, 2024 Findings of Fact, Award and Order is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 23, 2024

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

**JOSE BALTAZAR
LAW OFFICES OF SOLOV & TEITEL
LAW OFFICES OF RICHARD J. LUNCHE
LYDIA NEWCOMB, ESQ.**

PAG/abs

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

**REPORT AND RECOMMENDATION ON PETITION FOR
RECONSIDERATION**

(please note that the Petition for Reconsideration filed by the pro per applicant is untimely as it was filed three months after the Findings of Fact, Award, Order/Opinion on Decision)

I.

INTRODUCTION

Applicant, Jose Baltazar, age 49, while employed during the period June 1, 2001 to September 13, 2013 as an Offset Press Assistant II, Occupational Group No. 360 at Riverside, California, by Quad Graphics, Inc., was found to have sustained injury arising out of and in the course of employment to his neck, back, knees, hypertension, headaches, sense of smell, and upper respiratory in the form of allergic rhinitis. This Judge issued her Findings of Fact, Award and Order/Opinion on Decision dated April 15, 2024, served on April 16, 2024. The Applicant, now in pro per, filed an untimely, verified (although the signature is in the wrong place on the verification form) Petition for Reconsideration dated July 17, 2024. Defendant has yet to file an Answer to the Petition for Reconsideration.

The Petitioner has filed a form Petition for Reconsideration which is unclear as to how this Judge erred in this matter and it appears based on what the petitioner hand wrote in broken Spanish on said Petition that he is upset with his now prior attorney, his prior attorney did not explain his case or send him to a doctor to help him and he needs [\$1,000,000,000]dollars because he has a lot of problems and that he needs to explain in person.

II.

FACTS

At the initial trial in this matter on March 11, 2021, the parties stipulated that the applicant, while employed during the period June 1, 2001 to September 13, 2013 as an Offset Press Assistant II, at Riverside, California, by Quad Graphics, Inc., was found to have sustained injury arising out of and in the course of employment to his neck, back, knees, hypertension, headaches, sense of smell, and upper respiratory in the form of allergic rhinitis and claimed to have sustained injury arising out of and in the course of employment to his legs in the form of peripheral neuropathy, brain in the form of seizure disorder and epilepsy and psyche. The issues are trial were parts of body injured, temporary disability with applicant claiming a catastrophic injury and defendant alleging a non-industrial epileptic condition, permanent an stationary date, permanent disability, apportionment, occupation and group number, need for further medical treatment, self-procured medical treatment, lien were deferred with the exception of the EDD and the lien of [the] The Harford for long term disability benefits, attorneys' fees and whether additional discovery was needed (Minutes of Hearing & Summary of Evidence, **(EAMS DOC ID#73997209)**). The only witness to testify was the applicant/petitioner on June 3, 2021, August 12, 2021, and then September 30, 2021 (**(EAMS DOC ID#s 74292933, 75481478, 74724225)**) when the matter was submitted for decision.

This Judge then vacated submission to develop the record and set the case for status conference (**EAMS DOC ID#75022287**) since the AME Dr. Cocchiarella had not finalized her opinion and had not been provided with the reports and depositions of QMEs Dr. Espy and Dr. Shirman. Additionally the AME report of Dr. Sohn was stale dated and Dr. Sohn was now deceased. There were also missing pages of Dr. Shirman's medical reporting. After developing the record, the parties then returned for Trial on August 23, 2023 and resubmitted the matter. Submission was again vacated for the obtaining of a Formal Rating by the DEU which was served on all parties on January 10, 2024 and the matter was resubmitted.

This Judge issued her Findings of Fact, Award and Order/Opinion on Decision dated April 15, 2024, served on April 16, 2024. The Applicant, now in pro per, filed an untimely, verified (although the signature is in the wrong place on the verification form) Petition for Reconsideration dated July 17, 2024. Defendant has yet to file an Answer to the Petition for Reconsideration.

III.

DISCUSSION

At the time the decision in this matter issued, applicant was represented by counsel, Law Offices of Solov Teitell, who is well versed in filing Petitions for Reconsideration, yet they did not file a Petition for Reconsideration on behalf of the applicant/petitioner who was also served with this Judge's Findings of Fact, Award and Order and Opinion on Decision. Based on the file notes contained in EAMS, it does appear that on January 4, 2023, applicant spoke to an Information and Assistance Officer ("I&A"). At that time applicant apparently had a disagreement with his current attorney (Solov Teitell), but after speaking with I&A, he was advised to try to work things out with his attorney. When the parties returned for Trial on August 12, 2023, applicant was present, as was a certified Spanish Interpreter, and there was no further mention of the applicant having any disagreement with his attorney. After this Judge issued her decision in April 2024, it then appears in the notes in EAMS that applicant returned to I&A on June 10, 2024. At that time he was still represented and asked if he could speak with the Judge but on that day this Judge was teleworking. According to the notes, applicant said he "doesn't care about the money just wants justice." He also noted that he had not cashed the insurance company checks and I&A advised him that he should cash them before they expire. I&A also referred him to his attorney for further questions. Petitioner/Applicant then filed a Dismissal of Attorney on July 17, 2024 (**EAMS DOC ID#78170933**) and concurrently filed his untimely Petition for Reconsideration (**EAMS DOC ID#78171580**).

While this Judge did find a typographical error in the Award at page 3, subsection (b) on the weekly permanent disability indemnity rate which was stated as \$120.00 per week instead of \$230.00, the actual total monetary value of 40% PD was correct. The weekly permanent disability rate of \$230.00 was correctly stated in the Findings of Fact at page 2, Finding No. 6. This typographical error can be easily corrected. Other than the typographical error noted, this case at the time of decision was over 10 years old, there were numerous AME reports of Dr. Cocchiarella and Dr. Sohn, numerous PQME reports of Dr. Meth, Dr. Espy, and Dr. Berman, as well as

numerous joint exhibits, applicant's exhibits, defense exhibits and lien claimant the Hartford exhibits.

Assuming that the Petition for Reconsideration is not dismissed as untimely, in connection with the decision in this matter, Petitioner/ Applicant sustained injury arising out of and in the course of employment to his neck, back, knees, hypertension, headaches, sense of smell, upper respiratory in the form of allergic rhinitis. Applicant also alleged injury to his legs in the form of peripheral neuropathy, brain in the form of seizure disorder and epilepsy, and psyche. There was an allegation of catastrophic injury and defendant alleged a non-industrial epilepsy condition. Based upon applicant's credible testimony and the numerous medical reports (including AME depositions) of the AME Linda Cocchiarella, M.D. from April 11, 2015 through February 3, 2023, the AME reports & deposition of Roger Sohn, M.D., dated May 2, 2016, July 31, 2015 and April 16, 2015 (**Court Exhibits W-ZZZ**), it was found that applicant did not sustain injury to his legs in form of peripheral neuropathy, brain in the form of seizure disorder, psyche and epilepsy arising out of and occurring in the course of employment. While there are numerous reports in this matter, none of those amounted to substantial medical evidence regarding the applicant's epilepsy, seizure disorder or peripheral neuropathy to be caused on an industrial basis. As for the allegations of a psychiatric injury based on the medical evidence these appeared to be related to his non industrial seizure and epilepsy. Additionally, there was no substantial medical evidence to show that this was a catastrophic injury on an industrial basis even though it is clear that the applicant has a non-industrial epilepsy/seizure disorder. As for developing the record, there was no basis found to do so. This matter contained not only AME reporting, depositions, but also contained PQME reports as well as treating physician's reports. Some of which did not come close to being substantial medical evidence since they failed to review all the medical reporting and records in this matter which were now over 10 years old.

Since this was not found to be a catastrophic injury, petitioner was found to be entitled to temporary disability indemnity for 104 weeks based upon applicant's credible testimony and the numerous medical reports (including AME depositions) of the AME Linda Cocchiarella, M.D. from April 11, 2015 through February 3, 2023, the AME reports & deposition of Roger Sohn, M.D., dated May 2, 2016, July 31, 2015 and April 16, 2015. The 104 weeks of temporary total disability indemnity for the period beginning September 13, 2013 payable at the rate of \$605.56 per week, less amounts paid by EDD during that period and less the lien of The Hartford for the long term disability benefits during the period of temporary total disability and any permanent disability awarded herein.

Permanent and stationary date was found to be September 5, 2017 based on applicant's credible testimony and the numerous medical reports (including AME depositions) of the AME Linda Cocchiarella, M.D. from April 11, 2015 through February 3, 2023, the AME reports & deposition of Roger Sohn, M.D., dated May 2, 2016, July 31, 2015 and April 16, 2015. The factors of permanent disability set forth in the rating instructions were based upon applicant's testimony with due consideration to his credibility as a witness and the numerous medical reports (including AME depositions) of the AME Linda Cocchiarella, M.D. from April 11, 2015 through February 3, 2023, the AME reports & deposition of Roger Sohn, M.D., dated May 2, 2016, July 31, 2015 and April 16, 2015. No objection to the recommended rating nor a timely request for cross-examination of the disability evaluation specialist occurred and in accordance with the recommendation of the disability evaluation specialist, it was found that applicant was entitled to

a permanent disability award of 40% percent, equivalent to 201.00 weeks of indemnity payable at the rate of \$230.00 per week, in the total sum of \$46,230.00 payable forthwith, less amounts paid on account, if any, and less any amounts due in connection with the lien of the Hartford as noted above. Based upon the medical reports & deposition of the AME Roger Sohn, M.D., dated May 2, 2016, July 31, 2015 and April 16, 2015 and based upon the credible testimony of the applicant, it was found that there was proper apportionment of 30% industrial causation to the applicant's lumbar spine. Additionally, based upon applicant's testimony with due consideration to his credibility as a witness and the numerous medical reports (including AME depositions) of the AME Linda Cocchiarella, M.D. from April 11, 2015 through February 3, 2023, it was found that there was proper apportionment of 40% industrial causation to the applicant's hypertensive cardiovascular disease; 60% to the applicant's rhinitis; and 90% to his headaches.

Additionally, it was found that applicant is in need of further medical treatment to cure or relieve from the effects of the industrial injury and that he was entitled to reimbursement of self-procured medical treatment payable by defendant pursuant to the Official Medical Fee Schedule in an exact amount to be adjusted by and between the parties with the WCAB retaining jurisdiction in the event of a dispute and based on applicant's credible testimony and the numerous medical reports (including AME depositions) of the AME Linda Cocchiarella, M.D. from April 11, 2015 through February 3, 2023, the AME reports & deposition of Roger Sohn, M.D., dated May 2, 2016, July 31, 2015 and April 16, 2015.

Overall the decision in this matter was based on the totality of the documentary record with due consideration to the applicant's credibility as a witness.

IV.

RECOMMENDATION

It is therefore respectfully recommended that Applicant's Petition for Reconsideration be dismissed as untimely, however if deemed timely that it be denied in its entirety.

DATE: July 30, 2024

Diane E. Phillips
Workers' Compensation
Administrative Law Judge

Served by US Mail 7/31/2024
on parties shown on the
Official Address Record.

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

JOSE BALTAZAR, *Applicant*

vs.

**QUAD GRAPHICS, INC.;
TRAVELERS PROPERTY CASUALTY COMPANY, *Defendants***

**Adjudication Number: ADJ9193173
Los Angeles District Office**

**OPINION AND ORDER
CORRECTING CLERICAL ERROR**

It has come to the Appeals Board's attention that the April 16, 2024 Findings of Fact, Award and Order issued by the workers' compensation administrative law judge (WCJ) in this matter contains a clerical error in the Award consisting of an incorrect permanent disability indemnity rate. Paragraph "b" of the April 16, 2024 Award incorrectly lists the permanent disability indemnity rate as \$120.00, rather than the correct rate of \$230.00.

We correct this clerical error by virtue of this decision without granting reconsideration, as such errors may be corrected without further proceedings at any time. (Lab. Code, § 5803; 8 Cal. Code Regs., tit. 8, § 10986; see also 2 *Cal. Workers' Comp. Practice* (Cont. Ed. Bar, March 2019 Update) Supplemental Proceedings, § 23.74, p. 23-76.)

For the foregoing reasons,

IT IS ORDERED that the clerical error consisting of the incorrect permanent disability indemnity rate of \$120.00 in paragraph “b” of the Award is corrected to the correct rate of \$230.00.

WORKERS’ COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 23, 2024

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

**JOSE BALTAZAR
LAW OFFICES OF SOLOV & TEITEL
LAW OFFICES OF RICHARD J. LUNCHE
LYDIA NEWCOMB, ESQ.**

PAG/abs

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