

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

MY PHOUNG THI NUYNH, *Applicant*

vs.

**ANDRE TRAN, homeowner;
WAWANESA INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ15061583
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact (Findings) issued on August 27, 2024, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant sustained injury to the lumbar spine on December 29, 2019, and that applicant was employed by defendant at the time of injury.

Defendant argues that applicant's testimony was not credible and thus the WCJ incorrectly found in applicant's favor.

We have not received an answer from applicant.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report. Based on our review of the record and for the reasons stated in the August 27, 2024 Opinion on Decision and the WCJ's Report, both of which we adopt and incorporate, we will deny reconsideration.

DISCUSSION

I.

Former Labor Code section 5909¹ 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.

(§ 5909.)

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 September 27, 2024, and 60 days from the date of transmission is Tuesday, November 26, 2024. This decision is issued by or on November 26, 2024, 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.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on September 27, 2024, and the case was transmitted to the Appeals Board on September 27, 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 section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 27, 2024.

II.

As to the merits of the petition, based upon our review of the record and for the reasons stated in the Opinion on Decision and the Report, we concur with the WCJ's findings on credibility.² We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500, 504-505].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

Accordingly, we deny reconsideration.

² We note that the parties filed a Compromise and Release in this matter on November 19, 2024. In the future, when parties have reached a settlement while a petition for reconsideration is pending, the parties should advise the Appeals Board whether they intend to withdraw the petition or otherwise have the matter returned for settlement approval. Absent any guidance from the parties, we have proceeded to issue this decision. In addition, since a WCJ may not approve a C&R while a case is pending at the Appeals Board, it is in the parties' best interest to notify the Appeals Board of a settlement or a withdrawal of a pending petition for reconsideration or removal as soon as possible. (Cal. Code. Regs., tit. 8, § 10961.)

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact issued on August 27, 2024 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 25, 2024

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

**MY PHUONG THI HUYNH
PURINTON, JIMENEZ, LABO & WU, LLP
NITKA LAW FIRM
INGBER & WEINBERG, LLP
ANDRE TRAN, HOMEOWNER
WAWANESA INSURANCE**

EDL/mc

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