

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

SHAHROOZ BIGONAH, *Applicant*

vs.

**STATE OF CALIFORNIA IHSS, legally uninsured,
administered by INTERCARE HOLDINGS INSURANCE SERVICES, INC., *Defendants***

**Adjudication Numbers: ADJ11722162; ADJ12080963
Van Nuys District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Opinion and Order Dismissing Reconsideration (Opinion) issued by the Appeals Board on July 1, 2024, which dismissed applicant's Petition for Reconsideration for failing to state the grounds upon which reconsideration was being sought and for failing to cite with specificity to the record. Applicant had sought reconsideration of the April 9, 2024 Joint Findings and Order (F&O) wherein the workers' compensation administrative law judge (WCJ) ordered a take nothing after determining applicant had failed to meet his burden of proof in establishing two injuries: an April 5, 2018 injury arising out of and/or in the course of employment (AOE/COE) to the neck, bilateral shoulders, back, right arm, bilateral hands, bilateral feet, sinuses, and arthritis and a cumulative trauma through July 24, 2018 to the neck, back, bilateral shoulders, bilateral wrists, bilateral legs, nervous system, and psyche.

Applicant now seeks reconsideration in response to our July 1, 2024 Opinion, but the Petition apparently also challenges the April 9, 2024 F&O.

We have not received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be dismissed.

We have considered the Petition, the Report, and have reviewed the record in this matter. Based upon our review of the record and the Report, which we adopt and incorporate, and for the reasons discussed below, we will dismiss the Petition.

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.

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 under the Events tab 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 August 15, 2024, and 60 days from this date is October 14, 2024. This decision was issued on or by October 14, 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.

Here, according to the proof of service for the Report and Recommendation by the WCJ, the Report was served on August 15, 2024, and the case was transmitted to the Appeals Board on August 15, 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 August 15, 2024.

II.

Turning to the Petition, there are 20 days allowed within which to file for reconsideration from a “final” decision. (Lab. Code, §§ 5900(a), 5903.) This time limit is extended by 5 calendar days to allow for service upon an address located within California. (Cal. Code Regs., tit. 8, § 10605(a)(1).) It is further 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 considered timely, a petition for 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 & 2 Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

In the instant case, our Opinion was issued on July 1, 2024. Twenty-five days from this date is July 26, 2024. Applicant therefore had until July 26, 2024 to file the Petition for Reconsideration. According to the record, applicant’s Petition was not filed until August 13, 2024. As such, it is untimely and must be dismissed.

Further, to the extent that applicant challenges the April 9, 2024 F&O, the current Petition is successive and duplicative. Additionally, we observe that on this occasion applicant provided a typed narrative rather than the form petition for reconsideration making it impossible to decipher his contentions. This renders applicant’s Petition skeletal. Applicant’s Petition is therefore subject to dismissal on the above two bases as well.

Accordingly, we dismiss applicant’s Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Opinion and Order Dismissing Reconsideration issued by the Workers' Compensation Appeals Board on July 1, 2024 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 14, 2024

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

**SHAHROOZ BIGONAH
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK**

RL/cs

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

I

INTRODUCTION

- | | |
|---------------------------------------|----------------------|
| 1. Order | 04/09/2024 |
| 2. Identity of Petitioner | Applicant |
| 3. Verification | Yes |
| 4. Timeliness | Petition is untimely |
| 5. Petition for Reconsideration Filed | 08/12/2024 |
| 6. Petitioner's Contentions: | |

- a. "Object to Opinion and Order Dismissing Reconsideration" *et al*

This matter was submitted for decision on February 6, 2024. Findings and Orders issued and were served by mail on April 9, 2024.

On April 19, 2024, Applicant in *pro per* filed a timely verified Petition for Reconsideration of the Findings and Orders. However, this Petition was dismissed, as the Petition was skeletal, failed to state the grounds upon which reconsideration was sought, and failed to cite with specificity to the record.

Applicant has apparently filed another Petition for Reconsideration, ostensibly challenging the dismissal of his prior Petition, and attempting to challenge the April 09, 2024 adverse trial decision in the first instance.

To the extent that applicant is attempting to remedy the deficiencies of his first Petition for Reconsideration by filing a replacement Petition, this replacement Petition is untimely in relation to the April 9, 2024 Order. To the extent that applicant is attempting to seek reconsideration of the July 1, 2024 WCAB Order dismissing his first Petition, applicant is neither newly aggrieved, nor would this second Petition be timely in relation to the service of that July 1, 2024 Order.

The WCJ cannot respond to the Petition on the merits; the Petition is essentially unintelligible, filled with pages of content that are simply duplicated over and over again, and references to medical articles and prior unrelated civil claims that have clearly been copied and pasted from unidentified sources.

II

RECOMMENDATION

For the reasons stated above, it is respectfully recommended that applicant's Petition for Reconsideration be DISMISSED.

DATE: 8/14/2024

Adam D. Graff

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE