

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

**SHAMIMA AKTAR, *Applicant***

**vs.**

**U.S. BANK, insured by OLD REPUBLIC INSURANCE COMPANY,  
administered by CCMSI-CANNON COCHRANE IRVINE, *Defendants***

**Adjudication Numbers: ADJ14138693; ADJ13886990  
Santa Rosa District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION AND DISQUALIFICATION**

Applicant, in pro per, filed a Petition (Other) on July 31, 2024 and a Petition for Reconsideration on October 9, 2024. These filings appear to be in response to the May 10, 2024 Findings and Order issued by the workers' compensation administrative law judge (WCJ). We will treat them as Petitions for Reconsideration and Disqualification. We have reviewed the petitions and the WCJ's Reports and Recommendation. Based on our review of the record, we will dismiss the Petitions for Reconsideration and Disqualification.

**I.**

Preliminarily, we note that former Labor Code<sup>1</sup> 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.

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

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

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, 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.

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 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 Findings and Order issued on May 10, 2024. Based on the authority cited above, applicant had until Tuesday, June 4, 2024 to seek reconsideration on a timely basis. Accordingly, the petitions filed on July 31, 2024 and October 9, 2024 are untimely and will be dismissed.

To the extent applicant requests disqualification of the WCJ, we dismiss it. WCAB Rule 10960 provides that when the WCJ and “the grounds for disqualification” are known, a petition for disqualification “shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known.” Here, the petitions are untimely.

We advise applicant that repetitive, meritless, and ineffectual filings may lead to proceedings for the purpose of declaring applicant as a vexatious litigant pursuant to WCAB rule 10430. WCAB Rule 10430 states in its totality as follows:

(a) For purposes of this rule, “vexatious litigant” means:

(1) A party who, while acting in propria persona in proceedings before the Workers' Compensation Appeals Board, repeatedly relitigates, or attempts to relitigate, an issue of law or fact that has been finally determined against that party by the Workers' Compensation Appeals Board or by an appellate court;

(2) A party who, while acting in propria persona in proceedings before the Workers' Compensation Appeals Board, repeatedly files unmeritorious motions, pleadings or other papers, repeatedly conducts or attempts to conduct unnecessary discovery, or repeatedly engages in other tactics that are in bad faith, are frivolous or are solely intended to cause harassment or unnecessary delay; or

(3) A party who has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction(s) or occurrence(s) that are the subject, in whole or in substantial part, of the party's workers' compensation case.

For purposes of this rule, the phrase finally determined" shall mean:

(i) That all appeals have been exhausted or the time for seeking appellate review has expired; and

(ii) The time for reopening under Labor Code sections 5410 or 5803 and 5804 has passed or, although the time for reopening under those sections has not passed, there is no good faith and non-frivolous basis for reopening.

(b) Upon the petition of a party, or upon the motion of any workers' compensation judge or the Appeals Board, a presiding workers' compensation judge of any district office having venue or the Appeals Board may declare a party to be a vexatious litigant.

(c) No party shall be declared a vexatious litigant without being given notice and an opportunity to be heard. If a hearing is requested, the presiding workers' compensation judge or the Appeals Board, in their discretion, either may take and consider both oral and documentary evidence or may take and consider solely documentary evidence, including affidavits or other written declarations of fact made under penalty of perjury.

(d) If a party is declared to be a vexatious litigant, a presiding workers' compensation judge or the Appeals Board may enter a prefiling order," i.e., an order which prohibits the vexatious litigant from filing, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness to Proceed, petition or other request for action by the Workers' Compensation Appeals Board without first obtaining leave of the presiding workers' compensation judge of the district office where the request for action is proposed to be filed or, if the matter is pending before the Appeals Board on a petition for reconsideration, removal or disqualification, without first obtaining leave from the Appeals Board. For purposes of this rule, a petition" shall include, but not be limited to, a petition to reopen under Labor Code sections 5410, 5803 and 5804, a petition to enforce a medical treatment award, a penalty petition or any other petition seeking to enforce or expand the vexatious litigant's previously determined rights.

(e) If a vexatious litigant proposes to file, in propria persona, any Application for Adjudication of Claim, Declaration of Readiness to Proceed, petition or other request for action by the Workers' Compensation Appeals Board, the request for action shall be conditionally filed. Thereafter, the presiding workers' compensation judge, or the Appeals Board if the petition is for reconsideration, removal or disqualification, shall deem the request for action to have been properly filed only if it appears that the request for action has not

been filed in violation of subdivision (a). In determining whether the vexatious litigant's request for action has not been filed in violation of subdivision (a), the presiding workers' compensation judge, or the Appeals Board, shall consider the contents of the request for action and the Workers' Compensation Appeals Board's existing record of proceedings, as well as any other documentation that, in its discretion, the presiding workers' compensation judge or the Appeals Board asks to be submitted. Among the factors that the presiding workers' compensation judge or the Appeals Board may consider is whether there has been a significant change in circumstances (such as new or newly discovered evidence or a change in the law) that might materially affect an issue of fact or law that was previously finally determined against the vexatious litigant.

(f) If any in propria persona Application for Adjudication of Claim, Declaration of Readiness to proceed, petition or other request for action by the Workers' Compensation Appeals Board from a vexatious litigant subject to a prefiling order is inadvertently accepted for filing (other than conditional filing in accordance with subdivision (e) above), then any other party may file (and shall concurrently serve on the vexatious litigant and any other affected parties) a notice stating that the request for action is being submitted by a vexatious litigant subject to a prefiling order as set forth in subdivision (d). The filing of the notice shall automatically stay the request for action until it is determined, in accordance with subdivision (e), whether the request for action should be deemed to have been properly filed.

(g) A copy of any prefiling order issued by a presiding workers' compensation judge or by the Appeals Board shall be submitted to the Secretary of the Appeals Board, who shall maintain a record of vexatious litigants subject to those prefiling orders and who shall annually disseminate a list of those persons to all presiding workers' compensation judges.

(Cal. Code Regs., tit. 8, § 10430.)

For the foregoing reasons,

**IT IS ORDERED** that the Petitions for Reconsideration and Disqualification are **DISMISSED**.

**IT IS FURTHER ORDERED** that the matter is referred to the Presiding Judge to consider the issue of whether applicant may be declared a vexatious litigant pursuant to WCAB Rule 10430 (Cal. Code Regs., tit. 8, § 10430).

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**ANNE SCHMITZ, DEPUTY COMMISSIONER**  
**CONCURRING NOT SIGNING**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**NOVEMBER 26, 2024**

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

**SHAMIMA AKTAR**  
**LAW OFFICES OF LLARENA, MURDOCK, LOPEZ & AZIZAD**

**PAG/es**

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