

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

JOSHUA MURPHY, *Applicant*

vs.

**MATTHEWS SKYLINE LOGGING, INCORPORATED, insured by CALIFORNIA
INSURANCE COMPANY, administered by APPLIED RISK, *Defendants***

**Adjudication Number: ADJ12440587
Santa Rosa 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, the petition is successive and must be dismissed.

It is well settled that where a party fails to prevail on a petition for reconsideration, the Appeals Board will not entertain a successive petition by that party unless the party is newly aggrieved. (*Goodrich v. Industrial Acc. Com.* (1943) 22 Cal.2d 604, 611 [8 Cal.Comp.Cases 177]; *Ramsey v. Workmen's Comp. Appeals Bd.* (1971) 18 Cal.App.3d 155, 159 [36 Cal.Comp.Cases 382]; *Crowe Glass Co. v. Industrial Acc. Com. (Graham)* (1927) 84 Cal.App. 287, 293-295 [14 I.A.C. 221].) As stated in our en banc opinion in *Navarro v. A & A Framing* (2002) 67 Cal.Comp.Cases 296, 299 (Appeals Board en banc):

The general rule is that where a party has filed a petition for reconsideration with the Board, but the party does not prevail on that petition for reconsideration, the petitioning party cannot attack the [Appeal's] Board's action by filing a second petition for reconsideration; rather, the petitioning party must either be bound by the [Appeals] Board's action or challenge it by filing a timely petition for writ of review.

The only exception to this general rule occurs when, although the petitioning party does not prevail on its original petition for reconsideration, the Appeals Board's decision is based on some new

and additional evidence not presented at the time of trial. In this limited circumstance only, the original petitioner may properly file a second petition for reconsideration because the Appeals Board's decision is based on a new record. (*Pacific Employers Ins. Co. v. Industrial Acc. Com. (Mazzanti)* (1956) 139 Cal.App.2d 22, 25-26 [21 Cal.Comp.Cases 46].)

Here, the petition for reconsideration raises the same issues and arguments that were raised in an earlier petition for reconsideration in which petitioner did not prevail. Furthermore, no new evidence was accepted or considered at the time of the Appeals Board's decision on the original petition. Accordingly, the current petition for reconsideration must be dismissed as successive.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 4, 2021

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

**JOSHUA MURPHY
MICHAEL SULLIVAN**

PAG/bea

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