

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

**ANGELICA FUENTES, *Applicant***

**vs.**

**STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS AND  
REHABILITATION – CTF SOLEDAD, legally uninsured; STATE COMPENSATION  
INSURANCE FUND / STATE CONTRACT SERVICES, Adjusting Agency, *Defendants***

**Adjudication Number: ADJ15488412  
Salinas District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact, Awards and Orders (FA&O) issued by the workers' compensation administrative law judge (WCJ) on January 10, 2025, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and in the course of employment (AOE/COE) to her nervous system and psyche, via cumulative trauma through September 20, 2021; that applicant was temporarily totally disabled from September 20, 2021 to the present, less credit for wages paid, subject to 104-week cap; that there is no factual basis for apportionment; and that there is need for further medical treatment.

Defendant contends that applicant's psyche injury was caused by her fear of contracting COVID, which was due in part to her being uniquely vulnerable to COVID as a result of her previous cancer diagnosis; that her previous cancer and treatment are non-industrial and are 70% responsible for causing her psyche injury; and that applicant has not met her burden to prove that her psyche injury was pre-dominantly industrially caused.

We received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied as untimely.

Defendant filed a “Petition to Establish Good Cause to File Supplemental Pleading,” and a “Proposed Supplemental Pleading,” in which defendant requested that we address the merits of the Petition for Reconsideration, despite the late filing. Pursuant to WCAB Rule 10964(a), we have accepted and considered defendant’s supplemental pleading. (Cal. Code Regs., tit. 8, § 10964(a).)

We have considered the allegations in the Petition, the Answer, the Supplemental Pleading, and the contents of the Report, and we have reviewed the record in this matter. Based on our review of the record, the Petition is untimely and must be dismissed.

## **DISCUSSION**

### **I.**

Former Labor Code section 5909<sup>1</sup> 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 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 February 13, 2025, and 60 days from the date of transmission is April 14, 2025. This decision is issued by or on April 14, 2025, so that we have timely acted on the petition as required by section 5909(a).

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<sup>1</sup> All section references are to the Labor Code, unless otherwise indicated.

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 WCJ, the Report was served on February 13, 2025, and the case was transmitted to the Appeals Board on February 13, 2025. 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 February 13, 2025.

## 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).) In addition, an electronically transmitted document submitted to EAMS, and “received electronically after 5:00 pm of a court day...shall be deemed filed as of the next court day.” (Cal. Code Regs., tit. 8, § 10206.3(a).)

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].)

The petition in this matter was submitted to the Electronic Adjudication Management System (EAMS) after 5:00 pm on February 4, 2025. Thus, it was filed on February 5, 2025, as

mandated by Rule 10206.3 and our WCAB Rule 10615(b). (Cal. Code Regs., tit. 8, §§ 10206.3(a), 10615(b).) The filing date was more than 25 days after the service of the WCJ's decision on January 10, 2025, and beyond whatever extension of time, if any, the petitioner might have been entitled to under WCAB Rule 10600. Therefore, the Petition for Reconsideration is untimely and subject to dismissal.

We note that defendant concedes in its Supplemental Pleading that the Petition was untimely. (2/19/25 Supplemental Pleading, at p. 1.) Defendant requests that we consider the Petition on the merits, despite this error. (*Id.*, at p. 2.) As the time limit for filing a petition for reconsideration is jurisdictional, we have no authority to consider or act upon an untimely petition and will not do so here. (*Maranian, supra*, 81 Cal.App.4th at p. 1076; *Rymer v. Hagler, supra*, 211 Cal.App.3d at p. 1182; *Scott, supra*, 122 Cal.App.3d at p. 984; *Hinojoza, supra*, 201 Cal.App.2d at p. 549.)

However, we note that even if the petition had been timely, we would have denied it on the merits for the reasons stated in the WCJ's report.

Accordingly, we dismiss the petition.

### III.

Defendant also requests correction of a typographical error in the WCJ's Opinion on Decision. (Defendant's Petition for Correction of Clerical Error in the 1/10/25 Findings and Award.) In the Report, the WCJ acknowledged the clerical error and ordered a correction of page 14 of the Opinion. (Report, at p. 9.) We decline to take any further action, as correction of the Opinion is within the purview of the WCJ, and the Opinion has been corrected by the WCJ. We observe that the corresponding finding of fact in the FA&O was entered correctly, and it is the FA&O that is ultimately enforceable as a judgment. (See Lab. Code, §§ 5806, 5807.)

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER  
CONCURRING NOT SIGNING



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

**APRIL 14, 2025**

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

**ANGELICA FUENTES  
VIC R. REDULA, ESQ.  
STATE COMPENSATION INSURANCE FUND**

**MB/ara**

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

CS