

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

**EDILBERTO LOPEZ GUERRERO, *Applicant***

**vs.**

**DAVIS DEVELOPMENT COMPANY INC;  
TRAVELERS PROPERTY CASUALTY CO. OF AMERICA, *Defendants***

**Adjudication Number: ADJ19013889  
San Jose 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, and for the reasons stated below, we will dismiss the Petition for Reconsideration.

**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.

(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.

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

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 December 9, 2024, and 60 days from the date of transmission is February 7, 2025. This decision is issued by or on February 7, 2025, 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. Labor Code 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 December 9, 2024, and the case was transmitted to the Appeals Board on December 9, 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 December 9, 2024.

## II.

WCAB Rule 10842 states as follows:

All requests for an increase in attorney’s fee shall be accompanied by proof of service on the applicant of written notice of the attorney’s adverse interest and of the applicant’s right to seek independent counsel. Failure to notify the applicant may constitute grounds for dismissal of the request for increase in fee.

(Cal. Code Regs., tit. 8, § 10842.)

Here, the Petition for Reconsideration seeks an increase in attorney fees but is not accompanied by proof of service on applicant of notice of applicant's attorney's adverse interest and of applicant's right to seek independent counsel. Therefore, the Petition is subject to dismissal.

If the petition was not being dismissed for failure to comply with Rule 10842, we would have denied it on the merits for the reasons stated in the WCJ's Report.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



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

**February 7, 2025**

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

**EDILBERTO LOPEZ GUERRERO  
THE NIELSEN FIRM  
LAURA CHAPMAN**

**PAG/bp**

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