

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

**ELVIRA GARCIA, *Applicant***

**vs.**

**COUNTY OF RIVERSIDE, permissibly self-insured, *Defendants***

**Adjudication Number: ADJ11073288  
Riverside District Office**

**OPINION AND ORDER  
DISMISSING PETITION  
FOR RECONSIDERATION**

Applicant, acting in pro per,<sup>1</sup> seeks reconsideration of the Award, issued by the workers' compensation administrative law judge (WCJ) on November 4, 2024, wherein the WCJ approved Stipulations with Request for Award (Stipulations).

Applicant contends that the Stipulations were based on stale reporting and should be set aside.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied or, in the alternative, that the matter be returned to the WCJ to treat as a petition to set-aside the Award.

Defendant filed an Answer.

We have considered the allegations in the Petition and the Answer, and the contents of the Report with respect thereto.

Based on our review of the record, and as recommended by the WCJ in his Report, and for the reasons provided below, we will dismiss applicant's Petition as premature and return this matter to the trial level for consideration of the Petition as one to set aside the Award.

**BACKGROUND**

We will briefly review the relevant facts.

Applicant claimed injury to various body parts while employed by defendant as a healthcare social worker on September 20, 2017.

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<sup>1</sup> Applicant filed a Notice of Dismissal of Attorney on November 20, 2024.

On November 4, 2024, the parties entered into the Stipulations. In pertinent part, the parties stipulated that the injuries caused permanent disability of 33%.

On November 4, 2024, the WCJ issued an Award, designating service to defendant. On November 5, 2024, defendant served the Award, using a stale service list.<sup>2</sup>

On November 18, 2024, applicant filed a Petition for Reconsideration.

On November 20, 2024, applicant filed a Notice of Dismissal of Attorney.

## **DISCUSSION**

Former Labor Code section<sup>3</sup> 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.

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 2, 2024, and 60 days from the date of transmission is Friday, January 31, 2025. This decision is issued by or on January 31, 2025, so that we have timely acted on the petition as required by section 5909(a).

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<sup>2</sup> Applicant notified the parties and WCJ of a change of address on July 25, 2024. However, according to the proof of service, defendant attempted to serve applicant with the Award at a former address: 12650 Memorial Way #3164, Moreno Valley, CA 92553. By applicant’s timely Petition, we infer that applicant received the Award. We direct defendant to update their service list forthwith.

<sup>3</sup> All statutory references are to the Labor Code unless otherwise stated.

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 shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on December 2, 2024, and the case was transmitted to the Appeals Board on December 2, 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 2, 2024.

Accordingly, we dismiss applicant's Petition as premature and return the matter to the WCJ for further proceedings consistent with this opinion. We agree with the WCJ's recommendation to treat the Petition as a petition to set aside, including setting a hearing to allow the parties to provide evidence and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, any aggrieved person may then timely seek reconsideration of that decision.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ PAUL F. KELLY, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**JANUARY 31, 2025**

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

**ELVIRA GARCIA  
HANNA BROPHY  
PERONA, LANGER, BECK & HARRISON**

***JB/pm***

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

**REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION**

**I  
INTRODUCTION**

Date of Injury:	September 20, 2017
Occupation:	Healthcare Social Worker
Parts of Body Injured:	Headaches and psyche
Identity of Petitioner:	Applicant
Timeliness:	The petition was timely filed on 11/18/2024
Verification:	The petition was verified
Date of Award or Order:	November 4, 2024
Petitioner's Contentions:	Petitioner contends the WCJ erred by: Wanting further discovery, Award unjust and wants a C&R Agreement.

Petitioner, Applicant, represented by attorney Perona Langer Long Beach, filed a timely Petition for Reconsideration on November 18, 2024, challenging the Award of a 33% Stipulations with request for award dated November 4, 2024. At the time this Petition for Reconsideration was filed on November 18, 2024, the applicant is represented by Perona Langer. However, the next day on November 19, 2024, Perona Langer filed a Petition to be relieved as counsel wherein the court issued a Notice of Intention to relieve applicant's attorney on November 19, 2024.

Petitioner used the pre-filled, two-page Petition for reconsideration, WCAB Form 45, and provided additional documents titled Medical Log Records. Petitioner asserts additional evidence should have been considered, and her medical condition worsened. She seeks to have reconsideration granted. The court believes Petitioner seeks to rescind the Award issued on November 4, 2024. At the time of filing of this Report, Respondent, the defendant, did not file an Answer. It is recommended that reconsideration be denied and consider the Petition as a Petition to set aside the Award; or in the alternative, granted reconsideration but remanded to address the issue of setting aside the Award.

## **II** **DISCUSSION**

This case was set for trial on November 4, 2024. Both parties were represented by their respective attorneys, and the case resolved by way of a 33% stipulations with request for award. The Award was issued on November 4, 2024.

The applicant filed the Petition for reconsideration on November 18, 2024, stating that the Award is unjust, there are additional records that need to be considered, and the medical record is stale. She also desires to resolve the case by way of a Compromise and Release Agreement. Based on the applicant's assertions stated in the Petition, further development is necessary.

## **III** **RECOMMENDATION**

It is respectfully recommended that the Petition be denied, and the petition be considered as a request to set aside the award; or alternatively, granted reconsideration but remand to allow the parties to proceed on the issue of setting aside the Award.

Respectfully submitted,

DATE: December 2, 2024

**Eric Yee**

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE