

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

KOKAYI ELDRIDGE, *Applicant*

vs.

**CALIFORNIA HEALTH BENEFIT EXCHANGE, legally uninsured;
STATE COMPENSATION INSURANCE FUND, adjusting agency, *Defendants***

**Adjudication Numbers: ADJ16824578, ADJ16974663
Sacramento District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the “Order Dismissing Applications for Adjudication of Claim with Prejudice” (Order) of March 5, 2025, wherein the workers’ compensation administrative law judge (WCJ) dismissed applicant’s applications for adjudication. Applicant contends that she was unable to appear at the hearing due to a dental emergency and her medical condition and requested that her case be reopened.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be dismissed.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based on our review of the record, for the reasons discussed below, we will dismiss the Petition for Reconsideration.

FACTS

Applicant claimed cumulative injury to her nervous system, respiratory system, and mouth while employed by defendant as a program technician 2 from December 14, 2021 to July 1, 2022, in case ADJ16824578. Applicant claimed a specific injury to her nervous system and back while employed by defendant as a program technician 2 on December 14, 2021, in case ADJ16974663.

Applicant and her attorney were present at the hearing on March 7, 2024; the WCJ granted applicant's request to continue the hearing. (3/7/24 Minutes of Hearing (MOH), p. 1.)

Applicant's initial attorney was relieved as counsel on March 8, 2024. The WCJ granted applicant's request to continue the hearing scheduled for May 9, 2024. (5/9/24 MOH, p. 1.) After initially denying applicant's request to continue the hearing scheduled for June 20, 2024 (6/4/24 Order Denying Request for Continuance, p. 1), the WCJ continued that hearing to August 1, 2024, and ordered applicant's prior attorney to serve her file on her within 10 days. (6/20/24 MOH, p. 1.)

Applicant did not appear at the hearing on August 1, 2024; the WCJ ordered her to appear at the next hearing and to complete the Pre-Trial Conference Statement (PTCS) by then. (8/1/24 MOH, p. 1.) Applicant did not appear at the hearing on September 12, 2024, but called in to say she was unable to be present due to a family emergency. (9/12/24 MOH, p. 1.) The WCJ ordered her to appear at the next hearing. (9/21/24 MOH, p. 1.) Applicant did not appear at the hearing on November 7, 2024, due to a death in the family and the hearing was continued. (11/7/24 MOH, p. 1.)

At the hearing on December 5, 2024, defendant completed the PTCS stating that applicant claimed industrial injury to her psyche and that the issue for trial was whether the injury arose out of and in the course of employment (AOE/COE). The WCJ ordered that applicant had five days from the date of service to amend the PTCS and file it with the court. The WCJ served the PTCS on December 5, 2024.

Applicant did not appear at the hearing on January 28, 2025; defendant was able to reach her by phone, and she stated that she needed time to retain an attorney. (1/28/25 MOH, p. 1.) The WCJ then issued a "Notice of Intention to Issue Order Dismissing Application for Adjudication of Claim with Prejudice" (NIT) that the WCJ would dismiss both of applicant's applications for adjudication if she did not file a written objection within 10 days. Based on our review, no objection was filed.

On February 3, 2025, defendant State Compensation Insurance Fund (SCIF) served the NIT and the January 28, 2025 MOH on the parties. (2/3/25 Proof of Service for Trial 1/28/25; NIT to Dismiss Claim with Prejudice, pp. 1-2.)

On March 5, 2025, the WCJ issued the Order. The Order stated:

Following a Notice of Intention with No Objection:

GOOD CAUSE APPEARING:

Applicant failed to appear at a duly noticed trial. Based on the failure to appear either in person or via a representative, the Applications for Adjudication of Claim in ADJ16824578 and ADJ16974663 are hereby dismissed. The applications are dismissed with prejudice.

(Order, p. 1.) The Order was served by mail and email on the parties on March 5, 2025, with all service recipients located in California. (Order, p. 2.)

Applicant filed her first Petition for Reconsideration on March 11, 2025 of that Order. On May 12, 2025, the Appeals Board issued an Opinion and Order Dismissing Petition for Reconsideration (Opinion & Order); the case was returned to the trial level with the recommendation that the WCJ treat that Petition for Reconsideration as a petition to set aside and set a hearing on the matter.

At the hearing on June 12, 2025, the WCJ set a mandatory settlement conference (MSC) for July 17, 2025, and ordered the parties to complete the PTCS. Attorneys for both parties were present at that hearing. At the MSC on July 17, 2025, applicant, her attorney, and defendant's attorney were all present. The WCJ continued the MSC to August 28, 2025, to allow additional time for the parties to complete the PTCS. On July 17, 2025, applicant filed a Petition to Reschedule MSC and Set Status Conference and Discovery.

Also on July 17, 2025, applicant refiled her prior Petition for Reconsideration. On July 18, 2025, the WCJ issued an order taking the August 28, 2025 MSC off calendar (OTOC) pending return from reconsideration.

DISCUSSION

I.

Former Labor Code¹ 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.

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 July 18, 2025, and 60 days from the date of transmission is September 16, 2025. This decision is issued by or on September 16, 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. 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 July 18, 2025, and the case was

¹ All further statutory references are to the Labor Code unless otherwise noted.

transmitted to the Appeals Board on July 18, 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 July 18, 2025.

II.

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 is identical to 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 and duplicative. We caution applicant against filing any more successive or duplicative petitions for reconsideration. Instead, applicant should

wait to file any new petitions for reconsideration until there is an order by which applicant is aggrieved.

III.

Finally, we note that in our Opinion and Order of May 12, 2025, we dismissed applicant's earlier petition for reconsideration and returned the matter to the trial level with the recommendation that the WCJ treat the petition as a petition to set aside and set a hearing on the matter. The WCJ had set the matter for an MSC and directed the parties to submit a PTCS. Upon return to the trial court, we recommend that the WCJ set a new date for the MSC or set the matter for a status conference. It may be helpful for applicant to receive assistance from her attorney or from the Information and Assistance Officer at the district office. 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 the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 15, 2025

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

**KOKAYI ELDRIDGE
PATRICK CHRISTOFF, ESQ.
STATE COMPENSATION INSURANCE FUND**

JMR/abs

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