

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

ROBERTO GUEVARA, *Applicant*

vs.

**PLAZA DE MARISCOS;
STATE COMPENSATION INSURANCE FUND., *Defendants***

**Adjudication Number: ADJ7238534
Marina del Rey District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the “First Amended Findings of Fact and Order” (F&O) issued on August 20, 2025, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant failed to prove industrial injury in the form of cumulative trauma and ordered that applicant take nothing on his claim.

Applicant contends that the findings are not based upon substantial medical evidence.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ’s Report. Based on our review of the record we will dismiss applicant’s petition for reconsideration as it was not timely filed and thus, we do not have jurisdiction to consider it. However, if we were able to consider the petition on the merits, we would otherwise deny the petition for the reasons discussed in the WCJ’s Report.

DISCUSSION

I.

Former 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.

(§ 5909.)

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 October 1, 2025, and 60 days from the date of transmission is Sunday, November 30, 2025, which by operation of law means this decision is due by Monday, December 1, 2025. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on December 1, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on October 1, 2025, and the case was transmitted to the Appeals Board on October 1, 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 October 1, 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, § 10507(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, § 10508.) To be timely, however, a petition for reconsideration must be filed (i.e., received) within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10845(a), 10392(a).)

This time limit is jurisdictional and therefore, the Appeals Board has no authority to act upon or consider an *untimely* petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal. App. 4th 1068, 1076 [97 Cal. Rptr. 2d 418, 65 Cal. Comp. Cases 650, 656]; *Rymer v. Hagler* (1989) 211 Cal. App. 3d 1171, 1182, 260 Cal. Rptr. 76; *Scott v Workers' Comp. Appeals Bd.* (1981) 122 Cal. App. 3d 979, 984 [176 Cal. Rptr. 267, 46 Cal. Comp. Cases 1008, 1011]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal. App. 2d 545, 549 [27 Cal. Comp. Cases 73, 75–76].)

Here, the F&O was served on August 20, 2025. The 25-day period ran through Sunday, September 14, 2025, which meant that applicant had until Monday, September 15, 2025, to file the petition for reconsideration. Applicant filed the petition on September 20, 2025, which is untimely. Thus, the Appeals Board does not have jurisdiction to hear the petition.

However, even if we were to decide the matter on the merits, we would otherwise have denied the petition based upon the WCJ’s analysis contained in the Report.

Accordingly, we dismiss applicant’s petition for reconsideration as untimely.

For the foregoing reasons,

IT IS ORDERED that applicant's petition for reconsideration of the First Amended Findings of Fact and Order issued on August 20, 2025, by the WCJ is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 25, 2025

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

**ROBERTO GUEVARA
SCIF INSURED
ALCALA ASSOCIATES**

EDL/mt

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