

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

JHONNY ARTURO AREVALO NAVARRO, *Applicant*

vs.

**SANTA ANA CORPORATION FITNESS, INC. dba GOLDS GYM;
THE HARTFORD, *Defendants***

**Adjudication Number: ADJ10199818
Pomona District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

On June 12, 2023 we issued an Opinion and Order Dismissing applicant's Petition for Reconsideration filed on April 11, 2023 because it was untimely. Applicant subsequently filed this Petition for Reconsideration (Petition) on June 24, 2023 seeking to show that their April 11, 2023 petition (first petition) was timely. Defendant filed an Answer. We have considered the allegations of the Petition for Reconsideration, the Answer and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, the Petition is untimely, unverified and must be dismissed. If the Petition had been timely and verified, we would have denied it on the merits for the reasons stated in the WCJ's report and for the reasons discussed below.

There are 20 days allowed within which to file a petition for reconsideration from a "final" decision. (Lab. Code, §§ 5900(a), 5903.) This time is extended by 5 calendar days if service is made to an address within California or 10 calendar days if service is made to an address outside of California but within the United States. (Cal. Code Regs., tit. 8, § 10605(a)(1).) While applicant received service of the decision within California, defendant was served at an address outside of California.

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].)

In this case, we issued our decision on June 12, 2023. Based on the authority cited above, if the time to file is extended by 10 days based on defendant's out-of-state address, applicant had until Wednesday, July 12, 2023 to seek reconsideration in a timely manner. The record here shows that applicant's petition is date stamped received on July 14, 2023, making it untimely and subject to dismissal.

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].)

Additionally, Labor Code section 5902 requires that a petition for reconsideration be verified. (Lab. Code, § 5902; see also Cal. Code Regs., tit. 8, § 10510(d).) In *Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425 (Significant Panel Decision), it was held that where a petition for reconsideration is not verified as required by section 5902, the petition may be dismissed if the petitioner has been given notice of the defect (either by the WCJ's report or by the respondent's answer) unless, within a reasonable time, the petitioner either: (1) cures the defect by filing a verification; or (2) files an explanation that establishes a compelling reason for the lack of verification and the record establishes that the respondents are not prejudiced by the lack of verification.

Here, the Petition for Reconsideration is not verified and notice of this defect was specifically in the WCJ's report. (WCJ Report, p. 3.). Moreover, a reasonable period of time has elapsed, but petitioner has neither cured the defect by filing a verification nor offered an explanation of why a verification cannot be filed.

If the Petition had been timely and verified, we would have denied it on the merits. As detailed in our June 12, 2023 Order, applicant had until Wednesday, February 8, 2023 to seek reconsideration of the WCJ's January 9, 2023 decision in a timely manner. (Lab. Code, §§ 5900(a), 5903, Cal. Code Regs., tit. 8, § 10605(a)(1).) The record showed that applicant's petition was date stamped received on April 11, 2023, thus subject to dismissal. Applicant includes in this

instant Petition a United States Postal Service (USPS) tracking receipt dated February 22, 2023, with no description of the contents or recipient, to support their assertion that the first Petition was delivered by USPS on February 24, 2023. First, we note that this is still after February 8, 2023 and thus, the first petition would have still been untimely and subject to dismissal. Furthermore, the USPS receipt does not establish a contrary filing date because a petition is filed when received, and applicant has submitted no offer of proof as to receipt of the petition. (Cal. Code Regs., tit. 8, § 10615(b), (c). Applicant's first petition contains a district office "received" stamp of April 11, 2023 and applicant fails to rebut the filing date established by the receipt of the first petition by the district office.

Accordingly, we will dismiss the petition.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ NATALIE PALUGYAI, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 12, 2023

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

**JHONNY ARTURO AREVALO NAVARRO (Pro Per)
MANNING KASS LAW FIRM**

LN/pm

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