

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

JENNA MCCOMBIE, *Applicant*

vs.

**REA-2003-1, LLC, A DELAWARE LIMITED
LIABILITY COMPANY, dba SADDLE RANCH CHOP HOUSE;
EMPLOYERS COMPENSATION INSURANCE COMPANY *Defendants***

**Adjudication Numbers: ADJ10336948, ADJ10597290, ADJ10354411
Van Nuys District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

On May 18, 2022, applicant, in pro per, filed a document entitled "WCAB COMMISSIONER CLARIFICATION NEEDED" regarding the Opinion and Decision After Reconsideration we issued on April 21, 2022. We will treat applicant's document as a Petition for Reconsideration. Based on our review of the record, we will dismiss the Petition for Reconsideration as untimely and successive.

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, § 10605(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, § 10600.) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

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 Opinion and Decision After Reconsideration on April 21, 2022. Based on the authority cited, above, applicant had until Monday, May 16, 2022 to seek reconsideration on a timely basis. Therefore, the Petition for Reconsideration filed on May 18, 2022 is untimely and subject to dismissal.

In addition, 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 IAC 221].). As stated in our en banc opinion in *Navarro v. A & A Framing* (2002) 67 Cal.Comp.Cases 296, 299:

“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.”

If applicant wished to challenge our April 21, 2022 Opinion and Decision After Reconsideration, it would have been appropriate for her to seek a writ of review from the Court of Appeals. It is improper for applicant to file multiple petitions for reconsideration that attempt to relitigated issues that have been finally determined against her.

If we had considered the merits of applicant’s petition, we would have denied it for the reasons stated in our April 21, 2022 Opinion and Decision After Reconsideration, which we incorporate here.

Finally, we note that record of proceedings for WCAB consists of the following:

[T]he pleadings, minutes of hearing, summaries of evidence, certified transcripts, proofs of service, admitted evidence, exhibits identified but not admitted as evidence, notices, petitions, briefs, findings, orders, decisions and awards, opinions on decision, reports and recommendations on petitions for reconsideration and/or removal, and the arbitrator’s file, if any. Each of these documents is part of the record of proceedings, whether maintained in paper or

electronic form. Documents that are in the adjudication file but have not been received or offered as evidence are not part of the record of proceedings.

(Cal. Code Regs., tit. 8, § 10803(a)(2).

We thoroughly reviewed the entire record of proceedings in this case in previously denying applicant's claim. Had there been additional audio recordings of proceedings and/or transcriptions of those recordings, we would not have been authorized to consider or rely on them. (Lab. Code, § 5708.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 18, 2022

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

**JENNA MCCOMBIE, IN PRO PER
WOOD SMITH LAW FIRM**

PAG/abs

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