

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

**ELLEANA LOPEZ, *Applicant***

**vs.**

**JERSEY MIKES; FARMERS OKLAHOMA CITY, *Defendants***

**Adjudication Number: ADJ16301127  
Van Nuys District Office**

**OPINION AND DECISION AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant sought reconsideration of the dismissal order issued by the workers' compensation administrative law judge (WCJ) on December 23, 2022. Applicant contends that after asking for the matter to be dismissed, she changed her mind and now wants to pursue the matter.

We received a Report and Recommendation (Report) from the WCJ, wherein he recommends that the Petition for Reconsideration be denied. We did not receive an answer from defendant.

We have considered the allegations of the Petition for Reconsideration (Petition) and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the WCJ's order, and return this matter to the trial level for further proceedings consistent with this decision.

**FACTUAL BACKGROUND**

Applicant claimed cumulative injury to multiple body parts, while employed by defendant, Jersey Mikes, during the period from August 27, 2021 to May 13, 2022.

On October 11, 2022, an undated request to dismiss form was signed and filed by applicant. It was served on all parties on October 11, 2022.

On December 23, 2022, the WCJ issued an order, dismissing the matter without prejudice. The order was served on December 30, 2022.

On December 29, 2022, one week after the dismissal order was issued, but before it was served, applicant's counsel filed and served a Petition for Reconsideration on applicant's behalf. In it, counsel wrote, "On December 29, 2022, the Applicant contacted the undersigned counsel and changed her mind, stating she now wishes to continue with her case and confirmed she would participate if the Court would allow the case to proceed." Counsel requested that, based on this change of circumstance, the dismissal order be rescinded.

The WCJ's January 3, 2023 Report recommended that the request to reopen be denied because applicant did not include evidence in her petition to support her claim of changed circumstances. The WCJ concluded that there was no good cause presented that justifies the rescinding of the dismissal order and explained that applicant is free to file a new claim if she wishes to do so.

### **DISCUSSION**

Dismissal of a petition, at applicant's request, is governed by WCAB Rule 10850(a), which requires that upon request by the employee for dismissal, "orders of dismissal of applications for adjudication of claim shall issue forthwith." (Cal. Code Regs., tit. 8, § 10850(a).)

"The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4]...At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor." (Lab. Code, § 5803.) "No award of compensation shall be rescinded, altered, or amended after five years from the date of injury except upon a petition by a party in interest filed within such five years..." (Lab. Code, § 5804.) An appropriate pleading must be filed with the Appeals Board within five years of the date of injury to invoke the Appeals Board's continuing jurisdiction. (Lab. Code § 5804; *Bland v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 324, 329, fn. 3 [35 Cal.Comp.Cases 513].) When applicant's pleading is timely filed, no good cause is required to rescind, alter or amend an award of compensation. (Lab. Code, § 5804.)

In determining whether the WCAB has continuing jurisdiction, pleadings filed prior to the expiration of the five-year time limitation are liberally construed. (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920 [72 Cal.Comp.Cases 778].)

A Petition for Reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one that either

“determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].)

The prior dismissal of an applicant’s claim “without prejudice” had the effect of terminating the proceedings before the WCAB. (*Nolan v. Workers’ Comp. Appeals Bd.* (1977) 70 Cal.App.3d 122, 128 [42 Cal.Comp.Cases 401].) A dismissal without prejudice leaves a case as if no application had been filed, therefore, an applicant may reopen a dismissed claim as long as the petition is filed within five years of the date of injury. (*Associated Indemnity Co. v. WCAB (Jacobowitz)* (1969) 34 Cal.Comp.Cases 70 (writ den.)) To re-open a claim after a dismissal without prejudice, a party must file an opening document such as another Application for Adjudication of Claim under WCAB Rule 10455 or a Petition to Reopen under WCAB Rule 10534, subject to the time limits imposed by the statute of limitations. (Cal. Code Regs., tit. 8, §§ 10455(a), 10534.) A Petition for Reconsideration may be considered an opening document for purposes of re-initiating a claim.

Article XIV, section 4 of the California Constitution mandates that the workers’ compensation law shall be carried out “...to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character...” The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].)

Here, applicant’s Petition for Reconsideration was timely, as it was filed only one week after the matter was dismissed, and prior to the service of the dismissal order. (Lab. Code, § 5804.) Her petition met the requirement that it challenge a final order, as the dismissal order in this matter constituted a final order granting an award of compensation of zero dollars. (Lab. Code, §§ 5900(a), 5902, 5903.) WCAB has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division. (Lab. Code, § 5803.) We liberally construe applicant’s Petition for Reconsideration as a Petition to Reopen. (Cal. Code Regs., tit. 8, § 10534.)

Accordingly, we rescind the December 23, 2022 Order Dismissing Case, and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the December 23, 2022 Order Dismissing Case is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



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

**MARCH 29, 2024**

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

**ELLEANA LOPEZ  
THE LAW OFFICES OF ROBERT OZERAN  
FARMERS INSURANCE**

**MB/ara**

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