

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

JOSE F. VILLEGAS, *Applicant*

vs.

**MARQUEZ BROTHERS INTERNATIONAL, INC.;
TRAVELERS; MISSION FOODS;
CNA adjusted by BROADSPIRE, *Defendants***

**Adjudication Number: ADJ10837400
Fresno District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration 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 and must be dismissed.

There are 30 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address outside 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, the WCJ issued the Findings of Fact, Award on October 31, 2023. Based on the authority cited above, petitioner had until Thursday, November 30, 2023 to seek reconsideration on a timely basis. Therefore, the Petition for Reconsideration filed on December 4, 2023 is untimely and will be dismissed.

If the petition had been timely, we would have denied it on the merits for the reasons stated in the WCJ's report.

Finally, we admonish petitioner for citing the unpublished decision of *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd. (Mackie)* (1984) 49 Cal.Comp.Cases 673 (nonpub. opn.). (California Rules of Court, rule 8.1115(a).)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER



/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 2, 2024

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

**JOSE F. VILLEGAS
MITCHELL & POWELL
LAUGHLIN, FALBO, LEVY & MORESI
LAW OFFICES OF SASSAO & FLEISCHER**

PAG/abs

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