

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

JOSEPH MAYOR,

Petitioner,

vs.

**WORKERS' COMPENSATION
APPEALS BOARD and ROSS VALLEY
SANITATION DISTRICT,**

Respondents.

Case No. S287261

**RESPONDENT'S ANSWER TO AMICUS CURIAE
AMERICAN PROPERTY CASUALTY INSURANCE
ASSOCIATION**

First Appellate District, Division Four, Case No. A169465
Workers' Compensation Appeals Board, Case No. ADJ10036954

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RESPONDENT'S ANSWER TO AMICUS CURIAE
AMERICAN PROPERTY CASUALTY INSURANCE
ASSOCIATION

TO THE HONORABLE PATRICIA GUERRERO, CHIEF JUSTICE, AND
TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME
COURT OF THE STATE OF CALIFORNIA:

The Appeals Board has received and reviewed the brief of amicus curiae American Property Casualty Insurance Association (hereinafter "Amicus Brief") and pursuant to Rule of Court 8.520(f)(7) files this Answer.

- I. The Amicus Brief predominantly addresses the validity of the Appeals Board's "grant for further study" orders, an issue already resolved by the Court of Appeal, and not currently before this Court.**

Pursuant to this Court's Case Summary, this case presents the following issues:

- (1) May the Workers' Compensation Appeals Board apply equitable tolling to act upon a petition for reconsideration beyond the 60-day period provided in Labor Code section 5909, when the Appeals Board did not receive the petition for reconsideration until after the 60-day period has elapsed?

(2) Did the Court of Appeal act in excess of its jurisdiction in granting relief under traditional mandate (Code Civ. Proc., § 1085), where petitioner did not file a timely petition for writ of review pursuant to Labor Code section 5909?

(Case Summary; see Docket Order Granting Review, December 11, 2024.)

Throughout its Brief, amicus primarily argues against the Appeals Board's ability to issue a *timely* order granting reconsideration for further study *within 60 days* pursuant to Labor Code¹ section 5909², and then issue its decision after reconsideration at a later date. This is not the issue before this Court. The relevant issue under review is whether the Appeals Board may toll the time period in section 5909 when the petition for reconsideration was not transmitted by the Division of Workers' Compensation (DWC) to the Appeals Board until *after* the expiration of the 60-day period.³

Amicus conflates the issues raised in this case with those that were raised in a different case: *Earley v. Workers' Compensation Appeals Board* (2023) 94 Cal.App.5th 1 ("*Earley*"). For example, amicus states: "Exercising so-called '*Shiple*y tolling,' the WCAB issues a boilerplate order within 60 days stating simply that the petition merits 'further study.'" (Amicus Brief, p. 10.) This is incorrect. Equitable tolling under *Shiple*y v. *Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104 ("*Shiple*y") is not the same as the grant for further study issue addressed in *Earley*.

In *Earley*, the court found that the Appeals Board's use of form orders to grant reconsideration for further study violated section 5908.5, as the form

¹ All future references are to the Labor Code unless noted.

² Unless otherwise noted, reference to section 5909 throughout this brief refers to former section 5909, Stats 1992, ch. 1226, § 5, which is at issue.

³ The issue of whether traditional mandate was properly applied was not addressed in the Amicus Brief. Accordingly, we do not discuss the issue in this response.

order failed to state the evidence relied upon and specify in detail the reasons for the decision. (*Earley, supra*, 94 Cal.App.5th at p. 18.) The Appeals Board was ordered to “end its practice” of using form orders granting petitions for reconsideration. (*Ibid.*) The *Earley* court directed that when granting reconsideration for further study, the Appeals Board must “. . . explain in its order granting reconsideration why it made the decision to grant reconsideration based upon the evidence in the particular case.” (*Id.* at p. 10.)

Amicus’s concern regarding whether the Appeals Board may grant reconsideration for further study and then issue a decision at a later date was directly resolved in *Earley* as follows:

Contrary to the Petitioners’ further argument, the Board is not required to issue a final ruling on the merits within 60 days.

The Petitioners maintain that reading sections 5909 and 5315 together means the Board must finally resolve a petition for reconsideration within 60 days. Statutory text invalidates this proposed interpretation. We turn to that text.

We repeat our quotation of section 5909: “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 of filing.”

This section does not state the Board must issue a final decision on the merits of a petition within 60 days.

Next we quote the other provision on which Petitioners rely, section 5315: “Within 60 days after the filing of the findings, decision, order or award, the appeals board may confirm, adopt, modify or set aside the findings, order, decision, or award of a workers’ compensation judge and may, *with or without further proceedings*, and with or without notice, enter its order, findings, decision, or award based upon the record in the case.” (Italics added.)

The fact that “further proceedings” are permissible before the Board enters its own order means that the initial order setting aside the workers’ compensation decision need not be final. (§ 5315.)

(*Earley, supra*, 94 Cal.App.5th at p. 12.)

The court in *Earley* based its ruling, in part, upon a prior ruling of this Court:

Our Supreme Court has also explained that “[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory limitation none will be implied.” (*Gonzales v. Industrial Acc. Com.* (1958) 50 Cal.2d 360, 364 [325 P.2d 993].) Petitioners argue that this statement in *Gonzales* is dicta; we disagree and read the statement as necessary to the ruling but would count it as compellingly persuasive authority even were it a dictum. (Citation.)

(*Earley, supra*, 94 Cal.App.5th at p. 15.)

A second Court of Appeal has since considered this holding from *Earley* and noted: “We agree with our colleagues in *Earley* that section 5909 does not require the Board to issue a final ruling on a petition for reconsideration within 60 days.” (*Zurich v. Workers’ Comp. Appeals Bd.* (2023) 97 Cal.App.5th 1213, 1230 (“*Zurich*”) [internal citations omitted].)

To the extent the Amicus Brief invites the Court to take up the grant for further study issue, which is not raised in this case, the Court should decline. The grant for further study issue has been resolved by the court of appeal in *Earley*, and, as the *Earley* court points out above, is supported by this Court’s decision in *Gonzales v. Industrial Acc. Com.* (1958) 50 Cal.2d 360, 364. Amicus improperly attempts to conflate the equitable tolling issue in this case with the issue raised in *Earley* and omits material relevant case law that is contrary to its position. For all of these reasons, the Appeals Board respectfully asserts that the Amicus Brief is not persuasive on this point.

II. Equitable tolling is not precluded by section 5909.

On the relevant issue presented in this case, amicus is simply incorrect that equitable tolling does not apply. Amicus’s own authority supports this conclusion. All statutes are presumed to be subject to equitable tolling. (*Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710, 720 (“*Saint Francis*”).) The presumption that a statutory limitations period is subject to equitable tolling is rebuttable. (*Law Finance Group, LLC v. Key* (2023) 14 Cal.5th 932, 952-953.) However, there is no language in section 5909 that evidences a legislative intent to preclude the application of tolling. As this Court has noted, in other statutes the Legislature has included language stating that the statute “shall not be tolled or extended for any reason.” (*Id.* at p. 953.) Such language is absent in section 5909. The only reasonable conclusion from its absence is that the Legislature did not intend to preclude tolling.

Amicus claims that equitable tolling is precluded by section 5909 because the statute contains ‘deemed denied’ language. Amicus argues: “The WCAB does not cite a single statutory deadline with deemed-denied language that has been interpreted as subject to equitable tolling—nor is amicus aware of any.” (Amicus Brief, p. 19.) Contrary to amicus’ argument, the Appeals Board has repeatedly cited this Court’s holding in *J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648, which found that the Government Claims Act was subject to equitable tolling, notwithstanding the fact that such claims may be deemed denied per the statute. (*Id.* at p. 657 [“The doctrine of equitable tolling may also apply to the limitation periods imposed by the claims statutes.”].)

Examination of the manifest statutory policy underlying a statute may also demonstrate whether tolling may be applied. (*Law Finance Group, LLC,*

supra, 14 Cal.5th at p. 953.) Amicus argues that the manifest policy of workers' compensation is to resolve cases expeditiously. (Amicus Brief, pp. 20-21.) Amicus focuses on the adverb "expeditiously" in the Constitution; however, amicus omits the full context of the constitutional passage, which is: "such legislation shall **accomplish substantial justice** in all cases expeditiously, inexpensively, and without incumbrance of any character[.]" (Cal. Const., art. XIV, § 4.)

Amicus argues that the Appeals Board should deny cases by operation of law without any review so long as the denials issue quickly. This argument is not supported by a plain reading of the Constitution. The purpose of the workers' compensation system is not to accomplish technical application of the law expeditiously; the workers' compensation system must accomplish *substantial justice* expeditiously. It is axiomatic that substantial justice is "[j]ustice fairly administered according to the rules of substantive law, regardless of any procedural errors not affecting the litigant's substantive rights; a fair trial on the merits." (Black's Law Dictionary (7th ed. 1999); see also, *Dennis v. State of California* (2020) 85 Cal.Comp.Cases 389, 395 (Appeals Board en banc).) Substantial justice requires review of cases on the merits, including those cases where the application of equitable tolling may be warranted.

Equitable tolling is a narrow but vital exception to strict statutory deadlines that preserves due process, especially where procedural missteps are not the result of bad faith or strategic delay. The consequence of amicus' argument that the sole priority is to move cases quickly through the system without review on the merits is a clear denial of procedural due process under both the State and Federal Constitutions. As explained by the Supreme Court in *Mathews v. Eldridge* (1976) 424 U.S. 319:

This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest. (Citations.) The “right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.” (Citation.) The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” (Citation.)

(*Id.* at p. 333.)

Once a statutory right of judicial review has been provided, it must comport with the guarantees of due process in the United States and the California Constitutions. (*Shipley, supra*, 7 Cal.App.4th at p. 1108; see *State Farm Fire & Casualty Co. v. Workers’ Comp. Appeals Bd. (Felts)* (1981) 119 Cal.App.3d 193, 196; see also *Rea v. Workers’ Comp. Appeals Bd. (2005) (Millbauer II)* 127 Cal.App.4th 625, 635, fn. 22; *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755].) *This is the essential holding in Shipley.*

Thus, equitable tolling must be applied in cases where a petition for reconsideration is not in the Appeals Board’s possession, such as in this case. (*Shipley, supra*, 7 Cal.App.4th at p. 1107 [“While this language appears mandatory and jurisdictional, the time periods must be based on a presumption that a claimant’s file will be available to the board; any other result deprives a claimant of due process and the right to a review by the board.”].) The fundamental right to be heard cannot be lost when a petitioner’s file is lost by the court.

III. All elements of equitable tolling are satisfied in this case.

In *Saint Francis*, this Court held that equitable tolling doctrine applies to the 30-day statutory deadline for filing a petition for a writ of

administrative mandate under Government Code section 11523. (*Saint Francis, supra*, 9 Cal.5th at p. 710.) The Court emphasized that equitable tolling may be available when three elements are met: (1) timely notice to the opposing party; (2) lack of prejudice to the opposing party; and (3) reasonable and good faith conduct by the party seeking tolling. (*Id.* at p. 724.)

Applying the *Saint Francis* standard to the facts of this case, all parties received sufficient notice. Respondent Ross Valley Sanitation District filed its petition for reconsideration timely and served it upon petitioner. (*Mayor v. Workers' Compensation Appeals Bd.* (2024) 104 Cal.App.5th 1297, 1302.) At that point, petitioner was on notice that respondent sought judicial review of the WCJ's decision. Furthermore, all parties are presumed to have knowledge of the applicable law, and pursuant to the 30-year precedent in *Shiple*, the Appeals Board could toll the period to decide petitions for reconsideration in circumstances where the Appeals Board was not in possession of the petition. (*Shiple, supra*, 7 Cal.App.4th at p. 1107.) The district office of the DWC, a division of the Department of Industrial Relations and a separate entity from the Appeals Board, accepted the petition for reconsideration for filing. (*Mayor, supra*, 104 Cal.App.5th at p. 1302.) When the petition was successfully filed, it placed all parties on notice that they could presume that the petition would be handled appropriately. (See Cal. Code Regs., tit. 8, § 10915, subd. (e) [confirmation of electronic filing means that a document has been successfully filed]; Cal. Code Regs., tit. 8, §§ 10961, 10962 [generally requiring the WCJ to prepare a report on the petition for reconsideration and transmit the report to the Appeals Board].) The fact that the DWC then failed to timely transmit the petitioner's file to the Appeals Board is due to no fault of the parties or the Appeals Board.

Furthermore, there is no prejudice to the parties from tolling section 5909. To be clear, the issue of prejudice when deciding tolling is “whether application of equitable tolling would prevent the defendant from defending a claim on the merits.” (*Saint Francis, supra*, 9 Cal.5th at p. 728.) No prejudice is alleged in this case as to petitioner’s ability to proceed on the merits. To the extent that petitioner argues that his case has been delayed, that is not the type of prejudice contemplated when deciding tolling. Furthermore, this Court has noted that such an argument would necessarily defeat application of tolling in nearly every case. (*Ibid.*)

Finally, the Court requires reasonable and good faith conduct by the party seeking tolling. “A plaintiff’s conduct must be objectively reasonable and subjectively in good faith.” (*Saint Francis, supra*, 9 Cal.5th at p. 729.) Here, the Appeals Board applied tolling on behalf of respondent so that the Appeals Board could decide the matter on the merits. At the time that this occurred, the only law that existed to cover the dispute in this matter was *Shipley*. Respondent reasonably and in good faith relied upon the *Shipley* case in not seeking a writ of review, and instead notified the Appeals Board that the petition was lost. Respondent’s conduct was objectively reasonable and subjectively in good faith because they proceeded based on a long line of similar cases where the Appeals Board applied *Shipley* tolling.

Thus, amicus is simply incorrect that equitable tolling should not apply to allow the Appeals Board to consider the lost petition. All elements of equitable tolling exist in this case.

CONCLUSION

The Amicus Brief fails to address the issues properly before this Court, relies on inaccurate factual claims unsupported by the record, and

PROOF OF SERVICE BY TRUEFILING

(Code Civ. Proc., § 1010.6; Lab. Code, § 5954; Cal. Rules of Court, Rules 8.70-8.79)

STATE OF CALIFORNIA)
)ss.
CITY AND COUNTY OF SAN FRANCISCO)

I am over 18 years of age and not a party to this action. I am employed in the county where the mailing took place. My business address is 455 Golden Gate Avenue, Suite 9328, San Francisco, CA 94102. My electronic name address is AAfficial@dir.ca.gov.

On July 1, 2025 at 7:30 P.M., I electronically served the attached RESPONDENT’S ANSWER TO AMICUS CURIAE AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION to Jorge E. Navarrete, Clerk/Executive Officer, in the matter Supreme Court Case No. S287261, Joseph Mayor v. Workers’ Compensation Appeals Board and Ross Valley Sanitation District [WCAB Case No. ADJ10036954], and on the parties registered for electronic service through TrueFiling.

<p><u>Supreme Court (TrueFiling):</u> Jorge E. Navarrete Clerk/Executive Officer Supreme Court of California 350 McAllister Street San Francisco, CA 94102-4797</p>	<p><u>Counsel for Petitioner, Joseph Mayor (TrueFiling):</u> Elizabeth Hudson, Esq. beth@shoemakerlawoffices.com Shoemaker Law Offices 150 Glen Cove Marina Rd. E, Ste. 103 Vallejo, CA 94591</p>
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at San Francisco, California on July 1, 2025.

/s/ Annie Riza Aficial

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **MAYOR v. W.C.A.B. (ROSS VALLEY SANITATION DISTRICT)**

Case Number: **S287261**

Lower Court Case Number: **A169465**

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