

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
MASHALLAH ISHAL**

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
MASHALLAH ISHAL

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 Mashallah Ishal (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.¹

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

¹ Section I is adopted and incorporated from Respondent's Answer to Amicus Curiae American Property Casualty Insurance Association, filed on July 1, 2025, pp. 5-8. We have restated that section herein as the same issue is raised in both briefs.

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 Code² section 5909³, 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.⁴

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 '*Shipley* 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. The application of equitable tolling under *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104 ("*Shipley*") is not the same as the grant for further study issue addressed in *Earley*.

² All future references are to the Labor Code unless noted.

³ Unless otherwise noted, reference to section 5909 throughout this brief refers to former section 5909, Stats 1992, ch. 1226, § 5, which is at issue.

⁴ 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.

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 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].)

When amicus argues that the order granting reconsideration for further study *in his case* violated section 5908.5, amicus is arguing the facts of his own case, which have no bearing at all on the proceedings in *Mayor*. (*Mayor v. Workers’ Compensation Appeals Bd.* (2024) 104 Cal.App.5th 1297.) Again, this issue is not germane to the issues granted review.

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. Section 5909 is not a jurisdictional statute

Statutes are presumed to be not jurisdictional:

[W]e will not assume that the Legislature intended to imbue a time bar with jurisdictional consequences merely because the statute speaks in mandatory terms; as we have said, “jurisdictional rules are mandatory, but mandatory rules are not necessarily jurisdictional.” [Citation.] To establish that a particular filing deadline is jurisdictional, more is required. Much as the high court has said of Congress, our Legislature “must do something special, beyond setting an exception-free deadline, to tag a statute of limitations as jurisdictional” in the fundamental sense.

(*Law Finance Group, LLC, v. Key* 14 Cal.5th 932, 950.)

Amicus argues that section 5909 is jurisdictional by providing this Court with the following citation: “‘Legislative intent that a time limit be jurisdictional may be signaled where the statute sets forth time limits ... by asserting that no relief shall be allowed’ after the prescribed deadline. (*Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 343 [cleaned up].) (Amicus Brief, p. 20.)”

However, it appears that amicus has omitted the portions of the quoted passage in the *Kabran* holding that do not support amicus’ position. The unaltered quote from *Kabran* is:

Legislative intent that a time limit be jurisdictional may be signaled where the statute sets forth time limits in **“unusually emphatic form,”** by **“reiterat[ing] its limitations several times in several different ways,”** or, for example, by asserting that “‘no [relief] shall be allowed or made after the expiration of the period of limitation prescribed ... unless a claim ... is filed ... within such period.’” (*United States v.*

Brockamp (1997) 519 U.S. 347, 350–351 [136 L. Ed. 2d 818, 117 S. Ct. 849].)

(*Kabran v. Sharp Memorial Hospital* (2017) 2 Cal. 5th 330, 343 (emphasis added).)

Section 5909’s ‘deem denied’ provision is not unusually emphatic, nor is it reiterated several times in different ways. Furthermore, section 5909 does not preclude relief following the expiration of the 60-day period.

Amicus invites comparison of section 5909 with Code of Civil Procedure section 660, which is a jurisdictional statute. Former section 5909 stated:

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.

Code of Civil Procedure section 660(c) states, in pertinent part:

[T]he power of the court to rule on a motion for a new trial shall expire 75 days after the mailing of notice of entry of judgment by the clerk of the court pursuant to Section 664.5 or 75 days after service on the moving party by any party of written notice of entry of judgment, whichever is earlier, or if that notice has not been given, 75 days after the filing of the first notice of intention to move for a new trial.

There is a clear juxtaposition of language between these statutes. Code of Civil Procedure section 660 is jurisdictional as it uses emphatic language indicating that the court is precluded from providing *any* relief after a set period. No such language exists in section 5909. As *all* statutes are presumed to be subject to equitable tolling, the only reasonable conclusion is that section 5909 is not jurisdictional. (*Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710, 720 (“*Saint Francis*”).)

Significant portions of the Amicus Brief cite cases that precluded application of tolling under Code of Civil Procedure section 660. These cases are not germane to the analysis here as unlike Code of Civil Procedure section 660, section 5909 is not a jurisdictional statute.

III. Due Process requires that the Appeals Board review all timely filed petitions for reconsideration on the merits.

Parties have a due process right to be heard:

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.)

(*Mathews v. Eldridge*, (1976) 424 U.S. 319, 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.***

Amicus argues that the deadline in section 5909 is not subject to due process because the Legislature’s plenary power to enact legislation is “unlimited by any provision of this Constitution.” (Cal. Const., art. XIV, § 4.) In support of its argument, amicus cites to *Stevens v. Workers’ Comp. Appeals Bd.* (2015) 241 Cal.App.4th 1074, 1093, and *Ramirez v. Workers’ Comp. Appeals Board* (2017) 10 Cal.App.5th 205, 227. Those two cases addressed a narrow issue: whether the due process of the litigants was violated by the Legislature’s enactment of a separate procedure for medical treatment that limited the jurisdiction of the Appeals Board to hear those

disputes.(See § 4610.6 [limiting Appeals Board’s jurisdiction to resolve medical treatment disputes]; cf. §§ 111, 5300, 5301, 5803 [jurisdiction of the Appeals Board].) As relevant here, however, the courts in *those* cases found that the procedures at issue provided adequate notice and an opportunity to be heard so as not to violate procedural due process. (*Ramirez, supra*, 10 Cal.App.5th at pp. 227-230.) Contrary to amicus’ argument, both decisions recognized that the litigants have federal due process rights in addition to state due process rights.

The facts in *Mayor*, the case that is before this Court, are that a workers’ compensation judge received a petition for reconsideration of his decision and failed to transmit it to the Appeals Board within the 60 days that the Appeals Board had to act. This, in effect, allowed a trial judge to deny an appeal of their own decision. The petition was never read, reviewed, or acted upon by the Appeals Board because it was never transmitted by the trial court. Unlike *Stevens* and *Ramirez*, these facts constitute a violation of *both* parties’ right to due process. Once a petition for reconsideration is timely filed, both parties have the due process right to be heard on the petition, which requires a review on the merits.

CONCLUSION

The Amicus Brief submitted by Mashallah Ishal misconstrues the procedural and legal posture of this case. The central issue before this Court is whether the Appeals Board may apply equitable tolling under section 5909 when it does not receive a timely transmitted petition for reconsideration. Rather than addressing that question, amicus focuses its argument on a separate and unrelated issue: whether the Board may issue a *timely* grant of reconsideration within the 60-day period and render a decision after

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(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 MDholakia@dir.ca.gov.

On July 3, 2025 at 3:15 P.M., I electronically served the attached RESPONDENT’S ANSWER TO AMICUS CURIAE MASHALLAH ISHAL to Jorge E. Navarrete, Clerk/Executive Officer, in the matter Supreme Court Case No. S287261, Joseph Mayor v. Workers’ Compensation Appeals Board; Ross Valley Sanitation District [WCAB Case No. ADJ10036954], and on the parties registered for electronic service through TrueFiling.

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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 3, 2025.

/s/ Monali Dholakia

STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S287261**

Lower Court Case Number: **A169465**

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