

**IN THE SUPREME COURT OF
CALIFORNIA**

JOSEPH MAYOR,
Petitioner,

v.

WORKERS' COMPENSATION APPEALS BOARD and ROSS
VALLEY SANITATION DISTRICT,
Respondents.

S287261

First Appellate District, Division Four
A169465

Workers' Compensation Appeals Board
ADJ10036954

August 24, 2026

Justice Evans authored the opinion of the Court, in which
Chief Justice Guerrero and Justices Corrigan, Liu, Kruger,
Groban, and Kim* concurred.

* Associate Justice of the Court of Appeal, Second Appellate
District, Division Five, assigned by the Chief Justice pursuant
to article VI, section 6 of the California Constitution.

MAYOR v. WORKERS' COMP. APPEALS BD.

S287261

Opinion of the Court by Evans, J.

Joseph Mayor was awarded total and permanent disability for an injury he suffered while working for Ross Valley Sanitation District (Ross Valley). Ross Valley timely filed a petition for reconsideration of the award. At the time, Labor Code section 5909¹ provided that a petition for reconsideration “is deemed to have been denied” by the Workers’ Compensation Appeals Board (Appeals Board) “unless it is acted upon within 60 days from the date of filing.” (Stats. 1992, ch. 1226, § 5, p. 5766.) The Appeals Board did not act on the petition for reconsideration until 144 days after it was filed. The Appeals Board represented that it failed to act because it did not receive notice of the petition for reconsideration until after the 60-day statutory window expired. The issue before us is whether the Appeals Board may equitably toll former section 5909’s 60-day deadline for the Board to act on a petition for reconsideration when the Board did not receive the petition until after the deadline elapsed. The Court of Appeal held that former section 5909 is mandatory, and the Appeals Board exceeded its jurisdiction when it acted on the petition for reconsideration outside the 60-day statutory period. (*Mayor v. Workers’ Comp. Appeals Bd.* (2024) 104 Cal.App.5th 1297, 1309 (*Mayor*).)

¹ Further unlabeled statutory references are to the Labor Code.

We agree with the Court of Appeal that the deadline in former section 5909 is mandatory and that the Appeals Board may not equitably toll its own deadline to act. Tolling operates to allow *litigants* to pursue claims outside of an applicable statute of limitations when certain equitable considerations are present. It does not apply to the Appeals Board's own deadline to act. While there may be some narrow circumstances in which due process considerations could permit the Appeals Board to act outside of the 60-day deadline, Ross Valley has not asserted that its due process rights were violated, and the Board's automatic tolling of its own deadline is not the appropriate mechanism to resolve such concerns. We therefore affirm the judgment of the Court of Appeal granting Mayor's petition for writ of mandate.

I. FACTUAL AND PROCEDURAL BACKGROUND

In December 2013, Joseph Mayor suffered an industrial injury while working for Ross Valley Sanitation District. Mayor filed a workers' compensation claim and a workers' compensation judge (WCJ) issued an award finding Mayor totally and permanently disabled. On March 23, 2023, Ross Valley timely filed a petition for reconsideration of the WCJ's award. Mayor filed a timely answer to the petition. Within 15 days of the filing of a petition for reconsideration, regulations require the WCJ to either prepare a report and make a recommendation to the Appeals Board regarding how to dispose of the petition, rescind the award and initiate further proceedings, or rescind the award and issue an amended award. (Cal. Code Regs., tit. 8, § 10961; see also *id.* § 10962.) For reasons unclear in the record, the WCJ did not take any action on the petition for reconsideration.

The Appeals Board in turn did not take action within 60 days of the filing of the petition for reconsideration. Seventy-four days after filing its petition for reconsideration, Ross Valley sent a letter to the Appeals Board inquiring as to the petition's status. This is the first and only time Ross Valley communicated with the Appeals Board about the petition. There is no indication in the record that the Appeals Board responded to this inquiry.

Nearly five months (144 days) after the petition for reconsideration was filed, the Appeals Board issued an opinion and order granting the petition for reconsideration. Attached to the order was a "Notice Pursuant to *Shipley* [*v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104 (*Shipley*)]" that provided: "Reconsideration has been sought with regard to the decision filed on March 2, 2023. Labor Code section 5909 provides that a petition for reconsideration is deemed denied unless the Workers' Compensation Appeals Board acts on the petition within 60 days of filing The petition(s) was filed on March 23, 2023. The Appeals Board first received notice of the petition(s) on or about June 15, 2023 The Opinion and Order Granting Petition for Reconsideration filed simultaneously with this Notice may be considered timely if issued within 60 days of the Appeals Board receiving notice of the petition(s)."²

Mayor filed a petition for writ of mandate in the Court of Appeal requesting that the opinion and order granting the

² According to the Appeals Board, a *Shipley* notice is not an order or opinion of the Appeals Board; instead, it provides notice to the parties that the Appeals Board will be considering *Shipley* when it issues its final opinion.

petition for reconsideration be rescinded as untimely and void, and he requested to enforce the WCJ's award of permanent disability in his favor. Mayor argued the 60-day deadline in former section 5909 was mandatory and jurisdictional, so the Appeals Board acted in excess of its powers when it granted the petition for reconsideration after the deadline passed.

While the writ petition was pending, the Appeals Board issued an opinion and order granting the petition for reconsideration and decision after reconsideration. Shortly thereafter, the Appeals Board rescinded its opinion and order and issued a revised order addressing *Shiple*. It took the position that *Shiple* “properly recognized that in workers’ compensation, deprivation of reconsideration without due process — without . . . full de novo review of the record in the case — ‘offends’ the fundamental right of due process, as well as the Appeals Board’s mandate to ‘accomplish substantial justice in all cases.’” The Appeals Board also noted that with respect to petitions for reconsideration that it does not receive within 60 days of filing “due to irregularities outside the petitioner’s control,” under *Shiple*, the Appeals Board “acts to grant or deny such petitions for reconsideration within 60 days of *receipt* of any such petition, and thereafter to issue a decision on the merits. By doing so, the Appeals Board also preserves the parties’ ability to seek meaningful appellate review.” (Italics added.)

Turning to this case, the Appeals Board acknowledged Ross Valley filed a timely petition for reconsideration on March 23, 2023. According to the Appeals Board, it did not receive the petition until more than 60 days after it was filed due to an administrative irregularity that was neither party’s fault. The Appeals Board concluded that it could toll the time for it to act

on the petition for reconsideration until the petition was available to the Board, so that its order granting reconsideration was timely.

While the writ petition was pending, the Legislature enacted Assembly Bill No. 171 (2023–2024 Reg. Sess.) (Assembly Bill 171), which amended former section 5909 to state: “(a) 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 a trial judge transmits a case to the appeals board. [¶] (b)(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board. [¶] (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice. [¶] (c) This section shall remain in effect only until July 1, 2026, and as of that date is repealed.” (Stats. 2024, ch. 52, § 27, repealed by its own terms; replaced by Stats. 2024, ch. 52, § 28, eff. July 1, 2026.³)

The Court of Appeal granted Mayor’s writ petition. It held former section 5909 is mandatory and the Appeals Board exceeded its jurisdiction in issuing an order granting Ross

³ The sunset provision that was to take effect July 1, 2026, would have reinstated former section 5909’s requirement that petitions for reconsideration are deemed denied unless acted upon within 60 days from the date of *filing*. Since we granted review, the Legislature repealed the sunset provision. As a result, section 5909 maintains the amended trigger for the Appeals Board to act on a petition for reconsideration as 60 days from the date the trial judge *transmits* the case to the Board. (Stats. 2026, ch. 83, § 19, eff. July 13, 2026; see also Sen. Rules Com., Off. of Sen. Floor Analyses, Analysis of Sen. Bill 171 (2025–2026 Reg. Sess.) as amended June 29, 2026, p. 2.)

Valley's petition for reconsideration more than 60 days after it was filed. (*Mayor, supra*, 104 Cal.App.5th at p. 1301.) In so concluding, the Court of Appeal followed *Zurich American Ins. Co. v. Workers' Comp. Appeals Bd.* (2023) 97 Cal.App.5th 1213 (*Zurich*), which held that the Appeals Board acted in excess of its jurisdiction in granting a petition for reconsideration after the 60-day deadline passed. (*Mayor*, at p. 1301, see also *Zurich*, at pp. 1230, 1236, & fn. 17.)

We granted review. Since that time, we have granted review and deferred further action in other matters raising the issue presented here until after this case is decided. (*City of Salinas v. Workers' Comp. Appeals Bd.* (2025) 113 Cal.App.5th 801, review granted Nov. 19, 2025, S293212 (*City of Salinas*) [holding former section 5909 is mandatory but not jurisdictional and facts supported application of equitable tolling]; *Ishal v. Workers' Comp. Appeals Bd.*, review granted Feb. 19, 2025, S288364; *L.A. Specialty Produce Co. v. Workers' Comp. Appeals Bd.*, review granted Jan. 29, 2025, S288040; *Zenith Ins. Co. v. Workers' Comp. Appeals Bd.* (2026) 118 Cal.App.5th 510, review granted Apr. 29, 2026, S295357 (*Zenith*) [following *City of Salinas* and concluding facts did not support application of equitable tolling].)

II. DISCUSSION

A. Relevant Legal Background

Article XIV, section 4 of the California Constitution expressly vests the Legislature “with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workers’ compensation, by appropriate legislation.” Section 4 also “ratified and confirmed” “the creation and existence of the industrial accident commission of

this State” and vested plenary power in the Legislature “to provide for the settlement of any disputes arising under such legislation . . . by an industrial accident commission.” (Cal. Const., art. XIV, § 4.) This provision also declares that “the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.” (*Ibid.*)

To this end, the Legislature enacted the Workers’ Compensation Act, a comprehensive statutory scheme in the Labor Code. (§ 3201 et seq.; see also *id.* § 3201 [“This division and Division 5 (commencing with Section 6300) are an expression of the police power and are intended to make effective and apply to a complete system of workers’ compensation the provisions of Section 4 of Article XIV of the California Constitution”].) At the time of former section 5909’s enactment, all workers’ compensation matters were handled by the Industrial Accident Commission. (See, e.g., former § 5900, Stats. 1937, ch. 90, p. 302 [permitting an individual to petition the Commission for rehearing]; see also former § 5908, Stats. 1937, ch. 90, p. 304 [permitting the Commission to rescind, alter, or amend an order, decision, or award].) In 1965, the Commission’s responsibilities were divided between two newly-created entities — the Appeals Board, which took on the Commission’s judicial functions, and the Division of Workers’ Compensation (DWC), which received the Commission’s administrative responsibilities. (See former § 110, subd. (a), Stats. 1965, ch. 1513, p. 3556; former § 111, Stats. 1965, ch. 1513, p. 3557; former § 123, Stats. 1965, ch. 1513, p. 3559.)

The DWC is authorized to employ workers’ compensation administrative law judges (§ 123), who have authority to issue orders and awards necessary to fully adjudicate workers’

compensation cases. (Cal. Code Regs, tit. 8, § 10330.) “Orders, findings, decisions and awards issued by a workers’ compensation judge shall be the orders, findings, decisions and awards of the . . . Appeals Board unless reconsideration is granted.” (*Ibid.*)

Sections 5900 through 5911 govern petitions for reconsideration of workers’ compensation awards. Any person aggrieved by a decision or award of the Appeals Board or the WCJ may petition the Appeals Board for reconsideration. (§ 5900, subd. (a).) “[T]he appeals board may, with or without further proceedings and with or without notice affirm, rescind, alter, or amend the order, decision, or award made and filed by the appeals board or the workers’ compensation judge on the basis of the evidence previously submitted in the case, or may grant reconsideration and direct the taking of additional evidence.” (§ 5906.)

“The petition shall be made only within the time and in the manner specified in this chapter.” (§ 5900, subd. (a).) Section 5909 lays out the time for the Appeals Board to act on a party’s petition for reconsideration. The version of section 5909 that was operative at all relevant times in this case provided: “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.” (Stats. 1992, ch. 1226, § 5, p. 5766.)

Anyone “affected by an order, decision, or award of the appeals board” may file a petition for writ of review of that order. (§ 5950.) “The application for writ of review must be made within 45 days after a petition for reconsideration is denied, or, if a petition is granted . . . within 45 days after the filing of the order, decision, or award following reconsideration.” (*Ibid.*)

Appellate review of an order or award of the Appeals Board is limited to: whether “[t]he appeals board acted without or in excess of its powers”; whether the order, decision, or award was procured by fraud, was unreasonable, or was not supported by substantial evidence; or whether findings of fact support the order, decision or award. (§ 5952, subd. (a).)

The Court of Appeal here concluded the operative version of section 5909 is mandatory. (*Mayor, supra*, 104 Cal.App.5th at p. 1309.) In so doing, it adopted the analysis of *Zurich*, which held that the Appeals Board acted in excess of its jurisdiction when it granted a petition for reconsideration more than 60 days after it was filed. (*Zurich, supra*, 97 Cal.App.5th at pp. 1231–1236.) In that case, the Appeals Board granted a workers’ compensation insurer’s petition for reconsideration for study more than nine months after it was filed, even though the petition for reconsideration had been forwarded to the Appeals Board about five weeks after it was filed. (*Id.* at pp. 1223–1224.) The Appeals Board indicated that due to an administrative irregularity, it first received notice of the petition for reconsideration about a month before it granted the petition. (*Id.* at p. 1224.) *Zurich* filed a writ petition, and the Court of Appeal issued a peremptory writ of mandate directing the Appeals Board to rescind the order granting reconsideration. (*Id.* at p. 1240.)

In concluding that the Appeals Board exceeded its jurisdiction by acting on the petition for reconsideration after the statutory period elapsed, the *Zurich* court noted the operative version of section 5909 specifies a consequence for the Appeals Board’s failure to act within 60 days of the petition’s filing: the petition is deemed denied. (*Zurich, supra*, 97 Cal.App.5th at p. 1231.) The court observed that the legislative

history of the Workers' Compensation Act indicated “the workers' compensation system is designed to achieve ‘ “average justice” ’ that is ‘speedily and inexpensively administered’ instead of ‘exact justice’ that could consume too much time and leave the claimant in debt. [Citation.] The Legislature struck that balance in providing finality to the decision of the workers' compensation judge, setting time limits in which the Board may review a petition for reconsideration, and, upon expiration of those limits, providing the parties with access to judicial review.” (*Id.* at p. 1235.) The *Zurich* court additionally found the structure of the statutory scheme supported its conclusion, as section 5909 works in tandem with section 5950 — the statute setting the deadline to seek review in the Court of Appeal — and provides clarity as to when a party must file a petition for writ of review. (*Zurich*, at p. 1235.)

Here, the Court of Appeal took the position that Assembly Bill 171, which was enacted and took effect shortly after *Zurich*, “essentially ratified *Zurich*'s interpretation of the governing statutes.” (*Mayor, supra*, 104 Cal.App.5th at p. 1311; see also *id.* at p. 1312 [changing the trigger date of the 60-day deadline from the date of a petition's filing to the date of transmission of the case file to the Appeals Board “is a tacit acquiescence to *Zurich*'s interpretation of former section 5909's rule as mandatory, since if the deadline was not mandatory and the Board's practice was permissible there would have been no reason to alter the deadline”].) In rejecting the notion that a party has a due process right to a decision on the merits of the petition once they have filed a petition for reconsideration, the Court of Appeal observed that the goal of the workers' compensation system is “substantial, but expeditious, justice” so “opposing parties need not subordinate their rights to prompt

resolution of disputes to accommodate open-ended delays that the Board claims are necessary for it to rule on petitions for reconsideration.” (*Id.* at p. 1315; see also *Zurich, supra*, 97 Cal.App.5th at p. 1237.)

B. Section 5909 Does Not Implicate the Appeals Board’s Fundamental Jurisdiction

It is undisputed that the Appeals Board did not take any action on Ross Valley’s petition for reconsideration within the 60-day period in the operative version of section 5909. The question presented is whether the Appeals Board may apply equitable tolling to extend its own statutory deadline to act on a petition for reconsideration. This requires us to address two underlying issues: whether the statutory deadline is jurisdictional; and, if it is not, whether the Legislature intended to preclude equitable tolling. (See *Law Finance Group, LLC v. Key* (2023) 14 Cal.5th 932, 949, 952–953 (*Law Finance*)). The Appeals Board argues that it was permissible to grant Ross Valley’s petition for reconsideration after the 60-day deadline passed because the statutory deadline is not jurisdictional and is subject to equitable tolling. Mayor, in contrast, contends that the deadline in the operative version of section 5909 is both mandatory and jurisdictional and not subject to equitable tolling.

We conclude that section 5909 does not implicate the Appeals Board’s fundamental jurisdiction. We also conclude

that the Appeals Board lacks the authority to toll its own deadline to act.⁴

Whether the version of section 5909 at issue in this case is subject to equitable tolling and whether the statutory deadline is jurisdictional are questions of statutory construction that we review de novo. (See *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd.* (2025) 17 Cal.5th 510, 520.) “We employ familiar principles in this enterprise. We begin with the text, considering the ordinary meaning of the statutory language as well as the text of related provisions, terms used elsewhere in the statute, and the structure of the statutory scheme. [Citation.] If the text is clear, we must give effect to it. If, however, the text is ambiguous, we may consult extrinsic sources, including the legislative history. [Citation.] In ascertaining the statutory meaning, we accord appropriate weight to the interpretations adopted by the Workers’ Compensation Appeals Board in the course of official proceedings.” (*Id.* at pp. 520–521; see also *Larkin v. Workers’ Comp. Appeals Bd.* (2015) 62 Cal.4th 152, 157–158.) But “[i]f

⁴ Amici curiae Mashallah Ishal and American Property Casualty Insurance argue that the Appeals Board’s procedure of issuing a perfunctory order granting a petition for reconsideration to allow itself an opportunity to study the factual and legal issues further (known as a “grant-for-study order”) is not an appropriate method to resolve such petitions because the statutory scheme requires a decision on the merits to be made within the 60-day statutory period pursuant to section 5908.5, so any petition for reconsideration resulting in such an order should be deemed denied by operation of law. We express no opinion on the propriety of the grant-for-study practice or whether the Appeals Board is required to issue a final decision on the merits within the 60-day statutory period pursuant to section 5908.5.

the agency's interpretation is clearly erroneous or unauthorized under the statute, we will not give effect to its understanding of the statute." (*Larkin*, at p. 158.)

"As we have often observed, 'the term "jurisdiction" has "many different meanings." ' " (*Law Finance*, *supra*, 14 Cal.5th at p. 949.) In this case, we are concerned with jurisdiction in its fundamental sense. " "[F]undamental jurisdiction cannot be conferred by waiver, estoppel, or consent. Rather, an act beyond a court's jurisdiction in the fundamental sense is null and void" *ab initio*.' " (*Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 339 (*Kabran*)). "In other words, when a party fails to comply with a jurisdictional time bar, the court has no choice but to dismiss the case for lack of jurisdiction, even if equitable concerns would support reaching the merits." (*Law Finance*, at p. 950.)

"'Even when a court has fundamental jurisdiction, however, the Constitution, a statute, or relevant case law may constrain the court to act only in a particular manner, or subject to certain limitations.' [Citation.] We have described courts that violate procedural requirements, order relief that is unauthorized by statute or common law, or otherwise "fail[] to conduct [themselves] in the manner prescribed" ' by law as acting "in excess of jurisdiction." ' " (*Kabran*, *supra*, 2 Cal.5th at pp. 339–340.)

Given the "harsh consequences" of jurisdictional time bars, "we apply a 'presumption that statutes do not limit the courts' fundamental jurisdiction absent a clear indication of legislative intent to do so.' [Citations.] This approach reflects "a preference for the resolution of litigation and the underlying conflicts on their merits by the judiciary." ' " (*Law Finance*,

supra, 14 Cal.5th at p. 950.) Thus, even if a statute contains mandatory language, we will not assume it implicates a court's fundamental jurisdiction; instead, "our Legislature 'must do something special, beyond setting an exception-free deadline,'" to designate a statute as jurisdictional. (*Ibid.*) "[J]urisdictional rules are mandatory, but mandatory rules are not necessarily jurisdictional." (*Kabran, supra*, 2 Cal.5th at p. 342.)

"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.'" (*Kabran, supra*, 2 Cal.5th at p. 343, quoting *United States v. Brockamp* (1997) 519 U.S. 347, 350–351.)

Statutes we have found to "include such clear markers of legislative intent that their respective deadlines are jurisdictional" include the deadlines in the Code of Civil Procedure to file a notice of intent to seek a new trial and for the court to rule on a motion for new trial. (*Kabran, supra*, 2 Cal.5th at p. 344; see Code Civ. Proc., §§ 659, subd. (b) [deadlines to file a notice of intention to move for a new trial "shall not be extended by order or stipulation"], 660, subd. (c) [*"the power of the court to rule on a motion for new trial shall expire 75 days after the mailing of notice of entry of judgment . . . or 75 days after service . . . of written notice of entry of judgment"*], italics added.) In *Kabran*, we distinguished the language in these statutes from the language in Code of Civil Procedure section 659a, which sets a related deadline for a moving party to file briefs and accompanying documents in support of the motion for

new trial of “[w]ithin 10 days of filing the notice.” We held Code of Civil Procedure section 659a was not jurisdictional because it did not have similar language or such “clear limits on jurisdiction” as Code of Civil Procedure sections 659, subdivision (b) and 660, subdivision (c), and because section 659a had “no ‘ “consequence or penalty” ’ for noncompliance with the affidavit filing deadlines.” (*Kabran*, at p. 344.)

We conclude that section 5909 does not implicate the Appeals Board’s fundamental jurisdiction. While petitions for reconsideration in the workers’ compensation context function similarly to civil motions for a new trial, we discern no language in section 5909 that is similar to the clear jurisdictional language in Code of Civil Procedure sections 659, subdivision (b) and 660, subdivision (c). Former section 5909 neither expressly mentions jurisdiction nor deprives the Appeals Board of the power to act after the 60-day period. The plain language of the statute simply sets a timeline for the Appeals Board to act on a petition for reconsideration and the triggering date for the 45-day window for a petitioner to file a writ petition with the Court of Appeal. Thus, the Appeals Board’s issuance of a grant-for-study order after the 60-day period expired was in *excess* of its jurisdiction, but the Appeals Board did not lack *fundamental* jurisdiction to issue the order after the period ended.

Statutory context supports this conclusion. Section 5803 expressly provides that the Appeals Board “has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division At any time, upon notice and after an 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.” This continuing jurisdiction is limited by section

5804, which provides in part that “[n]o award of compensation shall be rescinded, altered, or amended after five years from the date of the injury except upon a petition by a party in interest filed within such five years and any counterpetition seeking other relief filed by the adverse party within 30 days of the original petition raising issues in addition to those raised by such original petition.” The broad grant of continuing jurisdiction in section 5803, limited only by the five-year deadline in section 5804, indicates that the Appeals Board is not deprived of fundamental jurisdiction when the 60-day period in section 5909 expires.

The legislative history of section 5909 also does not suggest any intent to deprive the Appeals Board of fundamental jurisdiction to act on a petition for reconsideration more than 60 days from its filing. As the Appeals Board observes, when section 5909 was enacted, workers’ compensation matters, including rehearing petitions, were handled by a single agency: the Industrial Accident Commission. Section 5909 originally provided: “A petition for rehearing is deemed to have been denied by the commission unless it is acted upon within thirty days from the date of filing. The commission may, upon good cause being shown therefor, extend the time within which it may act upon such petition for not exceeding thirty days.” (Former § 5909, Stats. 1937, ch. 90, p. 304.)

In 1965, the Legislature created the Appeals Board and the DWC. It provided the Appeals Board with authority over judicial functions and charged the DWC with administration, including employment of workers’ compensation judges. (See former § 110, subd. (a), Stats. 1965, ch. 1513, p. 3556; former § 111, Stats. 1965, ch. 1513, p. 3557; former § 123, Stats. 1965, ch. 1513, p. 3559.) Significantly, even though the Legislature

created two different bodies, it did not substantively amend the deadline or procedures for petitions for reconsideration set forth in section 5909.

In 1992, the Legislature amended the statute to the version at issue here. The statute omitted the 30-day extension period and extended the time for the Appeals Board to act on petitions for reconsideration to 60 days. (Stats. 1992, ch. 1226, § 5909, p. 5766; see also Legis. Counsel's Dig., Assem. Bill No. 3758 (1991–1992 Reg. Sess.), p. 2.) From the statute's original enactment, the triggering date for the Appeals Board to act was consistently the *filing* date of a petition for reconsideration — even after it became clear to courts that the workers' compensation “system ha[d] become . . . inefficient.” (*Shipley*, *supra*, 7 Cal.App.4th at p. 1108.)

In 2024, the Legislature for the first time changed the triggering date of the 60-day period to act on a petition for reconsideration from the date of filing to the date the trial judge transmits the petition to the Appeals Board. (Stats. 2024, ch. 52, § 27.) The Legislature observed, “[e]xisting law provides [that] . . . a petition for reconsideration is automatically considered denied if the [Appeals Board] does not to [*sic*] take action within 60 days from the date the petition was *filed*.” (Assem. Com. on Budget, Concurrence in Sen. Amends. to Assem. Bill No. 171 (2023–2024 Reg. Sess.) as amended June 22, 2024, p. 1, *italics added*.) The Legislature additionally described the effect of Assembly Bill 171 as simply “modif[ying] procedures by which the appeals board must act on a petition for reconsideration” (Sen. Rules Com., 3d reading analysis of Assem. Bill No. 171 (2023–2024 Reg. Sess.) as amended June 22, 2024, p. 2) by “deem[ing] a petition for reconsideration to have been denied by the WCAB unless it is acted upon by the

appeals board within 60 days from the date a trial judge transmits a case to the appeals board.” (Assem. Com. on Budget, Concurrence in Sen. Amends. to Assem. Bill No. 171, *supra*, as amended June 22, 2024, p. 1.)

Mayor argues the 2024 amendment to former section 5909 establishes that the statute is jurisdictional by indicating a legislative response to *Zurich*. We are not persuaded. There is no mention of fundamental jurisdiction in the legislative history of Assembly Bill 171. To the contrary, the legislative history indicates the Legislature acquiesced to *Zurich*’s interpretation of section 5909 as *mandatory* and merely intended to implement a “short-term fix to the Board’s need for resources to meet former section 5909’s deadline.” (*Mayor, supra*, 104 Cal.App.5th at p. 1312.) Further, the 2024 amendment to the statute, like prior versions of the statute at issue here, does not contain any express language depriving the Appeals Board of power to act after the 60-day deadline.

Mayor notes that the statutes governing the deadline to file a petition for reconsideration (§ 5900, subdivision (a)), the deadline for the Board to grant reconsideration on its own motion (§ 5900, subdivision (b)), and the deadline to file a petition for writ of review (§ 5950) in the reconsideration scheme have been found to be jurisdictional. (See, e.g., *United States Pipe & Foundry Co. v. Industrial Acc. Com.* (1962) 201 Cal.App.2d 545, 549, 550 [holding § 5900, subd. (b) is jurisdictional]; *Camper v. Workers’ Comp. Appeals Bd.* (1992) 3 Cal.4th 679, 686 (*Camper*) [holding § 5950 is jurisdictional].) We observed in *Kabran* that a deadline might be jurisdictional if it forms an “interconnected timing scheme” with other jurisdictional deadlines. (*Kabran, supra*, 2 Cal.5th at p. 344.) Unlike section 5909, however, the plain language of sections

5900, subdivision (a) and 5950 “include such clear markers of legislative intent that their respective deadlines are jurisdictional.” (*Kabran*, at p. 344.) Specifically, section 5900, subdivision (a), states that petitions for reconsideration “*shall be made only within the time and in the manner specified in this chapter.*” (Italics added.) Moreover, section 5950 permits a party to file a petition for writ of review “within the time limit specified in this section” and any petition “*must* be made within 45 days after a petition for reconsideration is denied, or, if a petition is granted . . . within 45 days after the filing of the order, decision, or award following reconsideration.” (Italics added.) No similar emphatic language is present in section 5909. “It is significant that the Legislature, while using language to identify [a] closely related time limitation[] in this set of statutes as jurisdictional, did not use similar language with regard to the” deadline to act upon a petition for reconsideration. (*Kabran*, at p. 344.) It is true that, like section 5909, section 5900, subdivision (b) does not contain emphatic language indicating that the deadline was intended to be jurisdictional. But *United States Pipe* is not a decision of this court and did not consider the statutory context or legislative history that we have considered here, which demonstrate that the 60-day period in section 5909 is a mandatory procedural deadline rather than a limit on the Board’s fundamental jurisdiction.

Mayor also argues that in *J.M. v. Huntington Beach Union High School Dist.* (2017) 2 Cal.5th 648 and *Bonnell v. Medical Board* (2003) 31 Cal.4th 1255 we held that Government Code sections 911.6, subdivision (c) and 11521, subdivision (a) — which require a court or agency to act within a certain timeframe or the matter is deemed denied — are jurisdictional.

But we did not consider whether these statutes were jurisdictional in the fundamental sense in these cases. In *J.M.*, we found that equitable tolling was not warranted on its facts when addressing whether a minor's late claim application against a public entity could proceed forward when minor's counsel failed to timely file a petition for relief in the superior court after the application was deemed denied. (*J.M.*, at pp. 651–652.) In *Bonnell*, we considered the amount of time a state administrative agency can stay its decision pursuant to Government Code section 11521, subdivision (a) in order to review a duly-filed petition for reconsideration. (*Bonnell*, at p. 1258.) As ““cases are not authority for propositions not considered” ’” (*B.B. v. County of Los Angeles* (2020) 10 Cal.5th 1, 11), these cases do not support Mayor's argument that the mere inclusion of “deemed to have been denied” language in section 5909, without more, reflects a clear legislative intent to render the statute jurisdictional.⁵

⁵ In another decision of this Court, *Evans v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755, we suggested in dicta that the Board “retains jurisdiction” to issue a new decision on reconsideration complying with section 5805.5 because it originally granted reconsideration within the statutory time period required by an earlier version of section 5909 (see Stats. 1965, ch. 1513, p. 3601, § 180). The issue in *Evans* was whether it was a violation of section 5905.5 [requiring a statement of reasons and evidence when the Appeals Board grants or denies a petition for reconsideration] for the Board to grant reconsideration and vacate a trial referee's decision granting a petition to reopen an employee's workers' compensation claim without a statement of reasons. (*Id.* at pp. 754–755.) Like *J.M.* and *Bonnell*, *Evans* is not determinative of whether section 5909 is jurisdictional because that question was not before this Court.

**C. The Appeals Board May Not Equitably Toll
the Deadline to Act in Section 5909**

Of course, “[e]ven if a statute of limitations is nonjurisdictional, the Legislature still may preclude the court from applying equitable doctrines like tolling and estoppel.” (*Law Finance, supra*, 14 Cal.5th at p. 952.) “The doctrine [of equitable tolling] allows our courts, ‘in carefully considered situations’ [citation], to exercise their inherent equitable powers to ‘soften the harsh impact of technical rules’ [citation] by tolling statutes of limitations.” (*Saint Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710, 724 (*St. Francis*); see also *id.* at p. 729 [equitable tolling “applies only ‘in carefully considered situations to prevent the unjust technical forfeiture of causes of action’ ”].) It is not “‘a cure-all for an entirely common state of affairs.’” (*Id.* at p. 724; *Law Finance*, at p. 954 [same]; see also *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 370 [tolling only applies “in carefully considered situations to prevent the unjust technical forfeiture of causes of action”].)

As with our jurisdictional analysis, we examine the statutory text and the legislative purpose of the statutory scheme, as either or both may indicate a legislative intent to prohibit equitable tolling. (See *Law Finance, supra*, 14 Cal.5th at p. 953; see also *Lantzy, supra*, 31 Cal.4th at p. 371 [“equitable tolling should not apply if it is ‘inconsistent with the text of the relevant statute’ ”]; *St. Francis, supra*, 9 Cal.5th at p. 720.)

We conclude that the Appeals Board’s practice of self-tolling the 60-day deadline in section 5909 is not supported by the plain language of the statute or its purpose. The statute does not expressly permit the Appeals Board to consider a petition for reconsideration outside of the 60-day statutory

period or to equitably toll the 60-day deadline. To the contrary, the statute's plain language cuts off any further action by the Appeals Board after 60 days by deeming petitions for reconsideration denied by operation of law if the Board does not take action within that timeframe.

The statute's plain language indicates that its purpose is to limit the time for the Appeals Board to act so that petitions for reconsideration do not languish. (See *Zurich, supra*, 97 Cal.App.5th at p. 1235.) This purpose is inconsistent with equitable tolling, particularly when the basis for the tolling is the Appeals Board's own inefficiency or neglect.

We acknowledge that the purpose of the Workers' Compensation Act generally is not limited to the expeditious resolution of workers' compensation cases. The Act is also intended to "accomplish substantial justice in all cases . . . inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) Permitting the Appeals Board to engage in the practice of self-tolling, however, impacts all litigants. This case is instructive. Mayor's award of total and permanent disability occurred in March 2023 and, as Mayor's counsel confirmed at oral argument, Mayor has not received any compensation since that time even though the deadline for Ross Valley to file a writ petition pursuant to section 5950 expired on July 6, 2023. The Appeals Board's practice of self-tolling opens the door to open-ended extensions of the time for the Board to act on reconsideration petitions, undermining the purpose of Article 14, section 4 of the California Constitution.

The 2024 amendment to section 5909 supports our conclusion that the statute is not subject to equitable tolling by the Appeals Board. By changing the trigger date for the 60-day

deadline from the date a petition is filed to the date a petition is transmitted to the Appeals Board, the Legislature has demonstrated that it understands the distinction between these dates and knows what language to use if it wishes for the Appeal's Board's timeline to act to run from a petition's transmission date. The Legislature did not use such accommodating language in the version of section 5909 at issue here.

More fundamentally, the Appeals Board misapprehends the doctrine of equitable tolling in two ways: who may assert tolling; and the type of deadline that may be tolled. As we have observed, equitable tolling excuses *litigants* from *filing* deadlines such as statutes of limitations. (See *St. Francis, supra*, 9 Cal.5th at pp. 719–720.) “‘Statute of limitations’ is the collective term applied to acts or parts of acts that prescribe the periods beyond which a plaintiff may not bring a cause of action.” (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.) The Appeals Board is neither a party nor a litigant in workers’ compensation proceedings. Nor is former section 5909 a statute of limitations, as it does not fix the time by which a party or a litigant must bring a claim or cause of action. Instead, the 60-day period merely sets a timeline for the Board itself to act. We are not aware of any precedent applying equitable tolling to *decisional* deadlines imposed on an adjudicative body.

The elements and history of the equitable tolling doctrine also demonstrate that the doctrine does not apply in this case. The doctrine has three elements: “[*(1)*] timely notice [*of plaintiff’s claims*] to the *defendant*, [*(2)*] lack of prejudice to the *defendant*, and [*(3)*] reasonable and good faith conduct by the *plaintiff*.” (*St. Francis, supra*, 9 Cal.5th at p. 726, italics added;

see also *id.* at p. 724.) Ross Valley, as the petitioner, is not seeking tolling of a deadline applicable to it; instead, the Appeals Board is tolling its own deadline to act. Further, Ross Valley did not cause any delay, so the reasonableness of its conduct is not at issue or dispositive and would not facilitate tolling here.

The Board maintains that *Shipley* permits it to equitably toll the 60-day deadline to act on a rehearing petition whenever it does not receive the petition within the 60-day period, regardless of the reason. *Shipley*, however, involved due process, not equitable tolling. In *Shipley*, an employee timely petitioned for reconsideration, but the Appeals Board failed to act on the petition within the 60-day statutory deadline.⁶ (*Shipley, supra*, 7 Cal.App.4th at p. 1106.) The employee inquired about the status of the petition after the deadline expired, and an Appeals Board clerk represented that the file had inadvertently been sent to archives. (*Ibid.*) The Board requested the file's return. Over the course of several months, the employee inquired twice more about the status of the petition, and after another unsuccessful attempt to request the file, the employee was ultimately allowed to reconstruct a duplicate file. (*Id.* at pp. 1106–1107.) Throughout this time, the employee “received reassurances from the board that his petition would be considered either after his file was found or

⁶ At that time, section 5909 provided, “A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 30 days from the date of filing. The appeals board may, upon good cause being shown therefor, extend the time within which it may act upon such petition for not exceeding 30 days.” (Stats. 1965, ch. 1513, p. 3601, § 180.)

after he reconstructed a duplicate file.” (*Id.* at p. 1108.) Nonetheless, the Appeals Board denied the petition, concluding it had been denied by operation of law pursuant to section 5909 since no action had been taken on the petition within the statutory time period. (*Id.* at p. 1107.)

The *Shiple*y court held that “the time period after which a petition for reconsideration is deemed denied by operation of law was tolled while the board misplaced [employee’s] file and led him to believe his petition would eventually receive consideration.” (*Shiple*y, *supra*, 7 Cal.App.4th at p. 1107.) In so holding, the court relied on the Constitutional directive that administration of workers’ compensation legislation “‘accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character’ ” and section 3202’s mandate to liberally construe the Workers’ Compensation Act “‘with the purpose of extending their benefits for the protection of persons injured in the course of their employment.’” (*Ibid.*) It observed that “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.” (*Ibid.*, italics added.) After emphasizing that the petitioner acted reasonably, the *Shiple*y court concluded, “[Petitioner’s] right to reconsideration by the board is likewise statutorily provided and cannot be denied him without due process. Any other result offends not only elementary due process principles but common sensibilities. [Petitioner] is entitled to the board’s review of his petition and its decision on its merits.” (*Id.* at p. 1108.)

While the *Shiple*y court held the deadline “after which a petition for reconsideration is deemed denied by operation of law was tolled” (*Shiple*y, *supra*, 7 Cal.App.4th at p. 1107), it never

mentioned the equitable tolling doctrine or considered or applied the elements of equitable tolling to the facts. Instead, *Shipley* reasoned that a party petitioning for reconsideration had a statutory right to review by the Appeals Board, and the petitioner was denied that right without due process due to the Appeals Board's failure to review the petition and its misrepresentations that it would do so. As *Shipley* did not consider the equitable tolling doctrine, it does not support the Appeals Board's argument that it may equitably toll its deadline to act on a reconsideration petition when it does not receive the petition within the 60-day statutory period.

Apart from the unique facts of *Shipley*, there may be other circumstances in which the failure to rule on a timely-filed reconsideration petition would raise due process concerns. But as this and other recent cases demonstrate, the Appeals Board has routinely invoked *Shipley* as a workaround to address a recurring, systemic problem with the Board's functioning — the Board's failure to implement processes that would ensure it receives the petition for reconsideration or the case file in a timely manner. (See *Zenith*, *supra*, 118 Cal.App.5th at p. 518, review granted; *City of Salinas*, *supra*, 113 Cal.App.5th at pp. 810–811, review granted; see also *Shipley*, *supra*, 7 Cal.App.4th at p. 1108 [observing the Appeals Board has noted its awareness of “‘situations . . . where . . . petitions were not processed at the district office and thus never reached the Appeals Board resulting in a denial by operation of law’ ”].) Even if these circumstances presented due process concerns, such longstanding failures, without more, do not justify a self-administered remedy that permits the Board to routinely toll its own statutory deadline to act, rather than a filing deadline applicable to a litigant.

Moreover, it is the petitioner, as the party adversely affected by the denial of their petition for reconsideration, who must assert their due process rights, not the administrative board that is tasked with ruling on the petition. Here, the Appeals Board purported to rely on *Shipley* to act outside of the statutory 60-day period simply because it received the file after the deadline passed due to an unspecified administrative irregularity. Ross Valley has not asserted that its due process rights were violated. We therefore need not decide what circumstances, if any, would give rise to a due process violation when a timely-filed petition for reconsideration is deemed denied by operation of law. As a general rule, under the operative version of section 5909, a petition for reconsideration will be denied by operation of law if not acted upon within 60 days of the date of filing. Thereafter, a petitioner will have 45 days to file a writ petition with the Court of Appeal.

The Appeals Board goes further, arguing that due process requires a decision on the merits of *every* timely-filed petition for reconsideration. Relatedly, the Appeals Board maintains that the denial of a petition for reconsideration by operation of law violates section 5908.5, which states, “[a]ny decision of the appeals board granting or denying a petition for reconsideration . . . shall be made by the appeals board and not by a workers’ compensation judge and shall be in writing, signed by a majority of the appeals board members assigned thereto, and shall state the evidence relied upon and specify in detail the reasons for the decision.”

The Appeals Board’s arguments ignore the plain language of section 5909 and would render the statute superfluous. “We seek to avoid ‘interpretations that render any language surplusage.’” (*Brennon B. v. Superior Court* (2022) 13 Cal.5th

662, 691.) The plain language of the operative version of section 5909 clearly indicates that the Legislature contemplated a petition for reconsideration would be deemed denied if not acted upon within 60 days of its filing. “[W]e may not broaden or narrow the scope of [a] provision by reading into it language that does not appear in it or reading out of it language that does.” (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 545.) Deemed denied provisions are relatively common (see, e.g., Gov. Code §§ 911.6, subd. (c) & 11521, subd. (a)), and it would be surprising if, as the Appeals Board implies, such provisions were unconstitutional simply because a petition or application is denied by operation of law due to inaction.

The Appeals Board’s argument also ignores the applicable regulation providing that the WCJ’s decision is the final decision of the Appeals Board unless reconsideration is granted. (Cal. Code Regs., tit. 8, § 10330.) We therefore reject the notion that all timely-filed petitions for reconsideration must be decided on their merits. The Legislature’s decision to deem a petition for reconsideration denied if not acted upon within 60 days of its filing is a constitutional exercise of its “plenary power . . . to create . . . *and enforce* a complete system of workers’ compensation . . . to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.”⁷ (Cal. Const., art. XIV, § 4, italics added.)

⁷ We disapprove of *Shipley v. Workers’ Comp. Appeals Bd.*, *supra*, 7 Cal.App.4th 1104 to the extent it suggests that all parties necessarily have a due process right to Board review of a petition for reconsideration after the 60-day deadline in

We rejected the Board's interpretation of section 5908.5 in *Le Vesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627. In that case, the issue was whether the Appeals Board could adopt the report and recommendation of a referee in denying a petition for reconsideration. This Court concluded the answer was yes, as long as the report made the basis for the decision reasonably clear. (*Id.* at p. 629.) In reaching this conclusion, we emphasized that "we must read section 5908.5 together with section 5909." We observed that by permitting a petition for reconsideration to be denied through inaction in section 5909, "[t]he Legislature has . . . provided that . . . the appeals board need not detail its factual and rational basis for so doing." (*Id.* at pp. 634–635.) We continued: "It is true that upon first glance [that] section 5908.5 apparently imposes the same requirements of detailed factual findings and statement of reasons upon the appeals board when it acts after reconsideration as when it *denies* a petition for reconsideration. But reading and construing sections 5909 and 5908.5 together we cannot believe the Legislature intended by section 5908.5 to require detailed findings and reasons upon a denial of reconsideration if the appeals board can avoid the requirement so easily under section 5909." (*Id.* at p. 635, fn. 11, italics added.) Thus, section 5908.5 does not prohibit the denial, under section 5909, of petitions for rehearing by mere inaction.

We recognize that once a reconsideration petition has been denied by operation of law, a petitioner's remaining route is by

section 5909. More is required to establish a due process violation resulting from the failure to timely rule on a petition for reconsideration than the simple filing of a reconsideration petition and the expiration of the statutory deadline to act.

way of a petition for writ of review before the Court of Appeal, and a reviewing court considering such a petition for writ of review is constrained by its limitations on review. (See § 5952.) The statutory deadline in section 5909 creates certainty with respect to the deadline to file a petition for writ of review and when a workers' compensation award is final. The Appeals Board's practice of equitable self-tolling undermines this certainty.

D. The Court of Appeal Acted Appropriately in Issuing a Writ of Mandate

The Appeals Board last argues the Court of Appeal erred in issuing a writ of mandate rescinding the order granting reconsideration. It maintains that its August 2023 order granting reconsideration was not final and therefore Mayor had suffered no injury that was redressable by petition for writ of mandate. The Board further maintains that Mayor had a plain, speedy, and adequate remedy at law in the form of a petition for writ of review from the Board's final decision granting the petition for reconsideration on the merits.⁸

“To obtain [writ] relief, a petitioner must demonstrate (1) no ‘plain, speedy, and adequate’ alternative remedy exists (Code Civ. Proc., § 1086); (2) ‘a clear, present . . . ministerial

⁸ The Appeals Board reads the Court of Appeal's decision as conflating administrative mandate with traditional mandate. But the Court of Appeal did not refer to administrative mandate and noted that a writ is appropriate in cases where mandamus is available under Code of Civil Procedure section 1085. The Appeals Board agrees that traditional mandate is available to, inter alia, “*compel the performance of an act which the law specifically enjoins.*” (Code Civ. Proc., § 1085, subd. (a), italics added.) Accordingly, there is no indication that the Court of Appeal conflated administrative and traditional mandamus.

duty on the part of the respondent” ’; and (3) a correlative “clear, present and beneficial right in the petitioner to the performance of that duty.” ’ [Citation.] A ministerial duty is an obligation to perform a specific act in a manner prescribed by law whenever a given state of facts exists, without regard to any personal judgment as to the propriety of the act.” (*People v. Picklesimer* (2010) 48 Cal.4th 330, 340.)

Mayor has no available alternative remedy. As Mayor contended below, the operative version of section 5909 imposed a duty on the Appeals Board to act, if at all, within 60 days of the filing of a petition for reconsideration. This duty is a ministerial act contingent only on the timely filing of a petition for reconsideration. If Mayor establishes that the Appeals Board violated its statutory duty by granting reconsideration after the 60-day period expired, the Court of Appeal may issue a writ directing the Appeals Board to rescind its order granting reconsideration. We therefore conclude that a petition for writ of mandate filed in the Court of Appeal is the proper way for an affected party to enforce section 5909.

The Court of Appeal found writ relief was not premature because the Appeals Board granted reconsideration, asserted jurisdiction, and ruled on the merits of the reconsideration petition in the August 2023 order and subsequent February 2024 order. We agree. Mayor’s petition for writ relief addressed the Appeals Board’s assertion of jurisdiction and whether the Appeals Board violated a duty to abide by the statute when it granted reconsideration after the 60-day period expired. Thus, Mayor’s writ petition is appropriate because it challenged the Appeals Board’s election to act on the petition for reconsideration after it was deemed denied by operation of law — a purely legal issue of broad importance. (See, e.g.,

Anderson v. Superior Court (1989) 213 Cal.App.3d 1321, 1328 [extraordinary relief is warranted “because ‘“the issues presented are of great public interest and must be resolved promptly” ’”].) In any event, even if the writ petition was premature at the time it was filed, it is undisputed that it was no longer premature after the Appeals Board issued its February 2024 order.

We also are not persuaded that a petition for writ of review following a final decision on a petition for reconsideration would constitute an adequate remedy at law in this context. Mayor argued below that he had a right to the expeditious determination of his entitlement to workers’ compensation benefits. Mayor should not be compelled to wait until an unspecified future date to pursue a petition for writ of review in an effort to enforce his award when he is not challenging the merits of the reconsideration order. Moreover, writ relief is the only way for Mayor to enforce the 60-day deadline in section 5909, a deadline that “protect[s] his right to an expeditious end to workers’ compensation proceedings.” (*Mayor, supra*, 104 Cal.App.5th at p. 1310.) We agree with the Court of Appeal that this right would be “meaningless if Mayor were forced to wait to enforce it for months or years until the conclusion of further proceedings.” (*Ibid.*)⁹

⁹ We note that Mayor’s writ petition would have been more properly brought as a writ of prohibition. (See *C.S. Smith Metropolitan Market Co. v. Superior Court* (1940) 16 Cal.2d 226, 228 [“The function of the writ of prohibition is to provide a remedy when rigidity of the ordinary procedure fails to protect a litigant from the wrongful exercise of jurisdiction by a court”]; Code Civ. Proc., § 1102 [“The writ of prohibition arrests the

The Appeals Board expresses concern that writ petitions in nonfinal cases will divert Board resources and delay other pending cases. We express no view on the Appeals Board's policy argument. This argument is best directed to the Legislature, which is free to amend the statute if it wishes to do so. Indeed, as we have already observed, the Legislature has elected to eliminate the sunset provision in the 2024 version of section 5909 and retain the trigger date for the Appeals Board to act on a petition for reconsideration as the date the trial judge transmits the case to the Appeals Board. (See Legis. Counsel's Dig., Sen. Bill No. 171 (2025–2026 Reg. Sess.) as amended July 13, 2026, p. 3.) “Our task is to give effect to the statute as we find it.” (*Haggerty v. Thornton* (2024) 15 Cal.5th 729, 741.)

proceedings of any tribunal . . . when such proceedings are without or in excess of the jurisdiction of such tribunal”].)

III. DISPOSITION

Section 5909 serves an important function: it sets a timeline for the Appeals Board to diligently act on petitions for rehearing and provides clarity as to when the proceedings must continue in the Court of Appeal. We therefore hold that the Appeals Board may not equitably toll its own deadline to act on such petitions. Accordingly, we affirm the judgment of the Court of Appeal.¹⁰

EVANS, J.

We Concur:

GUERRERO, C. J.

CORRIGAN, J.

LIU, J.

KRUGER, J.

GROBAN, J.

KIM, J.*

¹⁰ As Ross Valley has not requested any relief before this Court, we do not decide whether, or on what grounds, Ross Valley may obtain relief or pursue a remedy under the circumstances of this case.

* Associate Justice of the Court of Appeal, Second Appellate District, Division Five, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

See next page for addresses and telephone numbers for counsel who argued in Supreme Court.

Name of Opinion Mayor v. Workers' Compensation Appeals Board

Procedural Posture (see XX below)

Original Appeal

Original Proceeding

Review Granted (published) XX 104 Cal.App.5th 1297

Review Granted (unpublished)

Rehearing Granted

Opinion No. S287261

Date Filed: August 24, 2026

Court:

County:

Judge:

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