



**CONTRERAS V. WCAB,**

(ADJ1622633, B233103) 2012 Cal. App. Unpub. Lexis 126

*Provided by Steven P. Sanghera from the Stockton Office*

The 2<sup>nd</sup> District Court of Appeal has issued an Opinion that a Petition to Reopen which had been filed at the wrong Workers' Compensation Appeals Board office should not have been barred due to mistake. (Unpublished Opinion) Petitioner Salvador Contreras had filed a timely Petition to Reopen at the Los Angeles office of the WCAB. The matter had originally been tried in Ventura and CCR §10390 was in effect on August 24, 2004 when the Petition to Reopen was filed. §10390 provided that all documents requesting action by the WCAB shall be filed with the district office where the case is pending and if filed in the wrong district office "shall not be accepted for filing or deemed filed". In September, 2010, a trial was held to decide the sole issue of whether the WCAB had jurisdiction over the Petition to Reopen because it had not been filed in the proper venue. The Workers' Compensation Judge ruled that the WCAB lacked jurisdiction because the petition was deemed not filed under CCR §10390 and the five-year statute of limitations for reopening the claim had expired. The WCAB, in a 2 to 1 Decision, denied Contreras' Petition for Reconsideration.

The 2<sup>nd</sup> District Court of Appeal annulled the Decision, holding that the WCAB erred by not applying the current venue regulation, §10397 which was adopted in 2008. CCR §10397 provides that a Petition to Reopen shall not be rejected for filing solely on the basis that the document was not filed in the proper office of the WCAB. Further, the Court held that even if the current venue regulation did not apply to Contreras' petition, the WCAB erred by concluding that relief under former §10390 was unavailable. §10390 had provided that the WCAB, "in any proceeding, may excuse a failure to comply with this rule resulting from mistake, inadvertence, surprise, or excusable neglect." Contreras had testified that he personally filed his petition with the Los Angeles district office. It was date stamped and not rejected. He was not represented at the time. The Court held that Contreras, as a matter of law, established adequate grounds for granting relief based on mistake, inadvertence, or excusable neglect. The Court also considered the WCAB result to be harsh in the instant case, where the filing technicality was raised six years after the Petition to Reopen was filed, medical treatment and evaluations had continued, and the employee had set forth a prima facie claim for relief.