



1 EEOICPA is a federal compensation statute for employees of the Department of Energy, its  
2 predecessor agencies, and certain contractors, subcontractors, and vendors who incurred illness as a  
3 result of their exposure to radiation and other toxic substances at facilities covered under the act.  
4 Pursuant to Part E of EEOICPA, covered employees are eligible to be awarded payment of medical  
5 expenses and/or variable monetary compensation based upon an employee's level of permanent  
6 impairment and/or qualifying calendar years of wage-loss.

7 An individual asserting entitlement benefits under EEOICPA must file a claim with  
8 defendant Labor's Office of Workers' Compensation Programs. 20 C.F.R. §§ 30.100 and 30.101  
9 (2012). The office reviews the claim and issues a recommendation. After the office's  
10 recommendation, the claimant may file written objections within sixty (60) days. The  
11 recommendation, along with any objections, are then submitted to the Office of Workers'  
12 Compensation Programs Final Adjudication Branch which issues a final agency decision on the  
13 claim. A dissatisfied claimant may then seek judicial review of the agency's decision, but must file  
14 the petition for judicial review within sixty (60) days of the agency's final decision. 42 U.S.C.  
15 § 7385s-6(a).

16 Lott filed an initial claim with defendant Labor under Part E of EEOICPA. On February 11,  
17 2011, Labor issued its final decision denying his wage-loss claim. Doc.#1, Exhibit 1. On April 11,  
18 2011, Lott filed an initial, timely action for judicial review in *Lott v. U.S. Dep't of Labor*, Case no.  
19 3:11-cv-0258-ECR-WGC. *See* Doc. #1, Case no. 3:11-cv-0258-ECR-WGC. This initial action was  
20 eventually dismissed for Lott's failure to obtain and serve a summons along with the petition for  
21 judicial review. Doc. #8, Case no. 3:11-cv-0258-ECR-WGC.

22 Subsequently, on April 25, 2012, two weeks later, Lott filed the underlying action for  
23 judicial review. Doc. #1. In response, Labor filed a motion to dismiss for lack of jurisdiction  
24 (Doc. #7) which was denied by the court (Doc. #13). In the court's order, the court found that  
25 "although Lott filed the present complaint outside of the sixty day deadline, he [was] entitled to  
26

1 equitable tolling of the jurisdictional period.” Doc. #13. Thereafter, Labor filed the present motion  
2 for reconsideration of the court’s order. Doc. #14.

### 3 **II. Discussion**

4 Labor brings its motion for reconsideration pursuant to Fed. R. Civ. P. 59(e). A motion  
5 under Rule 59(e) is an “extraordinary remedy, to be used sparingly in the interests of finality and  
6 conservation of judicial resources.” *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 887, 890 (9th  
7 Cir. 2000). Rule 59(e) provides that a district court may reconsider a prior order where the court is  
8 presented with newly discovered evidence, an intervening change of controlling law, manifest  
9 injustice, or where the prior order was clearly erroneous. FED. R. CIV. P. 59(e); *see also United*  
10 *States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 1998); *School Dist. No. 1J, Multnomah County v.*  
11 *AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

12 In its motion, Labor contends that the court’s order was clearly erroneous because the sixty  
13 day filing requirement is a jurisdictional limitation that cannot be equitably tolled. *See* Doc. #14.

14 Labor is correct that compliance with the sixty-day filing deadline is a jurisdictional  
15 prerequisite for judicial review. *See Barrie v. U.S. Dept. of Labor*, 805 F. Supp. 2d 1140, 1144 (D.  
16 Col. 2011). However, the court disagrees with Labor’s position that equitable tolling is not  
17 available under the limited and unusual circumstances of this action. The court’s prior order  
18 recognized that Lott had filed a timely petition that was dismissed solely on a procedural ground.  
19 The court’s order extended equitable tolling to allow Lott to proceed with judicial review in this  
20 action because the government was on notice of Lott’s request to seek judicial review within the  
21 sixty day period and because public policy favors disposition of cases on their merits, rather than on  
22 procedural grounds. *See Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

23 The court cannot conclude that its prior order was in error in tolling the sixty-day period in  
24 this action by a mere two weeks. A minor defect in failing to submit a summons in the prior action  
25 with the petition for judicial review should not divest this court of jurisdiction. Especially in light  
26

1 of the fact that the petition for judicial review in this action is the same petition for judicial review  
2 which was served on Labor in the prior, timely action. Accordingly, the court shall deny Labor's  
3 motion for reconsideration.

4

5 IT IS THEREFORE ORDERED that defendant's motion for reconsideration (Doc. #14) is  
6 DENIED.

7 IT IS SO ORDERED.

8 DATED this 9th day of May, 2013.

9

10

11

  
\_\_\_\_\_  
LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26