

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

SYLVESTER SAMPSON, *Applicant*

vs.

**IHSS CALIFORNIA DEPARTMENT OF SOCIAL SERVICES;
permissibly self-insured, administered by INTERCARE, *Defendants***

**Adjudication Numbers: ADJ9635702; ADJ11702059; ADJ11702061; ADJ11702062;
ADJ9635701
San Diego District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

In addition to the grounds for denial on the merits as discussed by the WCJ in the Report, we note that applicant's petition is subject to dismissal for the failure to state appropriate grounds for reconsideration and to sufficiently cite to the record. The Labor Code requires that:

The petition for reconsideration shall set forth specifically and in full detail the grounds upon which the petitioner considers the final order, decision or award made and filed by the appeals board or a workers' compensation judge to be unjust or unlawful, and every issue to be considered by the appeals board. The petition shall be verified upon oath in the manner required for verified pleadings in courts of record and shall contain a general statement of any evidence or other matters upon which the applicant relies in support thereof.
(Lab. Code, § 5902, emphasis added.)

Moreover, the Appeals Board Rules provide in relevant part: (1) that "[e]very petition for reconsideration ... shall fairly state all the material evidence relative to the point or points at issue [and] [e]ach contention contained in a petition for reconsideration ... shall be separately stated and

clearly set forth” (Cal. Code Regs., tit. 8, former § 10842, now § 10945 (eff. Jan. 1, 2020) and (2) that “a petition for reconsideration ... may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved” (Cal. Code Regs., tit. 8, former § 10846, now § 10972 (eff. Jan. 1, 2020).

In accordance with section 5902 and WCAB Rules 10945 and 10972, the Appeals Board may dismiss or deny a petition for reconsideration if it is skeletal (e.g., *Cal. Indemnity Ins. Co. v. Workers’ Comp. Appeals Bd. (Tardiff)* (2004) 69 Cal.Comp.Cases 104 (writ den.); *Hall v. Workers’ Comp. Appeals Bd.* (1984) 49 Cal.Comp.Cases 253 (writ den.); *Green v. Workers’ Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 564 (writ den.)); if it fails to fairly state all of the material evidence, including that not favorable to it (e.g., *Addecco Employment Services v. Workers’ Comp. Appeals Bd. (Rios)* (2005) 70 Cal.Comp.Cases 1331 (writ den.); *City of Torrance v. Workers’ Comp. Appeals Bd. (Moore)* (2002) 67 Cal.Comp.Cases 948 (writ den.); or if it fails to specifically discuss the particular portion(s) of the record that support the petitioner’s contentions (e.g., *Moore, supra*, 67 Cal.Comp.Cases at p. 948; *Shelton v. Workers’ Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 70 (writ den.)). The petition filed herein fails to state grounds upon which reconsideration is sought or to cite with specificity to the record. Therefore it is subject to dismissal and denial.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 28, 2023

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**SYLVESTER SAMPSON
MANNING & KASS**

PAG/cs

I certify that I affixed the official seal of
the Workers' Compensation Appeals
Board to this original decision on this date.
CS

**REPORT AND RECOMMENDATION ON PETITION
FOR RECONSIDERATION**

Counsel:

Petition for Reconsideration Filed By: Applicant, in propria persona

Defendant: IHSS California Department of Social Services, P.S.I.

Attorney for Defendant: Jason Doshi, Esq.

Manning & Kass, Ellrod, Ramirez, Trester LLP

INTRODUCTION

Applicant, in pro per, has filed a timely, verified “Petition for Reconsideration,” on the undersigned’s Findings and Order dated September 13, 2023. Defendant has filed an Answer.

FACTS

Applicant, age 73, while employed on April 3, 2014, as a caregiver, occupational group No. 311, at San Diego, California, by IHSS, permissibly self-insured for workers’ compensation insurance, sustained injury arising out of and in the course of employment to his lumbar spine, cervical spine, and bilateral shoulders (ADJ96335702). Applicant settled his case via Stipulations with Request for Award which were filed on November 17, 2016 and the Award issued on November 17, 2016. Applicant filed a timely Petition to Reopen on September 5, 2018. The main issue for trial for ADJ96335702 was Applicant’s Petition to Reopen. After reviewing all the evidence, the undersigned found that Applicant had not sustained any new and further disability.

For ADJ11702059, ADJ11702061, and ADJ11702062, Applicant claimed injuries on dates when he was not employed by IHSS. The undersigned made finding that he was not employed on June 29, 2016 (ADJ11702059), December 13, 2016 (ADJ11702061), and November 28, 2016 (ADJ11702062) and therefore did not sustain injury arising out of or in the course of employment on those dates.

For ADJ96335702, Applicant requested that the case be re-opened. The undersigned found that the parties had stipulated, at the time of the settlement of case ADJ96335701, that case ADJ96335702 was dismissed with prejudice. At trial, the undersigned found no good cause to set aside the stipulation of the parties.

Applicant, in pro per, filed a timely, verified “Petition for Reconsideration,” on the undersigned’s Findings and Order dated September 13, 2023. Defendant has filed an Answer.

DISCUSSION

Applicant filed a timely Petition for Reconsideration on September 29, 2023. It states:

“I never receive my evaluation from Dr. John Lane reports brain, bilateral shoulder, cervical spine, lumbar spine, neck, mid back, low back, the insurance company denial me medical treatments for ten years for my lungs. I object to Judge Michelle Utter Finding and Order, Opinion on Decision on 9-13-2023. I was in the hospital for 7 Days on 8-8-2023 to 8-16-2023/ 9-6-2023 to 9-12-2023. I never received my pay.

I file tax in 2004 – to the present.

The IHSS never gave me my renewal package.

What is the minimum wage to the present. They never gave me my medical insurance – for 10 years, that why they did not give me medical treatments.

That is against the law, thats against my due process.”

Petitioner may be contending that he did not receive AME Lane’s reports which is an issue raised for the first time in his Petition for Reconsideration. The WCJ met with the parties numerous times and the reports of Dr. Lane were discussed. Some of Dr. Lane’s reports were joint exhibits. Defendant filed a proof of service of their exhibits (including reports of Dr. Lane) on Applicant. The undersigned believes that if Petitioner is contending that he did not receive Dr. Lane’s reports, that the contention is false.

Petitioner also mentions that Applicant was in the hospital in August and September of 2023 which was after this matter was submitted for decision. The attachments to the Petition for Reconsideration appears to relate to September of 2023 hospital visit. The report indicates that Applicant was treated in the hospital for lung cancer which is not an industrial injury.

ADJ9635702

Applicant, age 72, while employed on April 3, 2014, as a caregiver, occupational group No. 311, at San Diego, California, by IHSS, permissibly self-insured for workers’ compensation insurance, sustained injury arising out of and in the course of employment to his lumbar spine, cervical spine, and bilateral shoulders. Parties entered into a Stipulations with Request for Award which was filed on November 17, 2016 and the Award issued on November 17, 2016.

The issues for trial were parts of body injured, permanent disability and apportionment (if new and further disability were found), Applicant’s Petition to Reopen, Applicant’s request for

reimbursement for copying of exhibits, and Applicant's request for penalties on the denied body parts.

Based on review of the entire record, including the reporting of AME Lane, which the undersigned found to be substantial medical evidence, the Applicant did not sustain new and further disability. Dr. Lane was asked to comment on whether or not Applicant had sustained any new or further disability. Multiple times, Dr. Lane was provided additional medical reports regarding body parts and systems that Applicant believed should be considered industrially injured. Dr. Lane opined in his December 17, 2022 report that he did "not find that there are any other body parts which were injured on an industrial basis, and there is no new and further disability to any of those accepted body parts after November 17, 2016" (Joint Exhibit 2). Therefore, the undersigned ordered that Applicant's Petition to Reopen be denied.

Applicant also contended that additional body parts were injured as a result for the April 3, 2014 injury. As stated above, Dr. Lane did not find any additional body parts injured as a result of the admitted April 3, 2014 injuries. Dr. Lane was asked to review all medical reports provided by the parties. The undersigned found Dr. Lane's reporting to be substantial medical evidence and therefore did not find injury arising out and in the course of employment to any additional body parts other than the body parts previously stipulated to by the parties. As such, Applicant's request for penalties on the denied body parts was also denied.

ADJ11702059 AND ADJ11702061 AND ADJ11702062

Applicant, age 72, was not employed on June 29, 2016, as a caregiver, occupational group No. 311, at El Centro, California, by IHSS, permissibly self-insured for workers' compensation insurance, when he claimed to have sustained injury arising out of and in the course of employment to his nose, abdomen, chest, lung, throat, heart, sinuses, and kidney.

Applicant, age 72, was not employed on December 13, 2016, as a caregiver, occupational group No. 311, at El Centro, California, by IHSS, permissibly self-insured for workers' compensation insurance, when he claimed to have sustained injury arising out of and in the course of employment to his bilateral hips, feet, tailbone, buttocks, penis, coccyx, kidneys, and bladder.

Applicant, age 72, was not employed on November 28, 2016, as a caregiver, occupational group No. 311, at El Centro, California, by IHSS, permissibly self-insured for workers' compensation insurance, when he claimed to have sustained injury arising out of and in the course of employment to his brain, neck, back, and nervous system.

All three cases listed above involved the same issues for trial which were employment, AOE/COE, permanent disability and apportionment, statute of limitations, and Applicant's claim for penalties. Based on the evidence presented, which included testimony from the Applicant and Leticia Preciado, a program manager for the employer, Applicant was not an employee of IHSS on June 29, 2016, December 13, 2016, or November 28, 2016. Applicant testified at trial that his employment with IHSS terminated on June 30, 2015 (Summary of Evidence, page 5, lines 13-15). Ms. Preciado also testified that Applicant was no longer an employee after June 30, 2015. (Summary of Evidence, page 6, lines 20-21).

As Applicant was not an employee of IHSS on the above dates, the WCJ ordered that Applicant take nothing by reason of his Applications for Adjudication of Benefits for the above dates of injury.

ADJ 96335701

Applicant, age 72, while employed on March 28, 2014, as a caregiver, occupational group No. 311, at San Diego, California, by IHSS, permissibly self-insured for workers' compensation insurance, claimed to have sustained injury arising out of and in the course of employment to his head, neck, back, hip, shoulders, legs, the excretory system, and nervous system.

The parties stipulated that this case, ADJ96335701 was dismissed with prejudice in the signed and executed Stipulations with Request for Award for ADJ9635702. The Stipulations with Request for Award were filed on November 17, 2016 and the Award issued on November 17, 2016.

Based on review of the entire record, the undersigned found that there is no good cause to set aside the stipulation of the parties that ADJ96335701 would be dismissed with prejudice or the Award approving the stipulation.

RECOMMENDATION

It is respectfully recommended that reconsideration be denied.

DATED: 10/12/23

Michelle M. Utter

WORKERS COMPENSATION JUDGE