

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

LIONEL MARTINEZ, *Applicant*

vs.

**SILVER SPUR MOBILE MANOR;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ1567632 (RIV 0075845)
Riverside District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration (Petition) and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the Petition, we agree with the WCJ's recommendation and will dismiss reconsideration because the Petition is skeletal, untimely, unverified, and because applicant is not aggrieved.

DISCUSSION

In his Petition, applicant seeks reconsideration of a decision dated "3-25-2022." However, no such decision appears in the file for this case or any companion case. The most recent decision in this case was an Order Awarding Attorney Fees issued on August 10, 2021, and, prior to that, as noted in the WCJ's Report, was an Order Approving Compromise and Release issued on November 19, 2020. (WCJ Report, p. 2.) To the extent that applicant seeks reconsideration as to these prior decisions, the petition is untimely.

To the extent that applicant seeks reconsideration of a decision issued on "3-25-2022," no such decision exists. Therefore, applicant is not aggrieved. In order to properly seek reconsideration, a party must be "aggrieved directly or indirectly by a final order, decision, or award" made and filed by a WCJ or the Appeals Board. (Lab. Code, § 5900(a).) A final order, decision, or award is one that determines a substantive right or liability of those involved in the case. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (1978) 82 Cal.App.3d 39 [43

Cal.Comp.Cases 661]; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (1980) 104 Cal.App.3d 528 [45 Cal.Comp.Cases 410].) In this matter, there is no final order issued on March 25, 2022. Therefore, applicant is not aggrieved and reconsideration is not a proper remedy here.

Additionally, Labor Code section 5902¹ requires that a petition for reconsideration be verified. (Lab. Code, § 5902; see also Cal. Code Regs., tit. 8, § 10510(d).) In *Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425 (Significant Panel Decision), it was held that where a petition for reconsideration is not verified as required by section 5902, the petition may be dismissed if the petitioner has been given notice of the defect (either by the WCJ's report or by the respondent's answer) unless, within a reasonable time, the petitioner either: (1) cures the defect by filing a verification; or (2) files an explanation that establishes a compelling reason for the lack of verification and the record establishes that the respondents are not prejudiced by the lack of verification. Here, the Petition is not verified and notice of this defect was specifically given by the WCJ in the Report. Moreover, a reasonable period of time has elapsed, but applicant has neither cured the defect by filing a verification nor offered an explanation of why a verification cannot be filed. Accordingly, we will dismiss the Petition on these grounds, as well.

Finally, we note that a skeletal petition like the one filed by applicant also may be summarily dismissed by the Appeals Board. Section 5902 also 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.)

Moreover, Appeals Board Rule 10945 provides that a petitioner seeking reconsideration is to state each contention clearly and separately, and to set forth all material evidence. (Cal. Code Regs., tit. 8, § 10945.) Appeals Board Rule 10972 provides 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, § 10972.)

¹ All further statutory references are to the Labor Code unless otherwise stated.

In accordance with section 5902 and Appeals Board Rules 10945 and 10972, the Appeals Board may dismiss or deny a petition for reconsideration if it is skeletal (e.g., *Cal. Indemnity Insurance Co. v. Workers' Comp. Appeals Bd.* (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.* (2005) 70 Cal.Comp.Cases 1331 (writ den.); *City of Torrance v. Workers' Comp. Appeals Bd.* (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., *Shelton v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 70 (writ den.).)

Here, applicant filed a Petition for Reconsideration stating the five statutory grounds for reconsideration set forth under section 5903. However, applicant made no statement of his contentions regarding any disagreement with an existing decision by the WCJ, nor did he make any specific citations to the record or material evidence that would support his arguments. In short, applicant's petition is "skeletal," and will be dismissed accordingly.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the March 25, 2022 decision is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 10, 2022

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

**LIONEL MARTINEZ
STATE COMPENSATION INSURANCE FUND**

AH/oo

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