

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

BENJAMIN MULGADO, *Applicant*

vs.

**SAMUEL HALE and CANNON COCHRAN MANAGEMENT SERVICES, INC.;
CLEAR SPRING PROPERTY & CASUALTY COMPANY, *Defendants***

**Adjudication Number: ADJ15256075
Stockton District Office**

**OPINION AND ORDER DENYING
PETITION FOR RECONSIDERATION**

Applicant seeks reconsideration of the Findings of Fact, Order (F&O) issued on May 2, 2023 by a workers' compensation administrative law judge (WCJ). The WCJ found that the Workers' Compensation Appeals Board (WCAB) lacks jurisdiction to address the validity of the May 19, 2016 decision of the Administrative Director of the Department of Industrial Relations (AD) recognizing Samuel Hale's Alternative Dispute Resolution (ADR) process under the collectively bargained Labor-Management Agreement (WCA) pursuant to Labor Code¹ section 3201.7 (Sam Hale carve-out agreement); and, jurisdiction over applicant's workers' compensation claim is with the Sam Hale carve-out agreement pursuant to section 3201.7 and WCAB Rule 10990 (Cal. Code Regs., tit. 8, § 10990). The WCJ then deferred the dismissal of applicant's Application for Adjudication of Claim.

Applicant contends that the WCAB has jurisdiction over his claim because his signatures were forged on union documents and therefore, he was not a union member and cannot be subject to the Sam Hale carve-out agreement; that the WCJ's decision is contrary to *Wright v. Universal Maritime Service Corp., et al.* (1998) 525 U.S. 70, which requires employees to give a "clear and unmistakable waiver" of their right to a judicial forum; that *Costa v. Workers' Comp. Appeals Bd.* (1998) 65 Cal.App.4th 1777 [63 Cal.Comp.Cases 814] was decided before *Wright* and therefore

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

does not apply; and, that his right to due process has been violated because he cannot have his claim adjudicated in the California workers' compensation system.

Defendant filed an Answer to Petition for Reconsideration (Answer). The Answer contends that it is undisputed applicant was an employee of employer Sam Hale at the time of his injury, and that Sam Hale is an employer signatory to the WCA that contains the AD-approved Sam Hale carve out agreement.² Defendant also contends that whether applicant's signatures on employment paperwork were forged is irrelevant to the actual question at issue in this matter, i.e., whether his injury was covered by the Sam Hale carve-out agreement (citing *Becerra v. Eastside Reservoir Project/Avanco Constructors* (1997) 62 Cal.Comp.Cases 937 [1997 Cal.Wrk.Comp. LEXIS 4672] (*Becerra*); *Kaiser v. California Electric* (1998) 63 Cal.Comp.Cases 1391 [1998 Cal.Wrk.Comp. LEXIS 5002]); and, that union membership is not required for an injured worker's claim to be subject to the terms of an ADR agreement when the employer is a signatory to the WCA and thus, subject to the ADR agreement (citing *Elizarraras v. Mike Bubalo Constr. Co.*, 2010 Cal.Wrk.Comp. P.D. LEXIS 344,³ and multiple cases arising from the National Labor Relations Board (NLRB)). Finally, defendant contends that the WCAB has no authority to adjudicate the validity of the AD's approval of any carve-out agreement under section 3201.7,⁴ or to determine, once the carve-out program is approved by the AD, whether the WCA or the Sam Hale carve-out agreement contains a clear and unmistakable waiver of its members' rights to adjudicate claims in the California workers' compensation system.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending denial of the petition because the issue of whether applicant's signatures on employment paperwork were forged or not is an issue of membership in the union not raised at trial, and regardless, not subject to the jurisdiction of the WCAB pursuant to *Beccera and Marta Sanchez Jimenez and Mercedes Perez v. Samuel Hale, LLC* (2020) 85 Cal.Comp.Cases 814 [2020 Cal. Wrk. Comp. P.D. LEXIS 150] (*Sanchez*). The WCJ also recommended denial because

² See defendant's Exhibit A, ADR Agreement between Vforce and UFCW, 5/13/16; Exhibit. B, Addendum to Collective Bargaining Agreement.

³ "If applicant's employment was subject to the terms of the collective bargaining agreement that contained the ADR process, his injury is covered by that process and it does not matter if he was a "member" of the signatory union on the date of injury." (*Elizarraras, supra*, 2010 Cal.Wrk.Comp. P.D. LEXIS 344, *15.)

⁴ See defendant's Exhibit E, Administrative Director's Letter of Authorization, 5/19/16; Exhibit F, Amendment to change Vforce name to Sam Hale, 5/13/16.

applicant did not raise the issue of whether there was a clear and unmistakable waiver of his right to adjudicate his injury claim in the California workers' compensation system in the WCA or Sam Hale carve-out agreement. Finally, the WCJ recommended denial because pursuant to section 3201.7, subdivision (a)(3)(A) (section 3201(a)(3)(A)) and WCAB Rule 10990, applicant retains his right to due process – first through the Sam Hale carve-out agreement process, and then in any reconsideration to the WCAB following the exhaustion of his administrative remedies.

We have reviewed the record in this case, the allegations in the Petition for Reconsideration, the Answer, and the contents of the Report. For the reasons set forth in the Report, which we adopt and incorporate herein (except for the WCJ's conclusion that the issue of alleged signature forgery was not sufficiently raised),⁵ as well as for the reasons set forth below, we deny reconsideration.

DISCUSSION

Applicant contends that the WCJ had the jurisdiction to determine whether the WCAB had jurisdiction to adjudicate applicant's injury claim, but that the WCJ failed to consider facts relevant to that question, i.e., the alleged forgery of applicant's signature on employment documents and whether the WCA or Sam Hale carve-out agreement contained a clear and unmistakable waiver under *Wright*. We agree that the WCAB has jurisdiction to determine jurisdiction, but we disagree that the WCJ had jurisdiction to consider applicant's contentions. We concur with defendant's responsive arguments as stated above, and the contents of the Report (except for the WCJ's conclusion that the issue of alleged signature forgery was not sufficiently raised).

First, the WCJ is correct that applicant did not raise *Wright* at trial, i.e., the issue of whether there was a clear and unmistakable waiver in the WCA or Sam Hale carve-out agreement. (Minutes of Hearing and Summary of Evidence, April 3, 2023 (MOH); Pre-Trial Conference Statement (Final), December 15, 2022 (PTCS).) The issues identified for trial in the PTCS were whether defendant employer falsified applicant's signature on his employment documents, and which entity has jurisdiction to adjudicate applicant's injury claim, i.e., "ADR or WCAB." (PTCS, p. 3, Issues, Other Issues.) The "clear and unmistakable waiver" issue was not raised in the PTCS or at trial. (MOH, p. 2:17-19.)

⁵ The WCJ states that applicant did not raise the issue of the alleged forgery of signatures on the day of trial; however, the issue was clearly identified in the PTCS, and evidence related to the issue was submitted by applicant at the time of trial (MOH, pp. 2-3.)

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing includes, but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

Consequently, we cannot interpose our own findings on *Wright* and the issue of whether there was a clear and unmistakable waiver in the WCA or Sam Hale carve-out agreement – *even if* we had jurisdiction to do so – without violating the parties' right to due process. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584] citing *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158).

As to the issue of whether the alleged employer fraud in forging applicant's signatures on employment documents affects jurisdiction, we note that the issues presented by applicant on reconsideration were similarly raised and determined in the *Sanchez* case. We find *Sanchez* relevant and persuasive in this matter.⁶ The allegations of both applicants in *Sanchez* were that they were told to sign paperwork without understanding or explanation, and were unaware they were members of a union. (*Sanchez, supra*, 85 Cal.Comp.Cases at *11-13.) The allegations in *Sanchez* are analogous to the allegations of signature forgery by applicant in this case – essentially, they are all accusations of unfair labor practices, and may implicate the AD's approval of Sam Hale's carve-out agreement.

Although applicants have potential remedies to plead alleged unfair business practices against Sam Hale *outside* the workers' compensation system, the WCAB clearly has no jurisdiction to adjudicate those claims. The WCAB also has no jurisdiction to adjudicate objections to the AD's approval of the Sam Hale carve-out agreement. In other words, allegations of unfair

⁶ Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers' compensation judges. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) While not binding, the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board en banc).)

business practices and/or accusations that the union involved in not a “bona fide” union for purposes of AD approval of an arbitration carve-out program, are *not* issues or facts relevant to the limited issue of whether the WCAB has jurisdiction over applicant’s injury claim given that the injury is currently subject to the AD-approved Sam Hale carve-out agreement under section 3201.7. As stated in *Sanchez*:

Applicants ask the WCAB to invalidate the ADR Agreement based on the alleged malfeasance of Samuel Hale and Doc Johnson given the applicants’ testimony that they are not members of the UFCW, there is no legitimate representation of applicants by UFCW, and/or that Samuel Hale unlawfully interfered and assisted UFCW and its representation of Samuel Hale employees. **While some of these accusations implicate the AD’s requirement that any union applying for a labor-management agreement must be “bona fide” as defined by Rule 10200(e) and Rule 10202(d), applicants are essentially accusing Samuel Hale and the UFCW of unfair labor practices. Such issues may be subject to the jurisdiction of the National Labor Relations Board pursuant to the Labor Management Relations Act, 1947 (29 U.S.C. § 141 et seq.), and/or subject to other federal or state civil causes of action (see *San Diego Bldg. Trades Council v. Garmon* (1959) 359 U.S. 236 [79 S. Ct. 773, 3 L. Ed. 2d 775, 1959 U.S. LEXIS 1819]; *Adkins v. Mireles* (9th Cir. 2008) 526 F.3d 531 [2008 U.S. App. LEXIS 10540].) However, such issues are simply not within the jurisdiction of the WCAB.**

...

[T]he legislature conferred jurisdiction in the AD to recognize labor-management agreements pursuant to section 3201.7—not the WCAB—and the AD has the “power and jurisdiction to do all things necessary or convenient in the exercise of any power or jurisdiction conferred” by the Legislature under the Labor Code (Lab. Code, § 133). Although the WCAB has a broad grant of authority to exercise all judicial powers vested in it by the Labor Code and may do all things necessary or convenient in the exercise of any power or jurisdiction conferred upon it by the Labor Code (§§ 111, 133; see §§ 115, 130, 134, 5307, 5309, 5813, 5900 et seq.) [describing various powers of the Appeals Board], the WCAB has no authority in those matters where jurisdiction is vested in the AD by the Labor Code. (See *Stevens v. Workers’ Comp. Appeals Bd.* (2015) 241 Cal. App. 4th 1074, 1091 [194 Cal. Rptr. 3d 469, 80 Cal. Comp. Cases 1262 [statutory exceptions to the WCAB’s exclusive adjudicatory jurisdiction in sections 4610 (utilization review) and 4610.6 (independent medical review)]; see also Lab. Code, §§ 3715(c) (workers’ compensation insurance), 4603.6(f) (medical bills), and 139.21 (suspension of medical providers) [statutory exceptions to the WCAB’s exclusive adjudicatory jurisdiction].) (*Sanchez, supra*, 85 Cal.Comp.Cases at *25-28, emphasis added.)

We emphasize and concur with the WCJ's conclusion that applicant's right to due process is fully protected through applicant's right to adjudicate his injury claim through the Sam Hale carve-out ADR agreement *and* his right to reconsideration by the Appeals Board of any final arbitrator's decision arising from those administrative proceedings. As the panel stated in *Sanchez*:

However, the WCAB does not lose jurisdiction to review decisions issued by an arbitrator adjudicating claims under a recognized labor-management arbitration agreement. (Lab. Code, § 3201.7; *Becerra v. Eastside Reservoir Project/Avanco Constructors, Hartford Accident & Indem. Co.* (1997) 62 Cal. Comp. Cases 937, 938 [1997 Cal. Wrk. Comp. LEXIS 4672].) **All recognized labor-management agreements “shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision, or award made and filed by a workers’ compensation administrative law judge pursuant to the procedures set forth in Article 1 (commencing with Section 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals pursuant to the procedures set forth in Article 2 (commencing with Section 5950) of Chapter 7 of Part 4 of Division 4, governing orders, decisions, or awards of the appeals board.”** (Lab. Code, § 3201.7(a)(3)(A).) (*Sanchez, supra*, 85 Cal.Comp.Cases at fn. 6, emphasis added.)

In fact, “no labor-management agreement can diminish an employee’s right to workers’ compensation benefits...” (*Sanchez, supra*, 85 Cal.Comp.Cases at *18 citing Lab. Code, § 3201.7(b)(1).)⁷

Finally, we note that in *Sanchez*, there remained issues related to applicants’ election of employer, and therefore their applications for adjudication of claims were not dismissed. We find no indication in the record of this matter that any such issues remain in this case. Therefore, we note that should no such issue remain, it would be “premature to file either an Application or a petition for reconsideration since no arbitrator’s decision has been issued in this case. An Application is neither necessary nor required.” (*Kaiser v. Cal. Elec.* (1998) 63 Cal.Comp.Cases 1391, 1392 [1998 Cal.Wrk.Comp. LEXIS 5002].)

⁷“(b) (1) **Nothing in this section shall allow a labor-management agreement that diminishes the entitlement of an employee to compensation payments for total or partial disability, temporary disability, vocational rehabilitation, or medical treatment fully paid by the employer as otherwise provided in this division; nor shall any agreement authorized by this section deny to any employee the right to representation by counsel at all stages during the alternative dispute resolution process. The portion of any agreement that violates this paragraph shall be declared null and void.**” (Lab. Code, § 3207.1(b)(1), emphasis added.)

Accordingly, the WCAB has no jurisdiction over unfair labor practices or any objections to the AD's approval of Sam Hale's carve-out agreement. In addition, applicant's right to due process is fully protected through the Sam Hale carve-out agreement *and* his right to reconsideration by the Appeals Board of any final arbitrator's decision. Therefore, regarding those issues sufficiently raised for trial and before us for reconsideration, we deny applicant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact, Order issued on May 2, 2023 by a workers' compensation administrative law judge is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 20, 2023

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

**BENJAMIN MULGADO
LAW OFFICES OF MICHAEL J. RICHTER
LAW OFFICES OF BRADFORD & BARTHEL, LLP**

AJF/abs

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

...

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION⁸**

...

PETITIONER'S CONTENTIONS

Petitioner contends:

1. That by the order, decision, and award, the Board acted without or in excess of its powers;
2. The order, decision or award was procured by fraud;
3. The order, decision or award was unreasonable;
4. The WCJ erred by not making factual determinations on issues pertinent to its jurisdiction.

In summary, Petitioner contends that the WCJ erred by not finding the following:

- A. The WCJ determination it did not have jurisdiction to determine facts that could give it jurisdiction was error.
- B. This decision and California Law are contrary to the United States Supreme Court decision *Wright v. Universal Maritime Services Corp. et al.* (1998) 525 US 70, which requires an employee give a "clear and unmistakable waiver" of the right to a judicial forum.
- C. Applicant's US and California due process rights were denied in that he was not able to have a decision on facts that could have supported WCAB jurisdiction and prevented the matter going to the Samuel Hale ADR.
4. *Tony Costa v WCAB* (1998) 65 Cal. App. 4th 1177, 77 Cal. Rptr. 2d 289, 63 Cal. Comp. Cases 814, is not applicable because it did not address the U.S. Constitution issues and was decided before *Wright*, supra.

FACTS

As per stipulations of the parties, Applicant was, born on September 14, 200 I, while employed on July 15, 2021 as a mechanic-tractor at Salida, California, by defendant Samuel Hale, insured by Clear Spring Property & Casualty Company sustained an industrial injury arising out of and during the course of employment to his psyche, neck, upper and lower extremities, brain, vision, ears, shoulders, nervous system and body system. The Application of Adjudication of Claim was filed on September 30, 2021. Applicant filed a Declaration of Readiness to Proceed to Expedited Hearing, contending Applicant was not served any documents to support Applicant's case should proceed under the Alternative Dispute Resolution (ADR) process and the contract provided was not signed by the Applicant. Defendant filed a Petition for Dismissal on October 26, 2021, contending the Applicant's injury is covered under the ADR process and the Application should be dismissed. The only issue for the case submitted on the record, was whether which entity should have jurisdiction, ADR or the WCAB.

DISCUSSION-RESPONSE TO PETITIONER'S CONTENTIONS

The following is a response, which includes relevant modified portions of the Opinion On

⁸ All formatting, citation, and/or punctuation errors in the original.

Decision, in order to address the specific contentions of Petitioner.

ANALYSIS

CONTENTION A. Did the WCJ err by making a determination it did not have jurisdiction to determine facts that could give it jurisdiction?

ANSWER: No, the record supports the parties stipulating to the only issue for submission was whether the WCAB or ADR should have jurisdiction.

The parties agreed, the only issue for submission was which entity should have jurisdiction. No other issues were recorded in the record. The Minutes of Hearing were served upon the parties. Neither party lodged any objections regarding the Minutes of Hearing setting forth the Stipulations and Issues. The Applicant was present; however, the matter was submitted on the record, without any witnesses. As per Title 8, California Code of Regulations section 10517, the pleadings shall be deemed amended to confirm to the stipulations and statement of issues agreed to by the parties on the record.

Second, the Applicant fails to cite any authority in support of its theory that the WCJ is required to determine issues of fraud prior to issuing a determination of jurisdiction. The procedure for addressing the process for ADR jurisdiction is set forth in the Opinion on Decision, noting Labor Code sections 3201.7(a) and (d) recognizes a valid and binding labor-management agreement providing ADR of workers' compensation claims so long as requirements are met as set forth under Lab. Code 3201.7(a)(1)(2) and (3); thereafter, the bargaining representative must obtain authorization from the Administrative Director. Defendant's Exhibit A, EAMS ID #44402058, the employer complied with the relevant Labor Codes cited above by submitting the union contract to the Administrative Director. Defendant's Exhibit E, EAMS ID# 4440262, the Administrative Director validated the labor-management agreement by issuing the letter of authorization recognizing the ADR process.

Under Applicant's Contention A, Applicant addresses issues concerning the Applicant's electronic signatures and union membership. Issues concerning the applicant's membership and electronic signatures, were not issues submitted on the day of trial.⁹ Additionally, remedies for such disputes were set forth in the panel decision of Marta Sanchez Jimenez and Mercedes Perez v. Samuel Hale, LLC (2020) 85 Ca. Comp. Cases 814, noting issues regarding membership are for other state or federal civil jurisdictions of the National Labor Relations Board. A determination of union membership is not a condition precedent to the Administrative Director extending authorization recognizing the ADR process. Also see, *Becerra v. Eastside Reservoir Project/Advanco Constructors* (1997) 62 Cal. Comp. Cases (panel decision) and Lab. Code 3201.7.

⁹ The WCJ states that applicant did not raise the issue of the alleged forgery of signatures on the day of trial; however, the issue was clearly identified in the PTCS, and evidence related to the issue was submitted by applicant at the time of trial. (MOH, pp. 2-3.) Applicant raised the allegations to establish WCAB jurisdiction, and therefore, the Appeals Board disagrees that the issue was not at issue for trial.

CONTENTION B. Is the decision contrary to Federal Case Law?

ANSWER: No, the issue of jurisdiction is supported by the Labor Code and powers invested with the WCAB as set forth under the Lab. Code 133 and Section 4 of Article XIV of the California Constitution.

Contrary to the assertion made by Applicant alleging the WCJ is required by federal case law to address if the applicant made a “clear and unmistakable waiver”, of his rights to have his workers’ compensation claim adjudicated outside of the WCAB, Applicant may have overlooked the distinguishing factor; all ADR decisions can be appealed to the WCAB if a party chooses do to so. All appeals are filed and heard before the WCAB; therefore, the applicant’s claim is not exclusively addressed by ADR. See Title 8, California Code of Regulations section 10990. Secondly, Applicant did not raise this issue of “clear and unmistakable waiver” on the day of trial. There was no evidence presented in support of Applicant’s contention the WCAB is bound by federal case law. Lastly, the WCAB has the power and authority to create the ADR process, Lab. Code sections 111 and 133.

CONTENTION C. Was the Applicant denied due process?

ANSWER: No, any decision by the ADR can be appealed through the WCAB.

Applicant’s due process rights remain protected and available under the WCAB. The ADR process is the beginning of the adjudication process. The adjudication process does not end until the administrative remedies have been exhausted, and appealed to the WCAB as set forth under Lab. Code 3201.7(a)(3)(A) and Title 8, California Code of Regulations section 10990. The Applicant can appeal a decision of the arbitrator by filing a Petition for Reconsideration with the Appeals Board, Regulation section 10990 and Lab. Code 3201.7(a)(3)(A), “ ... Any system of arbitration shall provide that the decision of the arbiter or board of arbitration is subject to review by the appeals board in the same manner as provided for reconsideration of a final order, decision or award made and filed by a workers’ compensation administrative law judge pursuant to the procedures set forth in Article 1 ... “ Applicant fails to address the specific evidence in the record, in support of its dispute with the ADR process in its petition.

CONTENTION D. Is the Wright case binding upon the WCAB; thereby requiring the WCJ to ignore Costa v. WCAB (1998) 63 Cal. Comp. Cases?

ANSWER: No, the issues raised by Applicant were not raised at trial.

In addition to the applicant failing to set forth the issue of clear and unmistakable waiver noted in Wright, supra, on the day of trial, Applicant fails to address the relevant Labor Code sections and any case mandating state judicial forums be bound to follow federal judicial forums set forth under Wright, supra. Applicant further contends the WCJ is required to address whether there was a clear and unmistakable waiver by the applicant of having his case heard outside of the WCAB. Applicant fails to acknowledge, any appeal of a decision issued under the ADR process, can be appealed and jurisdiction for the appeal is with the WCAB as allowed under Lab. Code 5201.7 and Regulation 10990; thus the applicant’s rights to be heard by the WCAB remain available. Under Regulation 10945(a), “Every petition for reconsideration, removal, or

disqualification shall fairly state all of the material evidence relative to the point or points at issue”. Applicant not only fails to address the material evidence in the record, applicant attempts to raise issues not raised on the day of trial.

Second, Wright, supra, did not overturn Costa, supra. Costa, supra, remains valid authority.

CONCLUSION

The Findings and Order issued in this matter are clear, concise and supported by substantial credible evidence as set forth above and in the record.

Applicant’s attempt to adjudicate issues in its Petition for Reconsideration, not raised at trial,^[10] should not be raised in their Petition for Reconsideration. In Sloan D. Lamin v. City of Los Angeles, Police Department (2004) 69 Cal. Comp. Cases 1002, 2004 Cal. Wrk. Comp. LEXIS 241, Panel Decision, the court determined the WCJ may determine only issues that have been properly raised and submitted. (See Regulation section 10517) In Lamin, supra, only 2 issues were raised, whether the applicant was entitled to have an guardian ad litem and whether the applicant was entitled to have a nurse case manager. The issue of whether the applicant needs further medical care was not raised and the WCJ’s finding thereof, was rescinded. In the case at hand, the parties only submitted the specific issue of which entity has jurisdiction, ADR or the WCAB and all other issues were deferred, as set forth in the Minutes of Hearing. Raising issues in a Petition for Reconsideration, not raised at trial, supports this WCJ’s recommendation to deny reconsideration.

Additionally, Applicant fails to properly reference exhibits in their Petition for Reconsideration. As per Regulation section 10945(b)(3)(B) and (C) the exhibit referenced is not identified by stating the name of person deposed and the date of the deposition. Under Regulation section 10945(a), failure to state specific references to the record in support of their evidentiary statements is reason to deny reconsideration.

RECOMMENDATION

It is respectfully recommended that the Petition for Reconsideration be denied.

Date: June 13, 2023

Irene R. Bowdry
WORKERS’ COMPENSATION JUDGE

¹⁰ Please see footnote 9, *supra*.