

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

JOSE ALMAGUER, *Applicant*

vs.

**VALLEY PRODUCE MARKET PLACE;
EMPLOYERS COMPENSATION INSURANCE COMPANY, INC.,
adjusted by BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ10107712
Van Nuys District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Amended Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on March 18, 2021.¹ In pertinent part, the WCJ found that applicant sustained injury to various body parts arising out of and occurring in the course of employment (AOE/COE) and that applicant was entitled to permanent disability, future medical treatment, and attorneys' fees.

¹ We note that the WCJ designated defendant to serve the F&A pursuant to WCAB Rule 10629. While the Appeals Board may designate a party to serve documents, service must still be in accordance with WCAB Rule 10628. (Cal. Code Regs., tit. 8, § 10629 (eff. Jan. 1, 2020).) WCAB Rule 10628 does not allow the Appeals Board to designate service of any final order, decision or award relating to a submitted issue. (Cal. Code Regs., tit. 8, former § 10500, now § 10628 (eff. Jan. 1, 2020).) In the Appeals Board's March 18, 2020 en banc decision, the Appeals Board suspended the requirement for the WCAB to serve by mail unless a party has designated email for service. (March 18, 2020 In Re: COVID-19 State of Emergency En Banc (Misc. No. 260); Cal. Code Regs., tit. 8, former § 10500, now § 10628 (eff. Jan. 1, 2020).) The en banc decision stated that service by the WCAB may be made electronically with or without parties' consent but did not state that the WCAB may designate a party to serve a final decision, order or award. The district offices should still serve all parties of record with a final decision, order or award (whether electronically or otherwise), not designate a party to serve. Because we are dismissing applicant's petition on other grounds, we do not further consider the issue of improperly designated service.

Applicant's Petition² is made on a standard form, however the petition lacks required information, including a statement of facts upon which petitioner relies and a discussion of the applicable law. As such, applicant's specific contentions are unknown.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that we deny reconsideration. We received an Answer from defendant.

We considered the allegations in the Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated in the WCJ's Report and for the reasons discussed below, we will dismiss the petition for reconsideration.

Labor Code section 5902 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 WCAB 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 Labor Code 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 [2004

² We note that the Electronic Adjudication Management System (EAMS) adjudication file does not contain a proof of service of applicant's Petition, as required by the WCAB Rules, although by the fact that defendant filed an answer, defendant was served. (Cal. Code Regs., tit. 8, § 10610 (eff. Jan. 1, 2020); Cal. Code Regs., tit. 8, § 10625 (eff. Jan. 1, 2020).) Because we are dismissing applicant's petition on other grounds, we do not further consider the issue of invalid service.

Cal.Wrk.Comp. LEXIS 8] (writ den.); *Hall v. Workers' Comp. Appeals Bd.* (1984) 49 Cal.Comp.Cases 253 [1984 Cal.Wrk.Comp. LEXIS 3315] (writ den.); *Green v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 564 [1980 Cal.Wrk.Comp. LEXIS 3319] (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 [2005 Cal.Wrk.Comp. LEXIS 258] (writ den.); *City of Torrance v. Workers' Comp. Appeals Bd. (Moore)* (2002) 67 Cal.Comp.Cases 948 [2002 Cal.Wrk.Comp. LEXIS 1414] (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 948; *Shelton v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 70 [1995 Cal.Wrk.Comp. LEXIS 3468] (writ den.)) The Petition for Reconsideration filed herein fails to state grounds upon which reconsideration is sought or to cite with specificity to the record. Accordingly, we dismiss applicant's petition for reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 17, 2021

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

**JOSE ALMAGUER
LAW OFFICES OF EVERARDO VALENCIA
PEARLMAN BROWN & WAX**

JB/abs

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