

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

JOSE VASQUEZ, *Applicant*

vs.

**DALEY'S DRYWALL AND TAPING, INC.,
permissibly self-insured, CALIFORNIA
CONTRACTORS NETWORK, administered by
ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Numbers: ADJ9547761; ADJ11100483
Oakland District Office**

**OPINION AND ORDER
DISMISSING PETITIONS FOR
RECONSIDERATION**

Applicant, in pro per, filed a Petition for Reconsideration at the Oakland District Office on March 5, 2024. Based on our review of the petition and the record in this matter, and for the reasons discussed below, we will dismiss the petition because it is skeletal and because applicant is not aggrieved.

Preliminarily, however, we will address several irregularities at the trial level. While the WCJ issued a Report and Recommendation on Petition for Reconsideration recommending that we dismiss the petition as skeletal, a result with which we ultimately agree, the WCJ should have addressed the irregularities in the record prior to making that recommendation.¹ The Petition for

¹ The Report states, in relevant part: "Applicant's petition is filed in Spanish, and appears to be a skeletal petition. It also appears to be missing a portion of the first page of the pleading, which is cut off. Because of these factors, cannot decipher applicant's contentions. No Answer has been filed by defendant yet. I have reviewed applicant's pleading, and I have again reviewed the relevant record in this matter. [¶] 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

Reconsideration filed on March 5, 2024 (EAMS document number 77707434) consists of three (3) pages: a document separator sheet, page one (1) of the Petition for Reconsideration (which includes the caption), and page (2) of the Petition for Reconsideration (which includes the signature line and verification). The text at the bottom of page one (1) of the petition is cut off showing text continued off the page and the top of page two (2) of the petition is numbered “4.” It was not clear whether additional pages were intended to be inserted between pages one (1) and (2). Moreover, the Petition for Reconsideration was handwritten in Spanish and was not served on defense counsel. There is no evidence in the record that the WCJ attempted to take corrective measures pursuant to Rule 10205.8 to have the petition rescanned into EAMS or to obtain a translation pursuant to Rule 10564 or to serve defense counsel with the petition.

Our overarching constitutional mandate is to provide substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character. (Cal.Const., art XIV, § 4.) The “essence of due process is simply notice and the opportunity to be heard.” (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.*, 74 Cal.App.4th 928, 936.) Determining an issue without giving the parties notice and an opportunity to be heard violates the parties’ rights to due process. (*Gangwish v. Workers’ Comp. Appeals Bd.*, 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584] (citing *Rucker v. Workers’ Compensation Appeals Bd.*, 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].))

Based on this authority and applicant’s evident willingness to prosecute his claim, we believe that substantial justice requires the observance of due process prior to an administrative dismissal. In this case, that should have involved corrective efforts to have the petition rescanned or substituted pursuant to Rule 10205.8, translated² pursuant to Rule 10564, and served on defense counsel.

While the defendant carrier was served with the petition, as stated above, the petition was not served on their legal representatives, who appeared at the trial of November 30, 2023 in this matter. In situations involving ex parte communications, the WCJ has a duty to serve all letters or

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, it is subject to dismissal.” (Report, at p. 2.)

² The duty to have a Petition for Reconsideration translated to English is supported by Government Codes 68092.1[(a) The Legislature finds and declares that it is imperative that courts provide interpreters to all parties who require one, and that both the legislative and judicial branches of government continue in their joint commitment to carry out this shared goal.] and 11435.15 [(a) The following state agencies shall provide language assistance in adjudicative proceedings to the extent provided in this article: ...(19) Workers’ Compensation Appeals Board....].

other documents in a case pending before the Appeals Board with a cover letter. (Cal. Code Regs., tit. 8, § 10410(b).) While their client was served with the petition, we believe good practice would have been for the WCJ to have served the petition on defense counsel in this case as well. Defense counsel was served with the Report thereby acquiring notice of the Petition for Reconsideration but have not filed an answer.

On May 2, 2024, an Oakland District Office Information and Assistance (I&A) Officer uploaded a rescanned Petition for Reconsideration (EAMS document number 77914486). This document consists of six (6) pages: A document cover sheet (with a handwritten “1” in the top right corner), a document separator sheet (with a handwritten “2” in the top right corner), page one (1) of the Petition for Reconsideration (with a handwritten “3” in the top right corner – this page is date stamped as received by the Oakland District Office on March 5, 2024 and contains the handwritten text at the bottom that had been cut off in EAMS document number 77707434), page 2 of the Petition for Reconsideration (with a handwritten “4” in the top right corner), a second document separator sheet (with a handwritten “5” in the top right corner), and a proof of service (with a handwritten “6” in the top right corner). We accept EAMS document number 77914486 as a substitute for the Petition for Reconsideration filed on March 5, 2024.

A translation of the Spanish handwriting under Paragraph five (5) of the Petition for Reconsideration is as follows:

I don't speak English

Note: My name is Jose Enrique Vazquez Montes and on January 17, 2014 I had a work accident at the company of Daley's Drywall and Taping, Inc., hurting No. 1) the LEFT knee, No. 2) THE LOW BACK, No. 3) the LEFT SHOULDER, No 4) also the stomach. Signed Jose E. Vazquez Montes, Date: 03/04/2024.

I do not agree with the decision taken and the doctors have not done anything for my injuries and I clearly see that they are not taking account of the LOW BACK.

The Labor Code³ 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

³ All further statutory references are to the Labor Code, unless otherwise noted.

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, 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, § 10945 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, § 10972.

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.

Moreover, we have reviewed the record in this matter and are persuaded that applicant is not aggrieved. If we were to address the merits, we would affirm the WCJ’s February 16, 2024 Findings, Award and Order for the reason stated in the Joint Opinion on Decision.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 6, 2024

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

**JOSE VASQUEZ
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

PAG/abs

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