

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

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4 **ISIDORO A. LUCENA,**

Case No. WCK 037874

5 *Applicant,*

**OPINION AND DECISION AFTER
RECONSIDERATION
(OPINION AND ORDER VACATING ORDER
GRANTING
RECONSIDERATION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION)**

6
7 **vs.**

8 **DIABLO AUTO BODY; LIBERTY; MUTUAL
INSURANCE; SUN VALLEY FORD; GREAT
STATES INSURANCE,**

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10 *Defendant(s).*

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12 On August 7, 2000, we granted defendant's petition for reconsideration of the Order for
13 Payment of Sanctions dated May 16, 2000, in order to allow sufficient opportunity to further study the
14 factual and legal issues in this case. After further review, we hold that where a petition for
15 reconsideration is not verified as required by Labor Code section 5902,¹ the petition will ordinarily be
16 dismissed where the petitioner has been given notice of the defect (either by the Report and
17 Recommendation on Petition for Reconsideration (Report) of the workers' compensation administrative
18 law judge (WCJ) or by the respondent's answer) unless, within a reasonable time, the petitioner either:
19 (1) cures the defect; or (2) offers a compelling reason for the lack of verification and respondents are
20 not prejudiced thereby. Therefore, we will vacate our order granting reconsideration and will dismiss
the unverified petition for reconsideration.

21 I.

22 In the case before us the WCJ found that counsel for defendant, Great States Insurance
23 Company, willfully filed a petition for dismissal unsupported by the medical record known to defendant,
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¹ All further statutory references are to the Labor Code.

1 thereby causing applicant's counsel to incur expense in taking the time to reply to the totally
2 unsupported petition for dismissal. Great States Insurance Company was therefore ordered to pay
3 sanctions in the amount of \$100.00 plus reasonable attorney fees to applicant's attorneys for time and
4 expense in preparing their objection to the petition to dismiss.

5 Defendant filed a timely petition for reconsideration, admitting that the petition for dismissal was
6 filed in error but contending that it had relied upon a statement in a medical report. The defendant also
7 denied that the petition was willfully and intentionally misleading. Defendant attached a verification to its
8 petition but failed to sign it.

9 In his Report dated June 23, 2000, the WCJ noted that the petition for reconsideration was
10 unverified (page 2). The WCJ recommended that the petition be dismissed "unless within a reasonable
11 period the carrier verifies the document" (page 5).

12 Defendant has not subsequently submitted a verification.

13 We will dismiss the petition.

14 II .DISCUSSION

15 Section 5902 provides in relevant part: "The petition [for reconsideration] shall be verified upon
16 oath in the manner required for verified pleadings in courts of record" Thus, there is a clear and
17 specific statutory requirement that petitions be verified.² Petitioner, as noted above, has not done so
18 and, despite notice from the WCJ in his Report that the petition was not verified as required by section
19 5902, petitioner has not filed a verification late or otherwise. Petitioner has not offered a compelling
20 reason, or indeed any reason, for the lack of verification after specific notice of the absence thereof.
21 Therefore, we will dismiss the petition for failure to comply with section 5902. (See *Conner v.*
22 *Workers' Comp. Appeals Bd.* (1980) 45 Cal. Comp. Cases 370, (writ. den.).)

23 In dismissing the petition, we recognize that the failure to verify the petition is not a jurisdictional
24 defect which mandates dismissal. (*Wings West Airlines v. Workers' Comp. Appeals Bd. (Nebelon)*
25 (1986) 187 Cal.App.3d 1047, 1055 [51 Cal.Comp.Cases 609, 614]; *Mullane v. Industrial Acc.*
26 *Com.* (1931) 118 Cal. App. 283, 286 [17 IAC 328, 330].) Further, on this record, we see no basis

² Section 5905 also requires that answers to petitions for reconsideration be verified.

1 to conclude that the requirement should be deemed waived, the WCJ having specifically noted the lack
2 of verification and petitioner having failed to cure the defect in a timely fashion after such notice. The
3 statutory requirement for verification is clear on its face, assuring accuracy and responsibility in the
4 pleadings, and compliance with this statutory requirement should be expected and required.³

5 In sum, based upon the facts of this case (i.e., the lack of verification even after notice by the
6 WCJ), the petition for reconsideration will be dismissed. To accomplish this purpose, the Board will
7 vacate its prior order granting reconsideration, and substitute an order dismissing the petition for
8 reconsideration.⁴

9 For the foregoing reasons, and as the Decision After Reconsideration of the Workers'
10 Compensation Appeals Board,

11 **IT IS HEREBY ORDERED** that the Order Granting Reconsideration August 7, 2000, be, and
12 the same hereby is, **VACATED**.

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18 ³ There are situations where compelling reasons for the absence of a verification could be provided, such as where
19 the injured worker is not available for verification as being out of state or out of country or other circumstances that
20 would explain the lack of verification.

21 ⁴ Although we will generally dismiss unverified petitions for reconsideration under the circumstances discussed
22 above, we reiterate that verification is not a jurisdictional requirement (*Wings West Airlines v. Workers' Comp.*
23 *Appeals Bd. (Nebelon)*, *supra*, 187 Cal.App.3d at p. 1055 [51 Cal.Comp.Cases at p. 614]; *Mullane v. Industrial Acc.*
24 *Com.*, *supra*, 118 Cal. App. at p. 286 [17 IAC at p. 330]) and, of course, we have the discretion not to dismiss
25 unverified petitions. (E.g. *Detherage v. Workers' Comp. Appeals Bd.* (1998) 63 Cal.Comp.Cases 803 (writ den.);
26 *Lorenz v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 511 (writ den.); *Pacific Telephone & Telegraph Co.*
v. Workers' Comp. Appeals Bd. (Nichols) (1983) 48 Cal.Comp.Cases 530 (writ den.); *Arko v. Workers' Comp. Appeals*
Bd. (1982) 47 Cal.Comp.Cases 1281 (writ den.); *General Telephone & Electric v. Workers' Comp. Appeals Bd.*
(Tortorice) (1982) 10 Cal. Workers' Comp. Rptr. 179 [minute opinion].) Therefore, under some circumstances (e.g.,
where the petitioner is a pro per applicant or a pro per defendant, where the failure to verify is not pointed out by the
WCJ's Report or the respondent's answer, and/or where we believe no prejudice results from the failure to verify), we
may elect not to dismiss an unverified petition. In the usual case, however, we will dismiss, so the prudent
practitioner will verify, as required by statute.

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IT IS FURTHER ORDERED that the Petition for Reconsideration, filed June 8, 2000, be, and the same hereby is, **DISMISSED.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ Merle C. Rabine

I CONCUR,

/s/ Robert N. Ruggles

/s/ Dennis J. Hannigan

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 7, 2000

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES AS SHOWN ON THE OFFICIAL ADDRESS RECORD EXCEPT LIEN CLAIMANTS.

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