

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

ANTONIO VEGA, *Applicant*

vs.

**CABINETS 2000, LLC;
CYPRESS INSURANCE, administered by
BERKSHIRE HATHAWAY, *Defendants***

**Adjudication Number: ADJ11616714
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Although still represented by an attorney, applicant filed a Petition for Reconsideration in pro per on June 21, 2021. We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

We note that, as required by Labor Code section 5905, the petition was filed without proof of service on applicant's own attorney or defendant, which is an adverse party. Pursuant to defendant's verified answer, it became aware of the petition on July 1, 2021 and filed an answer on July 9, 2021 within 10 days of becoming aware of the petition. Accordingly, any defect in service on defendant was cured.

Nevertheless, 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 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 or denial.

Moreover, we have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 18, 2021

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

**ANTONIO VEGA
LAW OFFICE OF JOHN H. MARDOYAN
HARRIGAN, POLAN, KAPLAN & BOLDY**

PAG/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 RECONSIDERATION

The Workers' Compensation Administrative Law Judge ("WCJ") issued a decision on 6/1/21. Applicant has filed a timely and verified request for Reconsideration on the following grounds pursuant to Labor Code § 5903:

1. By order, decision, or award, the Board acted without or in excess of its powers;
2. Newly discovered material evidence that was not known before was not produced at the hearing;
3. The findings of fact do not support the order, decision or award.

CONTENTIONS

Essentially, the issue is whether the WCJ erred finding in defendant's favor.

PERTINENT FACTS

Applicant filed a claim for a specific injury occurring at work which he claims was reported to a supervisor. A short time thereafter, applicant was unexpectedly and suddenly terminated from his employment and he filed a workers' compensation claim. The defendant denied the claim based on post termination, LC Sec. 3600(a)(10). This Court found in defendant's favor and it is from this determination that the claim was made post-termination, and therefore barred, upon which applicant appeals.

DISCUSSION

Contrary to the requirements of WCAB Rule 10842, the applicant has not set forth any material evidence relative to the point that newly discovered evidence not available at time of trial has since been obtained and not able to be presented to the Court. Although [applicant] calls into question the amount of wages, it is not relevant to the issue presented regarding whether his (alleged) injury was reported post-termination and thereby barred.

Applicant contends in his Petition that he did report the injury prior to termination. Regarding the assertions made, this WCJ issued an Opinion stating, in pertinent part, the following:

“Applicant was terminated 35 days after commencing work. Applicant claims a specific injury occurred while lifting with his supervisor a heavy drum filled with trash prior to the date of termination. Applicant testified his supervisor lost his grip while lifting the drum and knew applicant hurt himself.

The defense witness/supervisor Cuevas credibly testified he expected applicant to have more skill based on the application and interview than what was exhibited by applicant on the job. Witness Cuevas explained applicant did not seem to be able to read schematics, needed a lot of supervision rather than being able to work on his own, and improperly repaired a particular

machine which led to productivity being halted for one day until it could be properly repaired (as applicant was unable to do so). Additionally, Cuevas testified that emptying the drum of trash was part of the job duties and that applicant was not doing any favor in assisting in such manner.

Applicant's allegation of the supervisor losing his grip while lifting a 50 gallon trash drum causing applicant's injury is disputed by defense witness as well as applicant's claims of reporting such an injury.

Defense witness testified he knows the procedure of filling out the appropriate paperwork if an injury is reported and the procedure required to send an injured employee to HR for referral to the doctor, or straight to the hospital in the event of emergency. Witness Cuevas came across credible and there is no indication witness Cuevas had any reason not to provide applicant with the same procedure of referring applicant to HR, as is done for other workers who report an injury, and which he had done many times in the past.

Applicant admitted that when he was terminated on the spot he was in shock as he thought it not fair to be terminated over one -- and first -- mistake. Whether or not being terminated for a first mistake and whether it was fair, is not for this Court to decide nor second-guess the employer's business judgment. The employer determined since the mistake was costly to the company in having production halted for the entire day, and applicant was in charge of maintenance/repair and did not seem to live up to the expectations in the short month he was there, he was apparently made to be the head that rolled.

Witness supervisor/Cuevas' testimony that applicant was not doing a favor in assisting in emptying the [trash] from the drum as it was part of the job duties, that the supervisor did not lose his grip and no incident was reported, that it is the [practice] to refer injured employees to HR, and as applicant was justifiably and understandably "in shock" upon being terminated, it leads to the [conclusion] that no injury, if one occurred, was reported until after termination.

Hence, it is found that defendant's version of events is more credible and reliable than applicant's and that any reporting of injury, if one occurred, was not until after termination and therefore is barred by LC 3600(a)(10)."

RECOMMENDATION

Based on the foregoing, it is respectfully recommended that applicant's Petition for Reconsideration be denied.

Dated: 6/25/2021

DAVID L. SEYMOUR
Worker's Compensation Judge