

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

**MIGUEL AGUILERA, *Applicant***

**vs.**

**CASTREJON, INC., ET AL., *Defendants***

**Adjudication Number: ADJ11562135  
Bakersfield District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

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, as quoted below, we will deny reconsideration.

We adopt the following quote from the WCJ's Report:

**Report and Recommendations on  
Petition for Reconsideration**

**I. Introduction:** Applicant-Petitioner Miguel Morales Aguilera seeks Reconsideration to annul the Findings of Fact & Orders of August 25, 2021.

Miguel Morales Aguilera, 48 years of age at the end of the alleged period of cumulative injury, claims to sustained an injury arising out of and in the course of his employment during the period from January 1, 2006 to July 26, 2014 to his neck, back, spine and respiratory system while employed by one or more of 22 alleged employers. *Application for Adjudication of Claim 9/28/2018 (Addendum listing of employers pp. 1-5)*

Following submission for decision pursuant to the Opinion and Decision after Removal, Findings of Fact & Orders issued. *Opinion & Decision After Removal 6/07/2021; Submission for Decision 7/13/2021; Findings of Fact & Orders 8/25/2021.* Petitioner was found to have failed to comply with Discovery Orders of April 30, 2019 and August 21, 2019, was not shown to have been generally or specially employed by any Defendant other than D&S

Labor Service during the alleged period of cumulative injury, was not shown to have sustained the alleged cumulative injury, and failed to attend the Mandatory Settlement Conference of February 19, 2020. *Findings of Fact & Orders 8/25/2021 pp. 1-2 (Findings of Fact #3, 4, 5, 6 & 8)*. Petitioner was ordered to take nothing further on account of his Application. *Findings of Fact & Orders 8/25/2021 p. 2 (Order #1)*. In the alternative, Defendants' motion for dismissal of the above-captioned case in light of Petitioner's non-compliance with Discovery Orders and non-attendance at the MSC was granted. *Findings of Fact & Orders 8/25/2021 p. 2 (Order #2)*.

By timely,<sup>1</sup> verified and sufficiently served petition, Mr. Aguilera seeks reconsideration. *Petition for Reconsideration 9/17/2021 p.11 (verification); Proof of Service 9/20/2021*. Authorized grounds for reconsideration are alleged pursuant to Lab.C. §5902{a}, {c} and {e}. *Petition for Reconsideration 9/18/2021 p. 1 line 26 to p. 2 line 2*. New evidence pursuant to Lab.C. §5903{d} was not asserted as grounds for reconsideration even though a nine-page medical record review is attached to the pending petition nor does the pending petition appear to include compliance with the applicable rule regarding reconsideration based on new evidence. *Petition for Reconsideration 9/17/2021-Exhibit A; 8 CCR §10974 (WCAB Rule 10974)*.

Petitioner repeats his prior argument that submission of this matter for decision violated his right to due process of law and was substantially unjust. *Petition for Reconsideration 9/17/2021 p. 6 line 1 to p. 7 line 7*. Regarding employment, Petitioner argues that payroll stubs and other documentation of employment were provided to the alleged employers and that a presumptively compensable claim against them was established. *Petition for Reconsideration 9/17/2021 p. 7 lines 9-12, p. 7 line 21 to p. 8 line 12*. Regarding non-compliance with Discovery Orders, Petitioner alleges that he substantially complied and that the WCJ commented that the required Social Security Administration might not be helpful in establishing periods of employment. *Petition for Reconsideration 9/17/2021 p. 7 line 13-20*. Regarding Injury AOE-COE, Petitioner argues that he is entitled to the presumption of Lab.C. §5402, that the subpoenaed records of Dr. Aziz (the subject to the medical abstract attached as Exhibit A) establish that the alleged injury occurred and that the Defendants were obligated to object to these treatment reports and trigger the AME-QME process of Lab.C. §4060 *et seq.* *Petition for Reconsideration 9/17/2021 p. 7 line 25 to p. 9 line 10*. Regarding non-appearance at the MSC, Petitioner argues that proper notice was not provided. *Petition for Reconsideration 9/17/2021 p. 9 line 11-17*. Petitioner concludes that the two Order should not have issued, that the law should be liberally construed in his favor, and prays that reconsideration be granted. *Petition for Reconsideration 9/17/2021 p. 9 line 22 to p. 10 line 15*.

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<sup>1</sup> The pending petition was filed twice. An electronic filing into the Electronic Adjudication Management System (EAMS) took place on Monday, September 20, 2021. This was the 26th day after the Findings of Fact & Order of August 25, 2021 but timely pursuant to 8 CCR §10600{b} (WCAB Rule 10600{b}). A "paper copy" of the pending petition was also filed but at the Van Nuys District Office. That copy was forwarded to the Bakersfield District Office and arrived September 23, 2021. This would have been a tardy filing but for the earlier EAMS electronic filing.

A timely<sup>2</sup>, verified and properly served Answer to the pending petition has been filed on behalf of Defendant Security National Insurance. *Answer to Petition for Reconsideration under Labor Code §5905 (Security National) 9/30/2021: Verification; Proof of Service 9/30/2021*. Security National argues that Petitioner had the burden to prove his case by a preponderance of the evidence, did not provide required notice of his claim, did not prove he was employed by Security National's beneficiary, did not prove he had sustained the alleged cumulative injury, and did not reasonably prosecute his claim. *Petition for Reconsideration under Labor Code §5905 (Security National) 9/30/2021 p. 2 line 12 to p. 4 line 20*.

A timely<sup>3</sup>, verified and properly served Answer to the pending petition has also been filed on behalf of Defendant State Compensation Insurance Fund (SCIF). *Answer to Petition for Reconsideration (SCIF) 9/29/2021 p. 5 (verification) pp. 6-7 (Proof of Service)*. SCIF argues that Petitioner was provided with due process notice of the relevant hearings and events and was provided with an ample opportunity to conduct discovery and prove his claim but failed to do so. *Answer to Petition for Reconsideration (SCIF) 9/29/2021 p. 2 line 9 to p. 4 line 5*.

It is recommended that the pending petition be denied. The appropriateness of submission for decision was previously adjudicated. *Opinion & Decision After Reconsideration 6/07/2021; Submission for Decision 7/13/2021*. Based on the evidentiary record as submitted, the undersigned PWCJ appropriately found that covered employment and injury AOE-COE has not been proved and properly held Petitioner accountable for non-compliance with Discovery Orders and failing to appear.

Consideration of the medical abstract attached to the pending petition would not change the recommended outcome. The abstract of the records of Hany Aziz, M.D., indicates that Petitioner suffers from pulmonary coccidioidomycosis (San Joaquin Valley Fever) among other conditions. But these medical records do not indicate that any of these ailments arose out of or in the course of any employment of Petitioner by any of the Defendants.

**II. Facts:** The present case was initiated by Petitioner with the filing of an Application for Adjudication on October 1, 2018. Petitioner alleged cumulative injury to his neck, back, skin and respiratory system during the period from January 1, 2006 to July 26, 2014 at "various locations." The mechanism of injury was described only as "CT." *Application for Adjudication of Claim 9/28/2018 pp. 2-3*. D & S Farm Labor insured by AmTrust were identified within the body of the Application. *Application for Adjudication of Claim 9/28/2018 p. 2*. Twenty-one other Defendant-Employers (for a total of

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<sup>2</sup> 2 Security National's Answer was filed on September 30, 2021, the tenth day after the first filing of the pending petition.

<sup>3</sup> SCIF's Answer was also filed on September 30, 2021.

22) were also identified. Defendant-Carriers were identified for 9 of the 22 Defendant-Employers. *Application for Adjudication of Claim 9/28/2018 (attachment pp. 1-5)*.

It does not appear that a DWC-1 Claim form was filed or served with any of the Defendants or the Appeals Board.

The present case was originally venued at the DWC's Van Nuys District Office. Defendant-Carrier SCIF generally appeared and objected to venue based on Petitioner's attorney's principal place of business.<sup>4</sup> *Objection to and Petition for Change of Venue 10/12/2018*. The objection was sustained and venue was changed to the Bakersfield District Office. *Order Changing Venue 11/16/2018*.

Castrejon, Inc. and Security National answered the Application, denying employment of Petitioner at any time during the alleged CT and Injury AOE-COE. *Answer to Application for Adjudication (Castrejon/Security National) 1/7/2019 p. 2*. The same Defendants also declared their readiness to proceed, seeking WCAB intervention to determine Petitioner's work history and the appropriate legal date of injury pursuant to Lab.C. §5412 and liability period pursuant to Lab.C. §5500.5. *Declaration of Readiness to Proceed 1/07/2019*.

The Law Offices of Yruegui & Roberts appeared generally as separate counsel for Security National's coverage of HMN, Inc. *Notice of Representation 1/08/2019*. An Answer was filed later disputing Injury AOE-COE. *Answer to Application for Adjudication of Claim (HMN Inc./Security National) 2/25/2019*.

Valley Law Group appeared generally on behalf of Security National's coverage of Mega Farm Labor Service, Inc. An Answer was filed disputing employment and injury AOE-COE was filed. *Answer to Application for Adjudication (Mega Farm Labor/Security National) 1/14/2019*.

The Law Offices of Stander, Reubens, Thomas & Kinsey appeared generally for Security National's coverage of Alfredo Moreno Gomez, FLC, Inc. *Notice of Representation (Stander, Reubens et al.) 1/31/2019*. An Answer was filed disputing Injury AOE-COE. *Answer to Application for Adjudication of Claim (Alfredo Moreno Gomez FLC/Security National) 1/31/2019*.

The Law Offices of Tobin-Lucks, LLP appeared generally for Security National's coverage of F & J Contracting. *Notice of Representation 2/12/2019*. An objection to co-Defendant's Declaration of Readiness to Proceed<sup>5</sup> was also

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<sup>4</sup> SCIF did specify which of the three Defendant-Employers for which it allegedly provided workers' compensation coverage was joining in its objection to venue, if any of them. SCIF attorney Lena W. Tsui, Esq. objected to venue. SCIF attorney Michael J. Solimon, Esq. thereafter provided notice of his representation of SCIF's coverage of J. Fernandez AG Contracting.

<sup>5</sup> The DOR of January 7, 2019 was inaccurately attributed to Petitioner.

filed, alleging that discovery was needed and medical reports had not been provided. *Objection to Declaration of Readiness to Proceed 2/25/2019.*

The Law Offices of Stockwell, Harris appeared generally for Security National's coverage of Peregrina, Inc. *Notice of Representation 3/15/2019.*

The Law Offices of Gilson, Daub appeared generally for Meadowbrook Insurance's administration on behalf of HMN, Inc. *Notice of Representation 3/25/2019.* The parameters of coverage of HMN Inc. between Security National and Meadowbrook have not been alleged nor has Petitioner's allegation of injurious exposure been parsed between these coverages.

The present case came on for Status Conference on April 3, 2019 before WCJ Marilen Zinner. The parties jointly requested that the present case go off-calendar for further discovery. WCJ Zinner issued a discovery order issued to Petitioner's attorney:

Within 45 days after 4/3/19, Konrad Kuenstler is ordered to obtain Social Security records for employment for the period of 1/1/06 through 12/31/2016 & wage information showing employment with joined Defendants. So Ordered. /s/ M. Zinner *Minutes of Hearing 4/03/2019.*

Petitioner has not complied with this Discovery Order. Petitioner alleges that he has "substantially" complied by providing unspecified earnings information to some of the Defendants. *Petition for Removal 7/30/2020 p. 2 lines 19-24.* However, neither the required Social Security records nor the alleged "substantial compliance" wage information have been offered or received into evidence.

On April 17, 2019, Rossi Law generally appeared on behalf of Cream of the Crop AG Services, permissibly self-insured via California Farm Management administered by Intercare Holdings Insurance Services. *Notice of Representation 4/04/2019.* An Answer was filed disputing AOE-COE. *Answer to Application for Adjudication of Claim (Cream of the Crop AG/Calif. Farm Mgm.t) 4/17/2019.*

Also in April 17, 2019, the Law Offices of Gilson, Daub generally appeared on behalf of Defendant-employer Supreme Valley AG Inc. insured by Star Insurance administered by Meadowbrook Insurance. *Notice of Representation 4/17/2019.*

On May 17, 2019, Defendants HMN Inc. by Security National declared its readiness to proceed. They requested a Status Conference to "assist with Applicant's employment with numerous employers." *Declaration of Readiness to Proceed 5/17/2019 p. 2.*

On May 28, 2019, Defendant Castrejon, Inc. by Security National petitioned for dismissal as a party-Defendant alleging Petitioner's non-compliance with the discovery order of April 3, 2019 and the lack of any other evidence indicating covered employment during the period of alleged cumulative injury. In the alternative, Castrejon/Security National requested a Priority Conference rather than a Status Conference. *Petition to Dismiss for Lack of Employment Pursuant to Labor Code §3600{a} 5/28/2019*. By order dated June 6, 2019, WCJ Zinner suspended the petition for dismissal pending the then-upcoming Status Conference. *Order Suspending Action 6/06/2019*.

On August 5, 2019, Defendants Supreme Valley AG Inc./Star-Meadowbrook filed its petition for their dismissal as party-Defendants, also alleging the lack of proof of covered employment during the period of alleged cumulative injury and Petitioner's non-compliance with the April 3, 2019 Discovery Order. *Supreme Valley AG Inc./s Petition to Dismiss for Lack of Employment Pursuant to Labor Code §3600{a} 8/3/2019*. The petition was suspended pending the then-upcoming Status Conference. *Order Suspending Action 8/07/2019*.

Also on August 5, 2019, Defendant Castrejon/Security National petitioned for costs and sanctions pursuant to Lab.C. §5813, alleging that the maintenance of the present case against 22 different employers without proof of covered employment and without compliance with the Discovery Order was sanctionably frivolous. *Petition for Costs & Sanctions, ect. 8/8/2019*.

On August 9, 2019, Defendants Supreme Valley AG Inc./Star-Meadowbrook filed its petition for actions, also alleging that the maintenance of a pending claim against 22 employers without proof of covered employment and in violation of the Discovery Order was sanctionably frivolous. *Petition for Costs and Sanctions Pursuant to Lab.C. §5813 8/08/2019*.

On August 14, 2019, Defendant HMN Inc./Security National petitioned for its dismissal for lack of proof of covered employment. HMN, Inc.'s *Petition to Dismiss due to Lack [of] Employment pursuant to Labor Code §3600{a} 8/14/2019*. This petition was suspended pending hearing. *Order 8/20/2019*. By separate petition HMN, Inc./Security National sought cost and sanctions in the amount of \$2,464.00 to that date. *Petition for Costs And Sanctions pursuant to Labor Code §5813*.

On August 16, 2019, the Law Offices of Albert, Mackenzie generally appeared on behalf of Defendant-Employer Peregrina, Inc. by Insurance Company of the West. *Notice of Representation 8/16/2019*. The newly appearing Defendant also petitioned for its dismissal for lack of proof of covered employment, alleging that its coverage began after the end of the alleged period of cumulative injury. *Petition to Dismiss Case, Ect. 8/20/2019*. The initial version of the petition appeared to call for dismissal of the entire case for non-

prosecution. An amended petition specified dismissal of Peregrina, Inc./ICW for lack of covered employment. The petitions were later considered duplicates. They were dismissed or suspended. *Order Suspending Action and Order Dismissing Duplicate Petition. 8/23/2019.*

The present case came on for Status Conference on August 21, 2019 before WCJ Marilen Zinner. She ruled:

Applicant's attorney was ordered to obtain Social Security records in the 4/3/19. Applicant's attorney did not do so. Sanctions are deferred. So ordered. Applicant's attorney is ordered to obtain Social Security earnings information within 90 days. So ordered. /s/ M. Zinner. *Minutes of Hearing 8/21/2019.*

The present case was then ordered off-calendar. *Minutes of Hearing 8/21/2019.* Petitioner has not complied with the second Discovery Order of August 21, 2019.<sup>6</sup>

On December 3, 2019, Defendant Castrejon, Inc./Security National declared its readiness to proceed and requested a Priority Conference on the issue of employment. Defendant alleged that Petitioner had not complied with the renewed order to obtain Social Security records and the threshold issue of employment still had not been met by petitioner. *Declaration of Readiness to Proceed 12/03/2019.*

Petitioner did not object to this Declaration of Readiness to Proceed.

Priority Conference was held on February 19, 2020. No appearance was made by or on behalf of Petitioner. *Minutes of Hearing 2/19/2020; Pre-Trial Conference Summary Statement 2/19/2020 p. 1; Petition for Removal 7/30/2020 p. 2 lines 26-28.* The present case was set for Trial on the issues of employment and injury AOE-COE with neither documentary exhibits nor potential witnesses identified by any party. *Pre-Trial Conference Summary Statement 2/19/2020 p. 3 (Issues) p. 5 (exhibits).*

Trial was held on April 14, 2020. However, as a result of the Covid-19 epidemic and in compliance with various instructions from the DWC, the Appeals Board and the Governor's Office, telephonic proceedings were held. Petitioner appeared via his counsel of record. No appearance were made by or on behalf of any of the Defendants. Petitioner's objection to the various petitions for dismissal was noted.

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<sup>6</sup> Petitioner alleges that he provided some unspecified information to some of the Defendants and claims that this constituted substantial compliance with the Discovery Orders. The pending record neither includes nor specifies the information allegedly provided nor identifies the Defendant(s) to which it was allegedly provided.

There was discussion of Petitioner's non-compliance with the two Discovery Orders. Critically, it should be noted that Petitioner's attorney did not accuse his client of working for one or more of the Defendants using a false name, without the legal right to work in the United States, "under the table" or in some other inappropriate manner but did suggest that IF such behavior had occurred it would not have generated Social Security records such that obtaining and providing Social Security records would not result in a complete and correct work history. The undersigned PWCJ noted that "Employment history still needed; SSA records may not be helpful." Concern was also expressed that one or more of the 22 Defendants may not have had applicable workers compensation insurance coverage such that "UEBTF joinder may be needed." The present case was ordered off-calendar. *Minutes of Hearing 4/14/2020.*

Defendants were not pleased that the present case had gone off-calendar. After consultations among themselves, counsel for Castrejon, Inc./Security National expressed their collective displeasure and reported that the Defendants had relied on information that WCAB proceedings would not be held, and, therefore, did not attend. Defendant's collectively requested that the OTOC be rescinded and the above-captioned case be re-set for Trial. *Correspondence of Michael Sullivan & Associates (Joshua K. Kruger, Esq.) 4/29/2020.*

Defendants' motion was granted and the present case was re-set for Trial on June 30, 2020. Computer generated notice as provided, including service of Petitioner and his attorney. *Notice of Hearing 5/08/2020.*

Trial was held on June 30, 2020. There was no appearance by or on behalf of Petitioner at this Trial. Neither the required Social Security records nor any other employment histories were filed for consideration. *Minutes of Hearing 6/30/2020 p. 1.*

Concern was expressed at Trial that not all of the participating Defendants had formalized their representation and been entered on the Official Address Record. The undersigned PWCJ allowed generally appearing parties until July 8, 2020 to submit notice of representation. Thereafter, Minutes of Hearing/Summary of Evidence and Notice of Intention to Submit for Decision issued. *Minutes of Hearing 6/30/2020 p. 2; Minutes of Hearing/Summary of Evidence 7/08/2020 p. 1 lines 32-33 (Disposition).*

Whereupon, Petitioner petitioned for Removal, alleging that the submission of the present case on an empty record violated Petitioner's right to due process of law was fundamentally unfair and exalted form over substance. *Petition for Removal 7/30/2020.* The Appeals Board panel initially granted Removal for study of the legal and factual issues. *Opinion and Order Granting Petition for Removal 9/28/2020.* A settlement conference was scheduled but was not successful in resolving the present case. *Correspondence of Hon. David*

*Hettick (Staff WCJ) 12/04/2020*. After study, the Appeals Board panel vacated the earlier Removal and denied Petitioner's petition. *Opinion and Decision After Removal 6/07/2021*.

Consistent with the decision of the Appeal Board, the present case was re-submitted for decision and decided. *Notice of Intention to Submit for Decision 6/15/2021; Order of Submission for Decision 7/13/2021; Findings of Fact & Orders 8/25/2021*. Petitioner was found to have failed to comply with Discovery Orders of April 30, 2019 and August 21, 2019, was not shown to have been generally or specially employed by any Defendant other than D&S Labor Service during the alleged period of cumulative injury, was not shown to have sustained the alleged cumulative injury, and failed to attend the Mandatory Settlement Conference of February 19, 2020. *Findings of Fact & Orders 8/25/2021 pp. 1-2 (Findings of Fact #3, 4, 5, 6 & \*)*. Petitioner was ordered to take nothing further on account of his Application. *Findings of Fact & Orders 8/25/2021 p. 2 (Order #1)*. In the alternative, Defendants' motion for dismissal of the above-captioned case in light of Petitioner's non-compliance with Discovery Orders and non-attendance at the MSC was granted. *Findings of Fact & Orders 8/25/2021 p. 2 (Order #2)*.

Whereupon, Petitioner seeks reconsideration.

**III. Discussion:** Petitioner repeats his prior argument that submission of this matter for decision on the present record violated his right to due process of law and was substantially unjust. *Petition for Reconsideration 9/17/2021 p. 6 line 1 to p. 7 line 7*. That issue has been adjudicated and decided. *Opinion and Decision After Removal 6/07/2021*.

The alleged period of cumulative injury ended in July 2014. The Application was filed in October 2018. The present case was not submitted for decision until July 13, 2021. Defendant SCIF is correct that Petitioner had an ample opportunity prior to submission to conduct appropriate discovery to prove his employment history and alleged injury. *Answer to Petition for Reconsideration (SCIF) 9/29/2021 p. 3 line 18 to p. 4 line 2*. Defendant Security National is correct that he did not do so. *Answer to Petition for Reconsideration under Labor Code §5905 (Security National) 9/30/2021 p. 3 lines 10-21*.

Regarding employment, Petitioner argues that payroll stubs and other documentation of employment were provided to some of alleged employers and that a presumptively compensable claim against them was established. *Petition for Reconsideration 9/17/2021 p. 7 lines 9-12, p. 7 line 21 to p. 8 line 12*.

The first problem with Petitioner's argument on employment is the alleged service of unspecified paystubs on some of the Defendants is well short of a complete employment history taken into evidence. The present record does not

contain evidence of Petitioner’s employment history with the Defendants in the face of, and even in defiance of, Discovery Order on that subject.

The second problem with Petitioner’s argument on employment is that this claim does not appear to be subject to a presumption of compensability. The Lab.C. §5402 presumption requires the filing of a DWC-1 claim form with the relevant employer. *Honeywell Computers v. WCAB (Wagner)*, (2005) 35 Cal. 4th 24, 24 Cal.Rptr. 3d 179, 105 Pac.3d 544, 70 CCC 97, 103-194. Claim forms were not shown to have been filed with any of the alleged employers nor were the denials of those employers shown to be untimely.

Likewise, the Lab.C. §3357 presumption of employment has the foundation fact of “rendering service for another...”. Petitioner was not shown to have rendered service to any of the alleged employers at any particular time. Thus, Petitioner’s claim that his employment with the Defendants is presumed is incorrect.

Regarding non-compliance with Discovery Orders, Petitioner alleges that he substantially complied and that the undersigned PWCJ commented that the required Social Security Administration might not be helpful in establishing periods of employment. *Petition for Reconsideration 9/17/2021 p. 7 line 13-20*. As noted above-the passing of some portion of Petitioner’s pay stubs to some, but not all, of the Defendants and the failure to file any of the alleged “compliance” is hardly substantial.

Regarding the undersigned PWCJ’s comment, it is important to remember that a guarantee of success is not a prerequisite to the enforceability of a Discovery Order. Indeed, the whole point of discovery efforts is to try to find out things that we do not know. Many legitimate discovery efforts, including discovery efforts in compliance with discovery orders are unsuccessful. That does not change the duty of the relevant litigant to comply with the order. Moreover, Petitioner is not entitled to complain if his inability to comply with the Discovery Orders is the result of his own misconduct.<sup>7</sup>

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Regarding Injury AOE-COE, Petitioner argues that he is entitled to the presumption of Lab.C. §5402, that the records of Dr. Aziz (the subject to the medical abstract attached as Exhibit A) establish that the alleged injury occurred and that the Defendants were obligated to object to these treatment reports and trigger the AME-QME process of Lab.C. §4060 *et seq.* *Petition for Reconsideration 9/17/2021 p. 7 line 25 to p. 9 line 10*.

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<sup>7</sup> It bears repeating that Petitioner’s counsel did not say that it way. He merely raised the possibility on a hypothetical basis.

As noted above, the Lab.C. §5402 presumption was not shown to apply. Likewise, the tardy filing of the medical abstract for the first time with the pending petition violates the applicable WCAB rules.

Even if the abstract of Dr. Aziz's records is considered, however, Petitioner's argument over-claims its content. The abstract does indicate that Petitioner suffers from pulmonary coccidioidomycosis (San Joaquin Valley Fever) among other conditions. But the abstract does not indicate that any of these ailments arose out of or in the course of any employment of the Petitioner by any of the Defendants.

Regarding non-appearances, Petitioner argues that proper notice was not provided. *Petition for Reconsideration 9/17/2021 p. 9 line 11-17*. However, Defendant SCIF's Answer carefully traces the hearing and notifications to demonstrate the contrary. *Answer to Petition for Reconsideration (SCIF) 9/29/2021 p. 2 line 10 to p. 3 line 8*.

Regarding Petitioner's plea for liberal construction, Defendant Security National properly notes that liberality of construction is not a substitute for meeting burdens proof via a preponderate of the evidence. *Answer to Petition for Reconsideration under Labor Code §5905 (Security National) 9/30/2021 p. 2 lines 12-26*.

**IV. Recommendation:** It is recommended that the pending petition for reconsideration be denied.

The employee bears the initial burden of proving injury arising out of and in the course of employment (AOE/COE) by a preponderance of the evidence. (Lab. Code, § 5705; *South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 3600(a).) In this case, we agree with the WCJ that applicant did not meet his burden of proof.

We further note that despite applicant's allegation of lack of notice, he and his attorney received adequate notice from the Workers' Compensation Appeals Board, of the following: the Notice of Hearing, served on May 8, 2020, giving notice of the June 30, 2020 hearing; the June 30, 2020 Minutes of Hearing, served on July 1, 2020; the June 15, 2021 Notice of Intention to Submit for Decision; and the July 13, 2021 Order of Submission for Decision.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**/s/ DEIDRA E. LOWE, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**November 19, 2021**

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

**ALBERT AND MACKENZIE  
BRADFORD & BARTHEL  
HANNA BROPHY  
KONRAD KUENSTLER  
MICHAEL SULLIVAN & ASSOCIATES  
MIGUEL AGUILERA  
STATE COMPENSATION INSURANCE FUND  
STANDER REUBENS THOMAS KINSEY  
STOCKWELL HARRIS WOOLVERTON & HELPHREY  
TOBIN LUCKS  
ROSSI LAW GROUP  
VALLEY LAW GROUP  
YRULEGUI ROBERTS**

**PAG/abs**

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