

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

ROSALINDA CERVANTES, *Applicant*

vs.

KERN HIGH SCHOOL DISTRICT, administered by SISC, *Defendants*

**Adjudication Number: ADJ8292326
Bakersfield District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Lien claimant, Alan Moelleken, M.D./Spine & Ortho Center, filed a Petition for Reconsideration on June 29, 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, we will dismiss the petition.

The Petition for Reconsideration was filed without proof of service on all adverse parties as required by Labor Code¹ section 5905. (Lab. Code, § 5905; see also Cal. Code Regs., tit. 8, §§ 10940(c); 10625.) Petitioner failed to serve applicant, applicant's attorney, and the other lien claimants on the Official Address Record, including Duran Interpreting Services, which provided services during the disputed treatment of applicant by petitioner.

"The failure to serve documents in a WCAB proceeding in the manner required by statute or the board's regulations is not a 'mere irregularity' but rather an omission of substance which denies a fundamental right." (*Hartford Acc. & Indemnity Co. v. Workers' Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1, 3 [43 Cal.Comp.Cases 1193].) Dismissal is appropriate for the failure to serve a real party in interest. (*M.C.A., Inc. v. Workers' Comp. Appeals Bd. (Stott)* (1981) 46 Cal.Comp.Cases 621 (writ den.); *Fisher v. Workers' Comp. Appeals Bd.* (2001) 66 Cal.Comp.Cases 517 (writ den.)) Petitioner did not cure the defective service although he was alerted to it by defendant's answer and the WCJ's Report.

¹ All further statutory references are to the Labor Code, unless otherwise noted.

If we had not dismissed the Petition for Reconsideration for defective service, we would have denied it for the reasons stated in the report. Petitioner has misstated the record in violation of WCAB Rules 10945 as described in the Report. Petitioner received notice of the misrepresentations by defendant's answer and by the report and has failed to cure the misrepresentations.

We admonish petitioner Alan Moelleken, M.D./Spine & Ortho Center for filing a pleading that contains false or substantially false statements of fact, statements that are substantially misleading, and/or misrepresentations of fact in violation of section 5813 and WCAB 10421(5) as described in the Report. (Cal. Code Regs., tit. 8, former §§ 10561(b)(5)(A), now §§ 10421(5) (eff. Jan. 1, 2020).) Failure to comply with the WCAB's rules in the future may result in the imposition of sanctions.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 24, 2021

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

**ROSALINDA CERVANTES C/O LEVITON DIAZ
BILLING DYNAMICS
DURAN INTERPRETING SERVICE
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN
KERN HIGH SCHOOL DISTRICT
LEVITON DIAZ
MED LEGAL PHOTOCOPY
SELF INSURED SCHOOLS
SPINE AND ORTHO CENTER**

PAG/ara

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