

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ADOLFO VELASQUEZ, *Applicant*

vs.

**KEVIN LV SMITH YOUR ENERGY SOURCE (THE LAVENNIS COMPANY); THE
REPUBLIC GROUP, AKA SOUTHERN INSURANCE, adjusted by US
ADMINISTRATOR CLAIMS, *Defendants***

**Adjudication Number: ADJ9156321
San Jose District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant, in pro per, filed a Petition for Reconsideration from the March 12, 2021 Findings and Award issued by workers' compensation administrative law judge (WCJ). 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 below, we will grant reconsideration, amend the WCJ's decision to remove the explanatory footnotes not appropriate in a Findings and Award and otherwise affirm the WCJ's decision.

Labor Code section 5313 states, "the workers' compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties." (Lab. Code, § 5313, emphasis added.) Thus, the parties should be able to determine their respective rights and/or liabilities solely from reading Findings and Award itself.

By contrast, the preparation of the Opinion on Decision fulfills the second part of section 5313 which states, "Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313, emphasis

added.) Thus, the footnotes added to the March 12, 2021 Findings and Award should have been included in the Opinion on Decision.

Nevertheless, while we are granting reconsideration to amend the Findings and Award to conform to proper format, applicant's petition for reconsideration fails to state grounds for reconsideration or cite with specificity to the record making it subject to dismissal. WCAB Rule 10945(b) provides, in relevant part: “[e]very petition for reconsideration … shall support its evidentiary statements by specific references to the record.” (Cal. Code Regs., tit. 8, former § 10842(b), now § 10945(b) (eff. Jan. 1, 2020), emphasis added.) Rule 10945(b) then goes on to specify how references to the record must be made.

The requirements of Rule 10945 regarding specific references to the record are consistent with case law regarding proper citation to the record in appellate proceedings. (*Flores v. Cal. Dept. of Corrections and Rehab.* (2014) 224 Cal.App.4th 199, 204 (“an appellant must do more than assert error and leave it to the appellate court to search the record … to test his claim”); *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287 (“[r]ather than scour the record unguided, we may decide that the appellant has waived a point urged on appeal when it is not supported by accurate citations to the record”); *Salas v. Cal. Dept. of Transp.* (2011) 198 Cal.App.4th 1058, 1074 (“[w]e are not required to search the record to ascertain whether it contains support for [plaintiffs’] contentions”); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 (“[t]he appellate court is not required to search the record on its own seeking error” and “[i]f a party fails to support an argument with the necessary citations to the record, … the argument [will be] deemed to have been waived”); *Nielsen v. Workers’ Comp. Appeals Bd.* (1985) 164 Cal.App.3d 918, 923 [50 Cal.Comp.Cases 104] (“Instead of a fair and sincere effort to show that the trial court was wrong, appellants brief … is an attempt to place upon the court the burden of discovering without assistance from appellant any weakness … . An appellant is not permitted to evade or shift his responsibility in this manner.”); see also Cal. Rules of Court, Rule 8.204(a)(1)(C) (“Each brief must … [s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears”.) Moreover, “[t]he larger and more complex the record, the more important it is for the litigants to adhere to appellate rules.” (*City of Santa Maria v. Adam, supra*, 211 Cal.App.4th at p. 287.)

If applicant's petition were not subject to dismissal, we would have denied it for the reasons stated in the WCJ's report, which we would have adopted and incorporated.

Accordingly, for the reasons stated herein, we will grant reconsideration, rescind the March 12, 2021 Findings and Award, substitute it with a new Findings and Award, omitting the footnotes and otherwise restating the WCJ's findings and award.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of March 12, 2021 Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of March 12, 2021 Findings and Award is **RESCINDED** and **SUBSTITUTED** with a new Findings and Award, as provided below.

FINDINGS AND AWARD

1. Applicant, Adolfo Velasquez, while employed on November 28, 2012 as an HVAC technician (Occupational Group Number 380), at San Mateo, California, by Kevin LV Smith/Your Energy Source, sustained injury arising out of and in the course of employment to his low back.
2. At the time of the injury, the employer's workers' compensation carrier was Republic Group, aka Southern Insurance.
3. Applicant's earnings at the time of injury were \$1,000.00 per week, warranting an indemnity rate of \$666.67 for temporary disability and \$230.00 permanent disability.
4. Applicant did not sustain injury AOE/COE to his neck.
5. Applicant's injury caused permanent disability of 23%, entitling applicant to 90.5 weeks of permanent disability indemnity payable at the rate of \$230.00 per week commencing 06/10/2013, in the total sum of \$20,815.00.
6. Applicant is in need of further medical treatment to the low back.

AWARD

AWARD IS MADE in favor of **ADOLFO VELASQUEZ** and against
THE REPUBLIC GORUP, AKA SOUTHERN INSURANCE as follows:

- 1) Permanent disability indemnity of 23% payable at the rate of \$230.00 per week, commencing 06/10/2013 less permanent disability advances to date, pursuant to Findings of Fact No. 3, and 5.
- 2) Medical care as set forth in Finding of Fact No. 6.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 28, 2021

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

**ADOLFO VELASQUEZ
LAUGHLIN, FALBO, LEVY & MORESI**

PAG/pc

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