

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

ELISA LOPEZ NAVARRO, *Applicant*

vs.

**COUNTY OF LOS ANGELES, permissibly self-insured,
administered by SEDGWICK, *Defendants***

**Adjudication Number: ADJ9845367
Van Nuys 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, we will deny reconsideration.

In addition to the reasons stated by the WCJ, we note that the failure to verify a petition is not a jurisdictional defect that mandates dismissal. (*Smith v. Workers' Compensation Appeals Bd.*, 66 Cal.Comp.Cases 788, 789 (writ den.); *Wings West Airlines v. Workers' Comp. Appeals Bd.* (1986) 187 Cal.App.3d 1047, 1055 [51 Cal.Comp.Cases 609] (writ den.) Rather, the WCAB may exercise discretion. In *Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425 (Significant Panel Decision), it was held that where a petition for reconsideration is not verified as required by section 5902, the petition ***may be dismissed*** if the petitioner ***has been given notice of the defect*** (either by the WCJ's report or by the respondent's answer) and failed to cure that defect. In this case there is no evidence that applicant received notice of the lack of verification. Moreover, for the reasons stated by the WCJ in the report, we find no abuse of discretion in the WCJ's decision not to dismiss the petition to reopen.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 22, 2021

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

**ELISA LOPEZ NAVARRO
MICHAEL SABZEVAR
DANIEL DONAHUE**

PAG/bea

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 RECOMMENDATION

INTRODUCTION:

On January 19, 2021, Defendant filed a timely verified petition for reconsideration. The petitioner contends the following:

- a) That the Petition to Reopen should have been dismissed because it lacked a mandatory verification;
- b) The Applicant failed to cure the defect in the petition to reopen after he was notified of said defect; and,
- c) The evidence does not support the findings of the WCJ.

STATEMENT OF FACTS:

On January 3, 2018, in response to a Stipulation with Request for Award for a specific injury dated February 5, 2014, WCJ Glass issued an Award. The Award based on the report of agreed medical examiner Steven B. Silbart, M.D. dated January 27, 2017, which rated 19% P.D.

On January 30, 2019, Applicant filed an unverified petition to reopen. On October 7, 2020, the matter was submitted on the documentary evidence. On November 10, 2020, the submission was vacated, the disposition was modified to send the matter to the DEU. The DEU rated the agreed medical examiner reports dated October 14, 2019, January 14, 2020 and January 21, 2020 at 27% P.D. On January 4, 2021, the undersigned WCJ found jurisdiction to issue an award for new and further disability. It is from this finding of jurisdiction that Defendant seeks relief.

DISCUSSION:

THE PETITION TO REOPEN SHOULD NOT BE SUMMARILY DISMISSED
FOR A LACK OF VERIFICATION

Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. (Cal Lab Code § 5410.) In this case, Defendant requests a DIR Rule requiring verification override the legislative statute that says “nothing in this chapter shall

bar the right of the injured worker.”

In addition, to the statute, there is, as a matter of fact, no relief from the effects of the injury if the petition to reopen is summarily dismissed because of an error made by Applicant’s Attorney and the Attorney’s failure to cure the error. The dollar loss to Applicant is \$10,414.63, an amount far too small to maintain a legal malpractice law suit. The appeals board has broad equitable powers derived under LC 5300 and LC 5301. There being no relief under law, the board may use its equitable power to accept the Petition to Reopen, which, by way of the agreed medical examiner, was shown to be truthful.

RECOMMENDATION:

The undersigned WCJ respectfully recommends that Defendant’s Petition for Reconsideration filed January 19, 2021 be dismissed.

Dated: January 25, 2021

M. Victor Bushin
Workers’ Compensation Administrative Law Judge