WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSEPH CHARLETTA, ***Applicant***

vs.

BARRETT BUSINESS SERVICES, INC.; ACE AMERICAN INSURANCE COMPANY, administered by CORVEL ENTERPRISE COMPANY, INC., ***Defendants***

Adjudication Number: ADJ12284038
Redding District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Applicant in pro per seeks reconsideration of the Findings and Award (F&A) issued on January 5, 2021, wherein the workers' compensation administrative law judge (WCJ) found in pertinent part that defendant terminated applicant for good cause on June 5, 2019[1] while he was on modified work, that defendant would have continued to make modified work available to applicant had it not terminated him, that applicant's alleged lost wages for the period of June 6, 2019 through February 12, 2020 resulted from his own conduct leading to his termination and not his industrial injury, and that defendant did not terminate applicant in violation of Labor Code section 132a.[2]

Applicant contends that the evidence establishes that defendant did not inform him that he had failed to perform any duty or comply with any policy before terminating him, and, therefore, that he was terminated because of his workers' compensation claim. Applicant further contends that the telephonic trial was unfair because it was not held in person and because his telephone service was frequently disconnected.

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[1] Because the Opinion on Decision states that applicant was terminated on June 5, 2019, because Finding of Fact number 9 states that applicant lost wages beginning June 6, 2019, and because the record otherwise consistently shows that applicant was terminated on June 5, 2019, we conclude that the F&A contains a typographical error where it states in Finding of Fact number 7 that applicant was terminated "on or about 5/5/2019." (F&A, pp. 2-3.)

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

We received an Answer from defendant.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will deny reconsideration.

FACTUAL BACKGROUND

On September 8, 2020, the matter proceeded to trial of the following relevant issues: temporary disability and applicant's section 132a petition. (Minutes of Hearing and Summary of Evidence, September 8, 2020, p. 2:22-25.) The parties stipulated that on April 1, 2019 applicant sustained injury to his left fifth metacarpal bone and claims to have sustained injury to the left hand in the form of spiral fracture and nerve damage while employed as a water technician by defendant. (*Id*., p. 2:3-6.)

The WCJ admitted documents identified as a September 12, 2018 Service Master Review of Action, a March 14, 2019 Service Master by Cronic Written Review of Action, a June 5, 2019 Service Master Written Review of Action, and Employee Handbook dated June 17, 2016, into evidence. (*Id*., pp. 4:16-5:24.)

The September 12, 2018 Service Master Written Review of Action includes the following:

> Joe has not been performing to satisfactory manner. Joe has removed cabinetry without proper approval from management. Joe has also removed a whole wall of drywall when instructed to only remove 4 ft. Joe went to a new loss, when asked if there was mold present he said no. Another tech arrived and there is mold present with air movement on it.
> . . .
> This is a verbal warning, next action will be a written or suspension.
> (Ex. P, Service Master Written Review of Action, September 12, 2018.)

The March 14, 2019 Service Master by Cronic Written Review of Action includes the following:

> Joe on 3/1/19, 3/4/19, 3/8/19, and 3/12/19 did not take mandatory 30 min break. On 3/5/19 and 3/11/19 Joe did not take his mandatory 30 mins break before the 5th hour of work.
> . . .
> This is a verbal warning. Next offense will be written.

(Ex. Q, Service Master by Cronic Written Review of Action, March 14, 2019, p. 1.)

Joe has been late multiple times; I had a conversation with him regarding his tardiness. He has still failed to make it to work on time.
. . .
This is a verbal action, next action will be written or suspension.
(*Id.*, May 20, 2019, p. 2.)

The June 5, 2019 Service Master Select Written Review of Action includes the following:

On 9/12/18 you were written up for performance issues. Also written up on 3/14/19 for not following company policy.
On 4/23/19-4/25/19 you called in claiming you couldn't work, later you shared with us you couldn't work because you had no daycare.
On 6/3/19 you reported to your manager you were going to DR in morning of and then would report to work, you failed to show up for work.
On 5/13/19 you were spoken to about falling asleep at work. On 5/20/19 you were written up for excessive tardiness.
On 5/30/19 you were caught watching YouTube videos and were spoken to.

. . .

Due to the performance issues listed above you are be dismissed from employment.
(Ex. C, Service Master Written Review of Action, June 5, 2019.)

The Employee Handbook dated June 17, 2016, which contains applicant's signature dated July 30, 2018 next to a written acknowledgment of receipt, provides as relevant:

These rules, if violated, after investigation, may result in discharge:

1. Repeated absence or tardiness.
2. Unsatisfactory work performance.
. . .
12. Sleeping on the job.
. . .
16. Not taking lunch time and breaks
17. Internet or e-mail usage for personal business.
. . .
(Ex. L, Employee Handbook, June 17, 2016, pp. 1, 16.)

At trial, applicant testified that, after his injury, defendant offered him modified duty, which he performed from April 1, 2019 through June 5, 2019. (*Id*., p. 10:9-11.) He signed the document identified as Exhibit P, the September 12, 2018 Service Master Written Review of

Action, which shows that defendant believed that his work performance was unsatisfactory. (*Id*., p. 11:3-5.)

He received the document identified as Exhibit Q, the March 14, 2019 Service Master by Cronic Written Review of Action and discussed the disciplinary issues referred to therein with defendant. Defendant identified the work performance issues set forth in Exhibits P and Q before he was injured. (*Id*., p. 11:9-10.)

Defendant terminated him on June 5, 2019, ending his modified work. (*Id*., p. 12:14-16.)

At the continued trial herein, defendant's owner/president, Robert Cronic, testified that applicant's job performance review of May 23, 2019 rated his work as "good", meaning that his work met defendant's minimum standard. However, applicant's write-ups were not reflected in the job performance review because they were not relevant to his performance in the field. (Minutes of Hearing and Summary of Evidence, September 29, 2020, p. 5:1-8.) Applicant was written up six times for working through lunch, which was a behavior which was against both state law and company policy. (*Id*., p. 5:11-16.) Applicant was tardy to work on multiple days, had been falling asleep at work, and was caught watching YouTube at work on his computer, all of which violated company policies. (*Id*., p. 6:13-19.)

Applicant's termination resulted from the combination of his violations of company policies, but just one of his violations would not be enough to justify his termination. (*Id*., p. 6:12-21.) Applicant was terminated for cause and, had he not been so terminated, could have continued performing modified work. (*Id*., p. 6:6-8.)

Defendant's comptroller, Kris Juliana, testified that she was familiar with the circumstances of applicant's termination, that she was shown a picture of the applicant that purported to be the applicant sleeping on the job, and that after she discussed the incident with applicant she concluded that he had been sleeping on the job. (*Id*., p. 7:4-9.)

In the Report, the WCJ writes:

> Evidence at trial established that applicant had been written up for multiple violations of the company policy and in some instances state law. The first write up occurred before the industrial injury (Defendant's Exhibit P dated 9/12/2018). Other write ups for unacceptable behavior occurred on 3/14/2019 (Defendant's Exhibit Q), 5/20/2019 . . . and on 6/5/2029 (Defendant's Exhibit C), after which he was formally terminated from his job.

Unrebutted testimony at trial established that but for the termination, applicant could have continued performing modified work. . .

On both trial days, applicant, representing himself, participated vigorously, calling witnesses, cross examining defendant's witnesses, objecting to proposed exhibits, and responding in turn to objections by the defendants. The record does not reflect that applicant requested a delay in the trial for problems with telephonic connections, or objected in any way to the fairness of the trial due to problems participating.
(Report, pp. 1-2.)

Under the heading "description of infraction," the termination document (Defendant's Exhibit C), references prior write-ups dated 9/12/2018 (Defendant's Exhibit P, a date notable as prior to applicant's accepted industrial injury on 4/1/2019), on 3/14/2019 (Defendant's Exhibit Q) . . . [These] exhibits contain the applicant's signature, indicating that he saw and reviewed their contents. Applicant also testified that he had seen the prior write-ups (Minutes of Hearing, Summary of Testimony, 9/9/2020, page 12: 4 – 8).

These write-ups were consistent with the discipline process that was described in the Employee Handbook (Defendant's Exhibit L, pages 5, 6, 13, 14, 15 and 16).
. . .
In the Employee Handbook (Defendant's Exhibit L), it states quite clearly on page 5 that employees are required to take breaks mandated by state law, and on pages 5 and 6, the handbook spells out the company's attendance policy. On page 14, it is stated that the internet shall not be used for personal purposes at work. Page 15 sets forth the general conduct rules expected of the employees at work, which includes not sleeping on the job and avoiding repeated tardiness.

The handbook is clear that violation of these rules could result in termination after investigation (see page 15), which is exactly what happened here.
. . .

[T]he testimony of Mr. Cronic, found on page 5: 1 - 16, Minutes of Hearing and Summary of Testimony, 9/29/2020, show that the performance review petitioner references reflected his performance of his job duties as a Water Tech only, and did not reflect the problems documented by the other write-ups, which were for different issues. . . . Petitioner did not offer rebuttal to this distinction.

> Therefore, the evidence shows that petitioner was in fact aware of what behavior was expected of him at work, as such behavior was clearly described in the Employee Handbook. Petitioner was also aware from that handbook that violations could result in termination. Finally, the problems with petitioner's job performance were amply documented in the aforementioned write-ups, which the applicant saw and signed, so the termination should have been no surprise.
> (Report, pp. 2-3.)

> The record is in fact devoid of any notation or evidence of any problem the petitioner had participating in the trial telephonically, and petitioner has cited nothing in the record to support his bare contention.
> (Report, p. 4.)

DISCUSSION

We observe that under section 132a, "[i]t is the declared policy of this state that there should not be discrimination against workers who are injured in the course and scope of their employment." Section 132a protects an employee from retaliation or discrimination by an employer because of an exercise of workers' compensation rights. (*City of Moorpark v. Superior Court* (1998) 18 Cal.4th 1143 [63 Cal.Comp.Cases 944] (*Moorpark*); *Judson Steel Corp. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 658 [43 Cal.Comp.Cases 1205]; *Department of Rehabilitation v. Workers' Comp. Appeals Bd.* (*Lauher*) (2003) 30 Cal.4th 1281, 1298-1299 [68 Cal.Comp.Cases 831]; *Smith v. Workers' Comp Appeals Bd.* (1984) 152 Cal.App.3d 1104, 1109 [49 Cal.Comp.Cases 212] (*Smith*); see *Usher v. American Airlines, Inc.* (1993) 20 Cal.App.4th 1520, 1526 [58 Cal.Comp.Cases 813].)

Section 132a provides in pertinent part:

> Any employer who discharges, or threatens to discharge, or in any manner discriminates against any employee because he or she has filed or made known his or her intention to file a claim…or an application for adjudication, or because the employee has received a rating, award, or settlement…testified or made known his or her intention to testify in another employee's case… is guilty of a misdemeanor and the employee shall be entitled to reinstatement and reimbursement for lost wages and work benefits . . .

This section has been "interpreted liberally to achieve the goal of preventing discrimination against workers injured on the job," while not compelling an employer to "ignore the realities of

doing business by 'reemploying' unqualified employees or employees for whom positions are no longer available." (*Lauher*, *supra*, 30 Cal.4th at pp. 1298-1299 [citations omitted].)

In *Lauher*, the Supreme Court clarified its definition for "discrimination," noting that in its previous decisions in *Smith*, *supra* and *Barns v. Workers' Comp. Appeals Bd.* (1989) 216 Cal.App.3d 524, the Court held that an employer's action which caused detriment to the employee because of an industrial injury was sufficient to show a violation of the statute. (*Lauher, supra,* 30 Cal.4th at p. 1299 quoting [1 Hanna, Cal. Law of Employee Injuries and Workers' Compensation (rev. 2d ed., Peterson et al. edits, 2002)], § 10.11[1], p. 10-20 ["[t]he critical question is whether the employer's action caused detriment to an industrially injured employee"]; see *Barns, supra*, 216 Cal.App.3d at p. 531.)

The *Lauher* court noted with approval the Court of Appeal's finding that the formulation enunciated in *Smith v. Workers' Comp. Appeals Bd.* (1984) 152 Cal.App.3d 1104, and adopted by *Barns* to establish a prima facie case was "analytically incomplete:"

> The court explained that, although Lauher had clearly suffered a detriment by having to use his accumulated sick leave and vacation time for his visits to see Dr. Houts, he never established he 'had a legal right to receive TDI [temporary disability indemnity] and retain his accrued sick leave and vacation time, and that [his employer] had a corresponding legal duty to pay TDI and refrain from docking the sick leave and vacation time.' Thus, said the court, '[t]o meet the burden of presenting a prima facie claim of unlawful discrimination in violation of section 132a, it is insufficient that the industrially injured worker show only that . . . he or she suffered some adverse result as a consequence of some action or inaction by the employer that was triggered by the industrial injury. *The claimant must also show that he or she had a legal right to receive or retain the deprived benefit or status, and the employer had a corresponding legal duty to provide or refrain from taking away that benefit or status.*' (*Lauher*, *supra*, 30 Cal.4th at pp. 1299-1300, italics added.)

The Court further agreed with the Court of Appeal that "[an] employer thus does not necessarily engage in 'discrimination' prohibited by section 132a merely because it requires an employee to shoulder some of the disadvantages of his industrial injury. By prohibiting 'discrimination' in section 132a, we assume that the Legislature meant to prohibit treating injured employees differently, making them subject to disadvantages not visited on other employees because the employee was injured or had made a claim." (*Lauher, supra* at p. 1300.)

As the *Lauher* court determined in the first part of its decision, the employee was no longer entitled to temporary disability indemnity (TDI) because his condition was permanent and stationary. (*Lauher*, *supra* at p. 1297.) Therefore, even though the employee's use of sick and vacation leave was for medical treatment and time off due to his industrial disability, because he was not entitled to TDI, the employee was treated in the same way as non-industrially disabled workers who were also required to use sick and vacation leave for medical treatment and time off due to a disability. Because the employee in *Lauher* was on the same legal footing as non-industrially injured employees with respect to this issue, he could not show a legal right to TDI, and therefore could have only established a prima facie case for discrimination if he had been "singled out for disadvantageous treatment." (*Id.* at p. 1301; *Accord*, *Gelson's Markets, Inc. v. Workers' Comp. Appeals Bd.* (2009), 74 Cal.Comp.Cases 1313, *County of San Luis Obispo v. Workers' Comp. Appeals Bd.* (2005) 133 Cal.App.4th 641 (*Martinez*); Compare with *San Diego Transit, PSI, Hazelrigg Risk Management Services, Administrator, Petitioners v. Workers' Compensation Appeals Board* (2006) 71 Cal.Comp.Cases 445 (*Calloway*) [writ den.; defendant violated section 132a by refusing to return applicant to her bus driver position after she was released to work by her PTP, another treating physician and an AME.].)

Based on its specific application to the facts of *Lauher*, we view the Court's phrase "singled out for disadvantageous treatment" to be an *application* of the broader standard adopted by *Lauher*—that, in addition to showing that he or she suffered an industrial injury and that he or she suffered some adverse consequences as a result of some action or inaction by the employer that was triggered by the industrial injury, an applicant "must also show that he or she had a legal right to receive or retain the deprived benefit or status, and the employer had a corresponding legal duty to provide or refrain from taking away that benefit or status." (*Lauher*, *supra* at p. 1300.) Stated another way, an employee must show they were subject to "disadvantages not visited on other employees because they were injured. . . ." (*Id.*)[3] Because the employee in *Lauher* was not deprived of a legal right to TDI, and therefore could not show he was treated differently than other

[3] *Accord, St. John Knits v. Workers' Comp. Appeals Bd.,* 2019 Cal. Wrk. Comp. LEXIS 75 [writ den.; the Court of Appeals found no reasonable grounds to review a WCAB finding of section 132a discrimination based upon substantial evidence of defendant employer's subjection of industrially-injured employee to disadvantages not visited on other employees.]

employees with respect to his alleged detriment, he could not establish a prima facie case of discrimination.[4]

Here the record reveals that defendant documented applicant's unsatisfactory performance on September 12, 2018 and failures to take mandatory breaks on March 14, 2019; that defendant informed applicant of his unsatisfactory performance and failures to take mandatory breaks before his industrial injury; that applicant sustained injury on April 1, 2019; that defendant informed applicant of his multiple failures to timely appear for work on May 30, 3019; and that defendant terminated applicant's employment approximately two months after his injury on June 5, 2019. (Ex. P, Service Master Written Review of Action, September 12, 2018; Ex. Q, Service Master by Cronic Written Review of Action, March 14, 2019, pp. 1-2; Report, p. 2; Minutes of Hearing and Summary of Evidence, September 8, 2020, p. 2:3-6; Ex. C, Service Master Written Review of Action, June 5, 2019.)

This record demonstrates that, contrary to applicant's contention that he was not informed of his unsatisfactory performance, failures to take mandatory breaks, or any other wrongdoing on his part prior to termination, defendant did in fact advise him in writing on at least three occasions, including two before his injury, that his failures to perform or comply with company policies would subject him to increasing disciplinary measures including termination. (Report, pp. 2-3; Ex. L, Employee Handbook, June 17, 2016, pp. 1, 16.)

However, while applicant's argument that defendant failed to apprise him that his conduct subjected him to disciplinary action before terminating him lacks merit, we recognize that the record shows that defendant was on notice of applicant's industrial injury when it terminated him and that the date of termination was two months after applicant's injury. In this regard, we observe that a worker may establish a prima facie section 132a claim by showing that the date of adverse action giving rise to the claim was in close temporal proximity to the employer's notice of the claim. (See *Arteaga v. Brink's, Inc.* (2008) 163 Cal.App.4th 327, 353 [finding that close temporal proximity between a worker's filing of a workers' compensation claim and the employer's action adverse to the employee established the employee's prima facie section 132a claim].) Thus, we

[4] We also note that the particular standard denoted by the phrase "singled out" does not literally apply where the detriment affects injured workers as a class, although the broader standard would apply. (*Anderson*, *supra* at pp. 1377-1378.)

conclude that defendant terminated applicant on a date in close temporal proximity to his injury, and, as such, that the record is sufficient to establish applicant's prima facie claim.

When an employee establishes a prima facie case, the defendant still retains the right to present evidence to rebut that case. (See § 5705; *Judson, supra*, 22 Cal.3d at p. 667.) In rebuttal, the employer must show that its actions were "…necessitated by 'the realities of doing business.'" (*Judson, supra*, 22 Cal.3d at p. 667; *Smith, supra*, 152 Cal.App.3d at p. 110.) The employer's stated business reasons must be reasonable under the facts of the case. (*Barns, supra,* 216 Cal.App.3d at pp. 534-535.) Thus, evidence produced by an employee in the prima facie case, and the related inferences raised by such evidence, may support a finding of retaliation or discrimination if the reason offered by the employer is unreasonable or not credible under the totality of the circumstances of an individual case. (See *Westendorf v. W. Coast Contrs. of Nev., Inc.* (9th Cir. 2013) 712 F.3d 417, 423. (Citation omitted.).) We note also that while an employer's motivation might be discriminatory in its effect, section 132a does not require proof of *discriminatory intent*. (*Lauher*, *supra,* at p. 1301, fn. 8, italics added.)

In this case, defendant's stated business reason for terminating applicant was as follows:

> On 9/12/18 you were written up for performance issues. Also written up on 3/14/19 for not following company policy.
> On 4/23/19-4/25/19 you called in claiming you couldn't work, later you shared with us you couldn't work because you had no daycare.
> On 6/3/19 you reported to your manager you were going to DR in morning of and then would report to work, you failed to show up for work.
> On 5/13/19 you were spoken to about falling asleep at work. On 5/20/19 you were written up for excessive tardiness.
> On 5/30/19 you were caught watching YouTube videos and were spoken to.
> . . .
> Due to the performance issues listed above you are be dismissed from employment.
> (Ex. C, Service Master Written Review of Action, June 5, 2019.)

Corroborating this stated reason, defendant's owner/president, Mr. Cronic, and its comptroller, Ms. Juliana, testified that applicant was discharged because he had violated company policies on multiple occasions and the record reveals that applicant was timely apprised of his failures to perform and violations of company policies. (Minutes of Hearing and Summary of Evidence, September 29, 2020, pp. 5:11-6:19, 7:4-9; Report, pp. 2-3.)

Based upon this record, including the evidence showing that defendant initiated disciplinary actions weeks before applicant was injured and that its measures were "consistent with the discipline process . . . described in the Employee Handbook" afterwards, we conclude that defendant's stated business reasons for terminating applicant were reasonable. Accordingly, the evidence before us demonstrates that defendant terminated applicant based upon the realities of doing business and therefore is not liable under section 132a.

We now turn to applicant's contention that the telephonic trial was unfair because it was not held in person and because his telephone service was frequently disconnected. Specifically, applicant argues:

> [B]ecause of the covid 19 restrictions, we were not allowed a fair and equal trial. The trial was conducted over the phone while we were experiencing a PG&E power outage at our home due to fire dangers. This caused my phone service to be terrible and I could not hear a lot of what was being said during the conference call trial. We were holding flashlights to read through the court documents causing issues during trial. During a normal trial, we could have adequately presented the case. Instead, we were put at a severe disadvantage due to the trial not being in person at a court of law, the power outage, and the poor cell service. We were not able to have a fair trial what so ever and that is not ok.
> (Petition, pp. 3-4.)

In this regard, we observe that Governor Gavin Newsom's Executive Order N-63-20 of May 7, 2020, section 11, suspended physical attendance at hearings during the Covid-19 pandemic so long as the proceedings satisfied the following requirements:

> a) Each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits;
>
> b) A member of the public who is otherwise entitled to observe the hearing may observe the hearing using electronic means; and
>
> c) The presiding officer satisfies all requirements of the Americans with Disabilities Act and Unruh Civil Rights Act.

As stated in the Significant Panel Decision of *Gao v. Chevron Corporation:*

> The WCAB's transition to remote hearings is not based upon some bureaucratic whimsy, but rather upon the advent of a global pandemic that has cost the lives of hundreds of thousands, and caused fundamental shifts in the behavior of most of

> the world's population. Due process is the process that is due under the circumstances as we find them, not as we might wish them to be. Executive Order N-63-20 represents the Governor's best judgment as to how to strike a fair balance between the due process rights of participants in hearings, the necessity of protecting the public from real and significant harm, and the state's responsibilities under the California Constitution to provide efficient, timely resolution of disputes in order to secure benefits for eligible injured workers.
>
> To be sure, each case must be resolved according to its own particular circumstances, and it would therefore be inappropriate to institute a blanket rule that it is per se unreasonable to continue a case to allow for in-person testimony. However, in consideration of Executive Order N-63-20, the purposes of the workers' compensation system, and current conditions, the default position should be that trials proceed remotely, in the absence of some clear reason why the facts of a specific case require a continuance.
> (*Gao v. Chevron Corporation,* (2021) 86 Cal.Comp.Cases 44, 48.)

While we recognize that the suspension of physical attendance at trial and the consequent requirement that trials be held telephonically can present difficult circumstances like those alleged in the Petition, we agree with the *Gao* panel that, under the current pandemic conditions, telephonic trials should be deemed appropriate in the absence of a clear record otherwise.

In this regard, as stated in the Report, the record reveals that applicant vigorously participated in the proceedings without asserting any objection based upon technical difficulties, a need for a continuance, or other basis suggesting that he was being denied an opportunity to participate in the proceedings, present his case, or rebut evidence presented by defendant. (See Executive Order N-63-20, May 7, 2020; *Gao v. Chevron Corporation,* (2021) 86 Cal.Comp.Cases 44, 48; and see also *Fremont Indem. Co. v. Workers' Comp. Appeals Bd*., 153 Cal.App.3d 965, 970-971 (citing *Massachusetts Bonding and Ins. Co. v. Ind. Acc. Com*. (1946) 74 Cal.App.2d 911, 913, discussing the requirements of due process).)

Moreover, applicant fails to allege with specificity when he was unable to participate in the proceedings or how he may in consequence have been harmed by being unable to present or rebut certain evidence due to lack of telephone service.

Hence, we concur with the reasoning of the WCJ, as expressed in the Report, that the record fails to establish that the telephonic trial was unfair, contrary to Executive Order N-63-20 of May 7, 2020, or violative of the right of due process. (Report, pp. 2, 4.) Therefore, we discern no merit to applicant's contention that the telephonic trial was unfair.

Accordingly, we will deny the Petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of Findings and Award issued on January 5, 2021 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 26, 2021

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

JOSEPH CHARLETTA
PATRICO, HERMANSON & GUZMAN
WELLS, SMALL, FLEHARTY & WEIL
EMPLOYMENT DEVELOPMENT DEPARTMENT

SRO/ara

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