

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

HELENA CALVIN, *Applicant*

vs.

**CITY AND COUNTY OF SAN FRANCISCO PARKS AND RECREATION AND CITY
AND COUNTY OF SAN FRANCISCO; PERMISSIBLY SELF-INSURED, *Defendants***

**Adjudication Number: ADJ6780758
Oakland District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant, in pro per, has filed a Petition for Reconsideration (Petition) on October 30, 2023 challenging a decision issued on January 29, 2020. A letter addressed to WCJ Stevenson with an article entitled “Common brain malformation traced to its genetic roots” and applicant’s genetic test results were attached to the Petition¹. (Cal. Code Regs., tit. 8, § 10945 (c)(2).)

Defendant filed a letter in response to the Petition. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report).

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, the petition will be dismissed.

This matter was most recently on calendar on October 17, 2023. The Minutes of Hearing and Summary of Evidence (MOH/SOE) for that hearing state as follows:

LET THE MINUTES REFLECT THAT this matter was tried before, in front of Judge Friedman, on January 29, 2020, at which point in time he admitted a significant number of exhibits into evidence. After trial, Judge Friedman had issued a decision on this case. The date of the decision is April 1, 2020. In his decision, Judge Friedman had found the following:

Applicant, Helena Calvin, while employed on March 2, 2009, sustained injury arising out of and in the course of employment to her cervical spine, left and right shoulders, psyche and sleep disorder. Judge Friedman had found that

¹ The documents attached to the Petition are not part of the adjudication file and it appears that applicant has attached the documents as newly discovered evidence.

Applicant did not sustain injury to her head/Arnold-Chiari Malformation as a result of this injury.

No appeals were taken from Judge Friedman's Findings of Fact. I will therefore today be focusing on the parts of the Decision that he had ordered further development of the record on, which is Applicant's permanent disability and apportionment.

Since the last trial, Applicant had filed an amended Application for Adjudication of Claim. The added body parts to that new Application for Adjudication of Claim are the left hip, low back and left knee.

In addition to determining the level of disability, I will also be addressing injury AOE/COE to the left hip, low back and left knee. I will not be addressing a body part that is left unclassified, because I need to be specific with respect to what body parts are actually needing determination.
(Minutes of Hearing, 10/17/23, pp. 2:1-2:30.)

The October 17, 2023 MOH/SOE were served on October 27, 2023 and applicant filed the present Petition for Reconsideration on October 30, 2023, with no final determination issued by the WCJ. In response to the Petition for Reconsideration, the WCJ issued a Report stating:

Applicant, Helena Calvin filed a Petition for Reconsideration on October 29, 2023. The skeletal petition for reconsideration alleges that a decision had issued in this matter on January 29, 2020.

This matter was before me for trial on October 17, 2023. As of this date no decision has issued.

Since no decision has issued to date the Petition for Reconsideration filed by applicant on October 29, 2023 must be dismissed. (Report and Recommendation on Petition for Reconsideration, 10/31/2023, p. 1.)

To the extent applicant's petition challenges the January 29, 2020, MOH/SOE or the October 17, 2023 MOH/SOE, these are not final decisions. A petition for reconsideration may properly be taken only from a "final" order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a "threshold"

issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Id.* at p. 1075 ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra*, at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders".]) Such interlocutory decisions include, but are not limited to, pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

Here, the January 29, 2020 MOH/SOE and October 17, 2023 MOH/SOE solely resolve an intermediate procedural or evidentiary issue or issues. They do not determine any substantive right or liability and does not determine a threshold issue. Therefore any petition for reconsideration challenging them would be subject to dismissal.

To the extent that the Petition for Reconsideration challenges the April 1, 2020 Findings of Fact, Award, which include the finding that "Applicant did not sustain injury to her head/Arnold-Chiari Malformation as a result of this injury, based upon the opinions of AME Stephen Conrad, M.D., and AME Daniel Shalom, M.D.," the petition is untimely and subject to dismissal.

There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California. (Lab. Code², §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).)

This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73].)

² All further statutory references are to the Labor Code, unless otherwise noted.

Based on the authority cited above, in order to challenge the April 1, 2020 decision, applicant would have had to file a Petition for Reconsideration by Monday, April 27, 2020. Accordingly, the Petition for Reconsideration filed on October 30, 2023 is untimely and must be dismissed.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 29, 2023

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

**HELENA CALVIN
FINNEGAN MARKS**

DLM/oo

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