

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

MICHAEL BAKER, *Applicant*

vs.

**CLASSIC PARTY RENTAL (INSPERITY); ACE AMERICAN INSURANCE
COMPANY, ADMINISTERED BY SEDGWICK CLAIMS MANAGEMENT SERVICES,
INC., *Defendants***

**Adjudication Numbers: ADJ10954617; ADJ16206534; ADJ16210220
Long Beach District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION
AND DENYING PETITION FOR
REMOVAL**

Applicant in pro per seeks reconsideration of March 28, 2025 Order appointing a regular physician issued by a workers' compensation administrative law judge (WCJ).

Applicant contends that the WCJ exceeded his authority when he issued the Order.

We have not received an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition for Reconsideration (Petition) be denied.

On May 15, 2025, applicant requested "leave of court" to file a Supplemental Petition pursuant to WCAB Rule 10964 (Cal. Code Regs., tit. 8, § 10964). We will accept and consider the Supplemental Petition.

We have considered the Petition and the Supplemental Petition, and the contents of the Report, and we have reviewed the record in this matter. Based on our review of the record, and for the reasons stated below, we will dismiss the Petition as one for reconsideration, treat it as one for removal and deny it.

BACKGROUND

We will briefly review the relevant facts.

Applicant while employed as a driver on or about July 26, 2016, sustained an admitted specific injury to left upper extremities (amputation of the left little finger and left wrist injury) arising out of and in the course of employment.

On December 31, 2024, the WCJ issued a Joint Notice of Intention (NIT) addressing various discovery and procedural issues. As relevant here, the NIT provided that since applicant had reached permanent and stationary status in ADJ10954617 and refused to proceed with a qualified medical evaluation, the WCJ would appoint Ray Craemer, M.D., as a regular physician pursuant to Labor Code¹ section 5701.

On January 27, 2025, applicant in pro per filed an objection to the NIT.

On March 28, 2025, the WCJ issued the Order appointing Dr. Craemer as a regular physician pursuant to section 5701. As relevant herein, in the Opinion, the WCJ stated that:

What should be noted, as was noted in the previous hearings, is that the Applicant has been found Permanent and Stationary by his Primary Treating Physician (hereinafter PTP). Applicant disagrees with the findings of the PTP, but does not wish to resolve his case. If there is a disagreement with the PTP, the parties are mandated to go through the PQME process. Applicant has repeatedly refused this process. As this process is being refused, the undersigned will utilize a Regular Physician to resolve the underlying medical issues. The Objection fails to state Good Cause to oppose the NOI. The undersigned will therefore issue an Order consistent with the NOI.

On April 25, 2025, applicant filed a Petition For Reconsideration.

DISCUSSION

I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on May 1, 2025, and 60 days from the date of transmission is June 30, 2025. This decision is issued by or on June 30, 2025, so that we have timely acted on the petition as required by section 5909(a).

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on May 1, 2025, and the case was transmitted to the Appeals Board on May 1, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on May 1, 2025.

II.

It is well settled that where a party fails to prevail on a petition for reconsideration, the Appeals Board will not entertain a successive petition by that party unless the party is newly aggrieved. (*Goodrich v. Industrial Acc. Com.* (1943) 22 Cal.2d 604, 611 [8 Cal.Comp.Cases 177]; *Ramsey v. Workmen’s Comp. Appeals Bd.* (1971) 18 Cal.App.3d 155, 159 [36 Cal.Comp.Cases 382]; *Crowe Glass Co. v. Industrial Acc. Com. (Graham)* (1927) 84 Cal.App. 287, 293-295 [14 IAC 221]). As stated in our en banc opinion in *Navarro v. A&A Framing* (2002) 67 Cal.Comp.Cases 296, 299: “The general rule is that where a party has filed a petition for reconsideration with the [Appeals] Board, but the party does not prevail on that petition for reconsideration, the petitioning party cannot attack the [Appeals] Board’s action by filing a second petition for reconsideration; rather, the petitioning party must either be bound by the [Appeals] Board’s action or challenge it by filing a timely petition for writ of review.”

Applicant raises many allegations in the Petition, but to the extent that those issues were addressed in our previous decision of June 12, 2024, it is improper for applicant to attempt to relitigate issues that have already been determined, and the Petition could have been dismissed on those grounds. Nonetheless, we address the issue raised with respect to the current Order of March 28, 2025.

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 WCJ’s Order solely resolves an intermediate procedural or evidentiary issue or issues. The decision does not determine any substantive right or liability and does not determine a threshold issue. Accordingly, it is not a “final” decision and the Petition will be dismissed as one for reconsideration.

Next, we will examine if the removal standard applies in the instant case. Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers’ Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will

not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

Section 5701 states in pertinent part that: “The Appeals Board may also from time to time direct any employee claiming compensation to be examined by a regular physician.”

Here, the WCJ provided applicant with notice via an NIT on December 31, 2024 that he intended to appoint a regular physician pursuant to section 5701 and allowed a period for timely objection.

On January 28, 2025, applicant filed his objection.

On March 28, 2025, the WCJ issued the Order.

Based upon the WCJ’s analysis of the merits of applicant’s arguments, we are not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to applicant.

Accordingly, we dismiss applicant’s Petition as one for reconsideration, and we deny it as on for removal.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the March 28, 2025 Orders is **DISMISSED**.

IT IS FURTHER ORDERED applicant's Petition for Removal of the March 28, 2025 Orders is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 30, 2025

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

**MICHAEL BAKER
SHAW JACOBMEYER CRAIN CLAFFEY**

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*