

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

ADALILIA ZAMORA, Applicant

vs.

**TRION SOLUTIONS, INC., LCF RESOURCE EMPLOYMENT SOLUTIONS;
UNITED WISCONSIN INSURANCE COMPANY administered by NEXT LEVEL
ADMINISTRATORS, L.L.C. Defendants**

**Adjudication Numbers: ADJ11905907; ADJ11906375¹
Anaheim District Office**

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

Defendant seeks reconsideration, or in the alternative removal, in response to the Findings and Orders (F&O) issued by the workers' compensation administrative law judge (WCJ) on July 22, 2024, wherein the WCJ found that cost petitioner, Express Interpreting is entitled to discovery.

Defendant contends that it is aggrieved by the WCJ's decision and asserts that the evidence does not support the findings of fact. Defendant seeks removal of discovery 'Orders A'² and exclusion of the evidence 'Order B'³ as defendant asserts that it will suffer irreparable harm if

¹Based on our review, the WCJ ordered that case number ADJ11906375 was dismissed with prejudice on May 10, 2023. Yet, there is nothing in EAMS in ADJ11906375 to reflect that the case was dismissed. Upon return, the parties and the WCJ should ensure that the final steps occur to dismiss the case.

² A. IT IS ORDERED that Cost Petitioner Express Interpreting is entitled to the following discovery, with all other potential issues pertaining to the Cost Petition of Express Interpreting deferred and jurisdiction reserved to the Workers' Compensation Appeals Board: 1. Benefit Printout of all payments made to all interpreters for this case. 2. All Next Level Explanation of Review ("EOR") for invoices regarding interpreter services for all dates of service for the case. 3. All written procedures for Next Level reduction/ review/ rejection of interpreter invoices regarding Labor Code §5811 cost services under Title 8, California Code of Regulations §9795.3. 4. Any internal market rate payment criteria that Next Level uses for payment of interpreter invoices. 5. The name of the Person Most Knowledgeable ("PMK") to discuss EOR deficiencies and policies at a deposition regarding Labor Code §5811 interpreter invoices and payments.

³ Defendant's Exhibit C is excluded from evidence.

forced to comply with discovery ‘Order A’ and the standing of ‘Order B’ of the WCJ’s Findings and Orders. Defendant contends that cost petitioner has been paid in full as evidenced by the benefit printout with a proof of service marked as defendant’s Exhibit A. Further, defendant contends that the WCJ erred in finding that defense Exhibit C is excluded as irrelevant, and last that the WCJ erred in finding that cost petitioner is entitled to discovery based upon an untimely objection to the November 28, 2022 Notice to Produce.

Cost petitioner’s attorney filed an Answer to the Petition for Removal. The WCJ issued a Report and Recommendation (Report) on the Petition for Reconsideration or Removal recommending that the petition be denied.

We have considered the allegations in the Petition for Reconsideration or in the alternative Removal, the Answer, 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 herein, we will dismiss the petition to the extent it seeks reconsideration and deny it to the extent it seeks removal.

BACKGROUND

Applicant filed an Application for Adjudication (Adjudication) alleging a specific injury to her hand, neck, shoulders, foot, and back while “working at a fast pace” as a laborer for defendant on November 9, 2018, which was assigned case number ADJ11905907.

Applicant filed an Application alleging cumulative injuries to her upper and lower extremities due to repetitive “fast pace [*sic*] work” as a laborer for defendant from August 23, 2018 to November 13, 2018, which was assigned case number ADJ1190375.

On July 12, 2019, applicant’s deposition was taken via a Spanish interpreter.

On August 27, 2019, cost petitioner provided two hours of Spanish translation deposition review services for applicant. Cost petitioner invoiced the services on September 19, 2019. (Exhibit 1, Cost Petitioner, 9/19/2019.)

Applicant received medical treatment for her injuries.

On May 10, 2023, applicant and defendant entered into a Stipulation with an Award made in case number ADJ11905907. Although ADJ11906375 is not identified as a case settled by way of the Stipulation, in the body of Paragraph 9, they stipulated that applicant agrees to dismiss case

number ADJ11906375 with prejudice. In the Award approving the Stipulation, the WCJ ordered ADJ11906375 dismissed.⁴

On April 25, 2024, the parties proceeded to trial on the issue of whether cost petitioner is entitled to discovery and, if so, to what extent?

On July 22, 2024, the WCJ issued a Findings and Order listing specific documents, which cost petitioner is entitled to receive from defendant.

I.

Former Labor Code 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.

(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 August 26, 2024, and 60 days from the date of transmission is October 25, 2024. This decision is issued by or on October 25, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

⁴ We note that according to the record in the Electronic Adjudication Management System (EAMS), ADJ11906375 does not appear to have been closed.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on August 26, 2024, and the case was transmitted to the Appeals Board on August 26, 2024. 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 26, 2024.

II.

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 decision 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. Here, the only issue is whether cost petitioner is entitled to discovery, thus we will treat the Petition as one for removal.

We will also deny the petition to the extent it seeks removal. 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).)

Accordingly, we will dismiss the petition for reconsideration as the only issue was as to a non-threshold discovery order. We will also deny the petition as one seeking removal.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the order issued on July 22, 2024 is **DISMISSED** and the Petition for Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 25, 2024

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

**ADALILA ZAMORA
LAW OFFICES OF GEORGE CORSON
DJG LAW GROUP**

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*