

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

**ANDREA FIGUEROA, *Applicant***

**vs.**

**CAMPESINOS FARM LABOR CONTRACTING INC.,  
PREFERRED EMPLOYERS INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ18844740**

**Bakersfield District Office**

**OPINION AND ORDER  
DISMISSING PETITION  
FOR RECONSIDERATION,  
GRANTING PETITION FOR REMOVAL,  
AND DECISION AFTER REMOVAL**

On August 19, 2024, defendant filed a Petition for Reconsideration in response to the Order to serve documents issued by workers' compensation administrative law judge (WCJ) on July 26, 2024 (July 26, 2024 Order). Defendant contends that the issue is moot because the petition for costs has been resolved.

On August 30, 2024, the WCJ issued a Notice of Intent to rescind the Order. On September 23, 2024, the WCJ issued an Order rescinding the July 26, 2024 Order (September 23, 2024 Order). Thus, the issue raised in the Petition for Reconsideration is now technically moot.

However, the September 23, 2024 Order was issued while this case was pending at the Appeals Board, and as explained below, the WCJ was without authority to issue it. Accordingly, while we have considered the allegations of the Petition for Reconsideration and the contents of the Report and Recommendation by the WCJ, based on our review of the record, and as discussed below, we will dismiss the Petition to the extent it seeks reconsideration and treat it as one for removal and grant it as one for removal. We will rescind the July 26, 2024 and the September 23, 2024 Orders, so that the record will be clear.

## I.

Preliminarily, we note that former Labor Code section 5909<sup>1</sup> 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.

(§ 5909.)

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 September 23, 2024, and 60 days from the date of transmission is November 22, 2024. This decision is issued by or on November 22, 2024, so that we have timely acted on the Petition as required by 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. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

---

<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on September 23, 2024, and the case was transmitted to the Appeals Board on September 23, 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 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 September 23, 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 evidentiary / discovery issue. 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 to the extent it seeks reconsideration.

As we made clear in our En Banc decision in *Ledezma v. Kareem Cart Commissary and Mfg.* (2024) 89 Cal. Comp. Cases 462, 475-476 (En Banc), and further emphasized in our Significant Panel Decision in *Reed v. County of San Bernardino* (2024) 89 Cal.Comp.Cases \_\_\_\_;

2024 Cal. Wrk.Comp.LEXIS 69, a party filing a petition for reconsideration should have good cause to believe that a final decision, award or order issued, and seeking reconsideration in response to non-final orders may be sanctionable. Moreover, as happened in the case before us, “[w]hen a petition is titled as a petition for reconsideration, even in the alternative, the Appeals Board must process it as a petition for reconsideration, which halts proceedings at the trial level.” (*Ledezma, supra*, 89 Cal.Comp.Cases at p. 475.)

An attorney must supervise non-attorneys and ensure that the non-attorney’s conduct “is compatible with the professional obligations of the lawyer.” (Cal. Rules of Prof’l Conduct, Rule 5.3(a); see *Ledezma, supra*, 89 Cal. Comp. Cases at p. 473.) Section 5700 provides that a party “may be present at any hearing, in person, by attorney, or by any other agent....” Section 4907 provides that “[non-attorney] representatives shall be held to the same professional standards of conduct as attorneys.” (See Cal. Code Regs., tit. 8, § 10401(b).) Per WCAB Rule 10401, “a non-attorney representative may act on behalf of a party in proceedings before the Workers’ Compensation Appeals Board if the party has been informed that the non-attorney representative is not licensed to practice law by the State of California.” (Cal. Code Regs., tit. 8, § 10401(a).) Here, the Petition for Reconsideration was filed by a non-attorney representative. We emphasize that a non-attorney representative is held to the same standards of behavior as an attorney and is expected to follow all statutory and decisional law when appearing at the WCAB. At the same time, that does not absolve defendant Preferred Employers Insurance Company of responsibility either, as it is their duty to supervise a non-attorney representative.

Nonetheless, we will grant the petition to the extent it seeks removal and rescind the WCJ’s Orders.

### III.

WCAB Rule 10961 (Cal. Code Regs., tit. 8, § 10961) provides that jurisdiction remains with the district office for 15 days after the timely filing of a petition for reconsideration and sets forth the following actions that a WCJ may take in response: (1) The WCJ may prepare a report and transfer jurisdiction to the Appeals Board to address the merits of the petition (Cal. Code Regs., tit. 8, § 10961(a); see Cal. Code Regs., tit. 8, § 10962); (2) The WCJ may rescind the entire order, decision or award and initiate proceedings within 30 days (Cal. Code Regs., tit. 8, § 10961(b)); or (3) The WCJ may rescind the order, decision or award and issue an amended order,

decision or award, and a new petition for reconsideration must be filed in response to the amended order, decision or award (Cal. Code Regs., tit. 8, § 10961(c)). However, “[a]fter 15 days have elapsed from the filing of a petition for reconsideration, a workers’ compensation judge shall not issue any order in the case until the Appeals Board has denied or dismissed the petition for reconsideration or issued a decision after reconsideration.”

Consequently, if the order, decision or award is rescinded pursuant to subdivision (b) or subdivision (c) within the 15-day period wherein the WCJ retains jurisdiction, the original petition is deemed moot because the order, decision or award that is the subject of the petition no longer exists. However, here, the Petition for Reconsideration was filed on August 19, 2024, and 15 days from that date is September 3, 2024. The WCJ’s second Order issued on September 23, 2024, thus, the WCJ was without authority to issue the order. Therefore, we will rescind the July 26, 2024 and the September 23, 2023 Orders, so that the record is clear.

Accordingly, we dismiss the Petition as one for reconsideration, grant it as one for removal, and as our decision after removal, we rescind the July 26, 2024 Order and the September 23, 2024 Order.

For the foregoing reasons,

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

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the Order issued by the WCJ on July 26, 2024 is **RESCINDED**.

**IT IS FURTHER ORDERED** that the Order issued by the WCJ on September 23, 2024 is **RESCINDED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**KATHERINE WILLIAMS DODD, COMMISSIONER**  
**CONCURRING, NOT SIGNING**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**November 22, 2024**

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

**MEDICAL COST REVIEW  
WINDSOR TROY LAW FIRM  
LAW OFFICES OF GEORGE E. CORSON, IV  
ALBERT & MCKENZIE, LLP  
PREFERRED EMPLOYERS SAN DIEGO**

**AS/mc**

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