

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

BERTHA VAZQUEZ, *Applicant*

vs.

**RALPH'S GROCERY COMPANY, permissibly self-insured, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ3550890 (LAO 0850144)
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case on May 23, 2022. This is our Opinion and Decision After Reconsideration.¹

Applicant seeks reconsideration of our "Opinion and Decision After Reconsideration," issued on March 8, 2022 wherein we rescinded the Amended Findings of Fact, Award and Orders (F&A), issued by the workers' compensation administrative law judge (WCJ) on September 3, 2019, which found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her neck and psyche, that applicant was temporarily totally disabled for the period from September 23, 2003, through May 4, 2015, and that as a result of the injury applicant is permanently totally (100%) disabled.

Applicant contends that further development of the record with respect to her injuries to her neck and shoulder and psyche is not warranted; and that a decision should issue based on the record submitted at trial.

We received an Answer from defendant.

¹ Commissioners Sweeney and Lowe, who were on the panel that issued the order granting reconsideration, no longer serve on the Appeals

We have considered the allegations of the Petition for Reconsideration and the Answer. Based on our review of the record, and our analysis in our March 8, 2022 Opinion and Decision After Reconsideration, we make no changes to our March 8, 2022 decision. We will vacate our May 23, 2022 Order Granting the Petition for Reconsideration, and dismiss the Petition as one seeking reconsideration as it seeks reconsideration of a non-final order. We will treat it as one seeking removal and deny the Petition.

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, we rescinded the WCJ’s decision in its entirety. Thus, our 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 for reconsideration will be dismissed.

Instead, applicant challenges our interlocutory order rescinding the WCJ’s decision. Therefore, we will apply the removal standard to our review.

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 significant 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).) Here, based upon our analysis of the merits of applicant's arguments, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

Applicant claims injury while employed by defendant up to 2003. Trial proceedings began on September 14, 2005, and a WCJ issued a Findings and Award on September 29, 2005, which found that applicant sustained injury to her psyche. Trial proceedings occurred next on March 16, 2010 and on April 25, 2011; on May 25, 2011, a WCJ issued a Findings and Order, which ordered further development of the medical record. Trial proceedings next occurred on August 10, 2017. On September 3, 2019, the WCJ issued a Findings and Award, which we rescinded on March 8, 2022.

In the well-written Petition before us, applicant carefully explains the reasons why we should have affirmed the WCJ's decision of September 3, 2019, and points out that further development of the record will only cause more delay the proceedings. Additionally, applicant alleges that defendant has failed to timely advance payment of benefits to applicant.

First, we acknowledge applicant's frustration at the length of time that these proceedings have taken. We remind defendant of its obligations under Labor Code section 4650 and the possibility of penalties under Labor Code section 5814. Upon return, the parties should work together to complete discovery and collaborate to resolve disputes as expeditiously as possible and promptly seek the assistance of the WCJ if any disputes cannot be resolved.

Accordingly, we vacate our Order Granting the Petition for Reconsideration, dismiss the Petition as one seeking reconsideration, and deny it as one seeking removal.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Granting Petition for Reconsideration issued by the Workers' Compensation Appeals Board on May 23, 2022 is **VACATED**.

IT IS FURTHER ORDERED that applicant's Petition for Reconsideration of the Opinion and Decision After Reconsideration issued by the Workers' Compensation Appeals Board on March 8, 2022 is **DISMISSED**.

IT IS FURTHER ORDERED that applicant's Petition for Removal of the Opinion and Decision After Reconsideration issued by the Workers' Compensation Appeals Board on March 8, 2022 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 14, 2024

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

**BERTHA VAZQUEZ
MICHAEL SULLIVAN & ASSOCIATES
MOORE & ASSOCIATES**

AS/mc

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