

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

**JOVITA SOLARES, *Applicant***

**vs.**

**TANIMURA DISTRIBUTORS INC.;**  
**U.S. FIDELITY & GUARANTEE INSURANCE COMPANY,**  
**administered by LWP CLAIMS SOLUTIONS,**  
***Defendants***

**Adjudication Number: ADJ1998642**  
**Van Nuys District Office**

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

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 including the Opinion on Decision, and based upon the WCJ's analysis of the merits of petitioner's arguments in the WCJ's Report, we will dismiss the petition to the extent it seeks reconsideration and deny it to the extent it seeks removal.

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 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 to the extent it seeks reconsideration.

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).) 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 petitioner.

Section 4062.2(f) provides:

The parties may agree to an agreed medical evaluator at any time, except as to issues subject to the independent medical review process established pursuant to Section 4610.5. A panel shall not be requested pursuant to subdivision (b) on any issue that has been agreed to be submitted to or has been submitted to an agreed medical evaluator unless the agreement has been canceled by mutual written consent.

(Lab. Code, 4062.2(f).)

The WCJ determined that there is no substantial evidence to support applicant’s contention that the two parties agreed to an agreed medical evaluator, and we will not disturb her decision.

Additionally, we note that applicant is not barred from submitting reports by Dr. Kohan

into evidence in this case. “The appeals board may receive as evidence either at or subsequent to a hearing, and use as proof of any fact in dispute, the following matters, in addition to sworn testimony presented in open hearing: (a) Reports of attending or examining physicians.” (Lab. Code, § 5703; *see Lorenz v. Encino Hosp. Med. Ctr.* (Aug. 21, 2014, ADJ7659456) [2014 Cal.Wrk.Comp. P.D. LEXIS 410].) Dr. Kohan’s reporting would be additional evidence for the WCJ to consider and would not be treated as an AME report in the instant case.

For the foregoing reasons,

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

**WORKERS’ COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

**I CONCUR,**

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR  
CONCURRING NOT SIGNING



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

**July 1, 2024**

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

**JOVITA SOLARES  
SOLOV TEITELL  
GURVITZ & MARLOWE**

**LN/pm**

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