

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

MARIA VILLEGAS, *Applicant*

vs.

**SCI SHARED RESOURCES LLC ;
OLD REPUBLIC INSURANCE CO.
C/O GALLAGHER BASSETT SERVICES,
*Defendants***

**Adjudication Numbers: ADJ17926934, ADJ17926935
Bakersfield 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, we dismiss defendant's Petition for Reconsideration because the Joint Order Suspending Action is an interim order and not a final order subject to reconsideration. Also based on this review, and for reasons set forth below and based on the Report, which we adopt and incorporate herein we deny defendant's Petition for 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 Joint Order Suspending Action is an interim procedural and/or discovery order. The Order does not represent a final order finally determining any substantive right or liability of any party, nor finally determining any threshold issue basic to applicant’s right to benefit. The Order neither approved nor disapproved the C&R, rather, the order set the issues presented for further hearing, thereby ensuring due process for all parties involved.

The recent en banc decision issued by the Appeals Board in *Ledezma v. Kareem Cart Commissary and Mfg.* (2024) 89 Cal.Comp.Cases 549 (Appeals Bd. en banc), affirmed that filing petitions for reconsideration on interlocutory orders may be considered “frivolous and filed for the purposes of delay in violation of section 5813 and WCAB Rule 10421.” (*Id.*, at pp. 555-556.) Given that the language related to final orders and interlocutory orders as it relates to the filing of reconsideration “has been used in dozens, if not hundreds of panel decisions issued by the Appeals Board...,” we can see no reason for defendant’s filing of a petition for reconsideration in this matter. (See *Ledezma (Alfredo) v. Kareem Cart Commissary and Mfg* (2024) 89 Cal.Comp.Cases 462, 476 (Appeals Board en banc).)

We therefore admonish defendant’s attorney Nathan McMurry and the Law Offices of Nathan D. McMurry, A Professional Corporation, that failure to comply with the WCAB Regulations may result in dismissal of a petition and subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

We dismiss the Petition for Reconsideration as the Joint Order Suspending Action is not a final order and thus not subject to 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.

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/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 22, 2024

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

**MARIA VILLEGAS
ALVANDI LAW FIRM
NATHAN MCMURRY LAW FIRM**

LN/md

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

Petitioner Defendant SCI Shared Resources, LLC and Old Republic Insurance Company c/o Gallagher Bassett Services (Petitioner), by and through their attorney of record, Nathan McMurry, filed a timely and verified Defendant's Petition for Reconsideration dated May 14, 2024 (Petition for Recon).

On May 10, 2024, Joint Order Suspending Action issued after review of the (Joint) Compromise and Release filed on May 7, 2024.

On May 21, 2024, Petitioner filed the Petition for Recon generally contending the Joint Order Suspending Action should be set aside and an Order Approving Compromise and Release should issue.

Petitioner's filing of statutory authority for filing is consistent with Labor Code §5903, Sections (a), (c), and (e) since it recites those provisions. [Petition for Recon, p. 1, lines 20-25.]

Specifically, Petitioner claims:

The Board acted in excess of its powers [Petition for Recon, p. 1, lines 23];

The evidence does not justify the Findings of Fact [Petition for Recon, p. 1, line 24];

The Findings of Fact do not support the Order, Decision, or Award [Petition for Recon, p. 1, line 25.]

II. RELEVANT FACTS

Applicant Maria Villegas (Applicant Villegas) has filed two Applications for Adjudication that are the subject of the Petition for Recon.

The first Application for Adjudication (First Application) was filed on July 10, 2023 wherein Applicant Villegas claimed an alleged injury dated December 17, 2022 to the shoulders, elbows, and arms while working for Defendant SCI Shared Resources, LLC [The name of Defendant Employer in the Application does not match the name in the Petition for Recon. In this section of this Report, the name provided by Applicant Villegas is identified. However, since Petitioner is more presumably qualified to know the correct name of Defendant employer, the name "SCI Shared Resources, LLC" is used elsewhere in this Report and Recommendation.] (Defendant Employer) as a Dispatch Removal Tech. [First

Application dated July 10, 2023 (EAMS ID No. 47165992).] This claim was assigned ADJ17926934.

On August 8, 2023, Petitioner filed an Answer to Application for Adjudication of Claim (Answer) that indicates, among other things, that the nature and extent of the injury is denied. [Answer dated July 31, 2023 (EAMS ID No. 77024380).]

The second Application for Adjudication (Second Application) was filed on July 10, 2023 wherein Applicant Villegas claimed a cumulative trauma injury dated from December 1, 2022 through June 30, 2023 to the nervous system (psyche, stress, and not specified) while working for Defendant Employer as a Dispatcher Removal Tech. [Second Application dated July 10, 2023 (EAMS ID No. 47165998).] This claim was assigned ADJ17926935.

The Board's file in ADJ17926935 has a duplicate copy of the Answer for the specific injury dated December 17, 2022 from ADJ17926934. [Answer dated July 31, 2023 (EAMS ID No. 77024380).] It appears Petitioner did not file an Answer to the cumulative trauma injury dated December 1, 2022 through June 30, 2023 in ADJ17926935.

On May 7, 2024, a Joint Compromise and Release was filed in both cases for \$10,000.00, less \$1,500.00 in attorneys' fees. [Compromise and Release dated March 21, 2024 (EAMS ID No. 77934819).]

On May 10, 2024, Joint Order Suspending Action issued after review of the Compromise and Release that identified seven concerns and indicated an August 21, 2024 conference at 1:30 p.m. at the Bakersfield District Office of the WCAB. [Joint Order Suspending Action dated May 10, 2024, (EAMS ID No. 77945705).]

On May 21, 2024, the Petition for Recon dated May 14, 2024 was filed. [Petition for Recon dated May 14, 2024 (EAMS ID No. 77982316).]

On June 4, 2024, the Status Conference set for August 21, 2024 at 1:30 p.m. before the undersigned workers' compensation judge was cancelled. As of the composition of this Report and Recommendation, no Answer to the Petition for Recon has been filed.

III. DISCUSSION

Any person aggrieved . . . by any final order, decision, or award made and filed by . . . a workers' compensation judge . . . may petition the appeals board for reconsideration in respect to any matters determined or covered by the final order, decision, or award, and specified in the petition for reconsideration (Labor Code §5900(a)).

What constitutes final orders, decisions, or awards for purposes of reconsideration under section 5900 has been decided by the courts. For example, determinations that a claim is not barred by the statute of limitations is a final decision subject to reconsideration. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (1978) 82 Cal.App.3d, 45 [43 Cal.Comp.Cases 661]). Other findings on whether an injury arose out of and in the course of employment or whether there has even been employment are threshold issues that are also subject to reconsideration (*Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* 104 Cal.App.3d. 528, 531-535 [45 Cal.Comp.Cases 410].) A final order under section 5900 has been defined to, "include any order which settles, for purposes of the compensation proceeding, an issue critical to the claim for benefits, whether or not it resolves all issues in the proceeding or represents a decision on the right to benefits." (*Maranian v. Workers' Comp. Appeals B.* (2000) 81 Cal.App.4th 1068 [65 Cal.Comp.Cases 650].)

The Joint Order Suspending Action is not a final order, does not make any findings or decision on the right to benefits. The Joint Order Suspending Action serves as notice to the parties regarding adequacy of the settlement. The parties were afforded the opportunity to address the adequacy either at the previously set Status Conference or by letter filed with the Board after service on the parties. Rather than inquire with the undersigned judge, Petitioner inappropriately filed the Petition for Recon that deprived itself and Applicant Villegas of a likely quicker resolution at a Status Conference.

Petitioner's contention that the judge acted in excess of her powers is flatly incorrect and does not provide an appropriate basis for reconsideration since the judge is required to inquire into the adequacy of all Compromise and Release agreements, and may set the matter for hearing to take to evidence when necessary to determine whether the agreement should be approved, or issue findings and awards (8 CCR §10700(b).)

Further, nothing has been admitted into evidence and no findings have been made.

For the foregoing reasons, reconsideration is an inappropriate remedy and the Petition for Recon should be dismissed.

Alternatively, if the Petition for Recon is treated as a petition for removal, Petitioner must show irreparable harm or significant prejudice that cannot be remedied after reconsideration. Petitioner has not met this standard and has not even tried to do so. Even if there were any harm or any prejudice, not the standard, any grievance would be remediable by reconsideration after a final order, decision or award.

If the Petition for Recon is viewed as a petition for removal, it should be denied for the foregoing reasons.

IV. RECOMMENDATION

Based on the foregoing, it is recommended that the Petition for Reconsideration be dismissed or, denied if treated as a petition for removal.

DATE: June 5, 2024

MARILEN ZINNER
Workers' Compensation Judge