

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

**VANESSA SANCHEZ NAVARRO, *Applicant***

**vs.**

**PREMIER COMMERCIAL CLEANING;  
NATIONAL CASUALTY, *Defendants***

**Adjudication Number: ADJ13021561**

**San Francisco District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted applicant's Petition for Removal or Reconsideration in the Alternative in order to further study the factual and legal issues<sup>1</sup>. This is our Opinion and Decision After Reconsideration.

Applicant sought removal or reconsideration in the alternative in response to the Order on the Pre-Trial Conference Statement (PTCS) issued on July 29, 2021, by the workers' compensation administrative law judge (WCJ), wherein the WCJ ordered in relevant part that the matter was set for trial and that "Medical-legal discovery involving any specialty other than chiropractic is stayed pending outcome of trial on AOE/COE." The WCJ wrote on the PTCS the following passage on the "Judge's Conference Notes" section: "Applicant is opting to proceed to trial on AOE/COE before obtaining internal QME. Parties were advised that applicant will not be allowed to re-litigate AOE/COE if she does not prevail at this trial. Nature & extent as to compensability of the hernia is deferred and will be litigated, if still disputed, in the event injury AOE/COE as to the neck is found. Liens deferred."

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<sup>1</sup> Commissioner Dodd was on the panel that issued the August 31, 2020 Opinion and Order Granting Petition For Reconsideration and Decision After Reconsideration. Another panelist was appointed in her place for the September.7, 2021 Opinion and Order Granting Reconsideration.

Applicant contends that the WCJ erred by not allowing her to bifurcate the issues of injury to the neck and injury in the form of hernia.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal or Reconsideration and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, and for the reasons stated by the WCJ in the Report, as our Decision After Reconsideration we will vacate our "Opinion and Order Granting Petition for Reconsideration" and dismiss applicant's Petition for Removal or Reconsideration in the Alternative as the only orders issued were with respect to trial setting and pre-trial proceedings and discovery.

### **FACTS**

On February 28, 2020, applicant filed a claim alleging a cumulative injury to her neck and in the form of hernia. (Application for Adjudication, February 28, 2020.)

The WCJ explained the events leading to applicant's petition as follows:

As reflected in the June 16, 2020, Minutes of Hearing (Doc. ID No. 72900491) and subsequent Findings and Order (Doc. ID No. 72902126), the claim has not been accepted. On June 10, 2021, applicant filed a Declaration of Readiness to Proceed (DOR) requesting a priority conference (Doc. ID No. 37011295). Therein, she identified AOE/COE as the principal issue and averred as follows: "claim remains denied despite medical evidence, carrier is in violation of Labor Code 4063, WCAB intervention is required; applicant urgently needs medical care to be approved and is owed temporary disability benefits," (case converted from all-upper; text otherwise unaltered from original).

#### **2. Proceedings at priority conference.**

The conference set pursuant to applicant's DOR took place in my department on July 29, 2021, with appearances by attorneys for applicant and two carriers, among others. The parties informed me that the alleged CT remains denied in its entirety. Counsel for defendant Illinois Midwest argued against setting the issue of injury AOE/COE for trial at this time, on the basis that applicant has yet to be seen by an internal medicine Qualified Medical Evaluator for the purpose of determining compensability of any alleged hernia. Applicant's counsel countered that he was prepared to proceed on AOE/COE on the current record. Having considered the parties' arguments, I instructed them to submit a pre-trial conference

statement (PTCS) so that the matter may be set for trial on injury AOE/COE. When the issue of bifurcating the body parts was raised, I instructed the parties that applicant would be within her rights to defer nature and extent, but not AOE/COE as such, intending to re-litigate it later if she is unsuccessful at the upcoming trial. That is, the parties would have no more than one trial on the issue of injury AOE/COE.

Consistent with this off-the-record discussion during the conference, the PTCS submitted to me by the parties includes a stipulation that “Applicant is deferring nature and extent, other body parts.” Injury AOE/COE is identified as an issue for trial, with the following comments written in: “AOE/COE to neck only (Per AA, Per DA matter set for AOE/COE, generally).” Under “Parts of Body Injured,” the parties wrote “neck, hernia is deferred.”

My notes and orders within the filed PTCS were, in relevant part, as follows:

Applicant alleges single CT exposure resulting in hernia and injury to neck. Med/legal discovery to date consists of reporting and testimony of chiropractic QME Dr. Vo, who deferred to internal QME as to hernia causation. Defendants dispute substantiality of Dr. Vo’s causation opinion as to neck. Applicant is opting to proceed to trial on AOE/COE before obtaining internal QME. Parties were advised that applicant will not be allowed to re-litigate AOE/COE if she does not prevail at this trial. Nature & extent as to compensability of the hernia is deferred and will be litigated, if still disputed, in the event injury AOE/COE as to the neck is found. Liens deferred.

(WCJ’s Report, pp. 2-3.)

## DISCUSSION

“Any person *aggrieved* directly or indirectly by any final order ... may petition the appeals board for reconsideration in respect to any matters determined or covered by the final order....” (Italics added; Lab. Code § 5900(a).) 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. As relevant here, the WCJ issued two interlocutory orders: (1) Setting the matter for trial; and (2) Staying medical-legal discovery, except as to chiropractic, pending the outcome of the trial.

Applicant contends that the WCJ issued an order “disallowing Applicant to pursue AOE/COE on her hernia claim at a later date.” (Petition for Reconsideration, p. 1.) There are multiple sections on page four of the PTCS. One section is labeled “Judge’s Conference Notes.” Another section is labeled “Other Disposition and Orders.” Here, the WCJ’s comments within the “Judge’s Conference Notes” section of the pre-trial conference statement are not orders. They are not final orders. They are not interlocutory orders. They are merely comments. A comment, without more (i.e. “IT IS SO ORDERED”), is not an order. Thus, applicant is not aggrieved, and we must dismiss the Petition.

The trial judge may review this matter on the day of trial, create a record, and independently decide whether bifurcation of injury to the neck and hernia is appropriate. The WCJ’s comments in the PTCS are not binding upon the trial judge. Once the trial judge issues an order as to the issue of bifurcation, any aggrieved party may then seek appropriate relief.

We make no decision as to the appropriateness of the request for bifurcation. (*Neary v. Regents of Univ. of Calif.* (1992) 3 Cal.4th 273, 284 [the issuance of advisory opinions is to be avoided].)

Therefore, as our Decision After Reconsideration, we vacate our “Opinion and Order Granting Petition for Reconsideration” and dismiss applicant’s Petition for Removal or Reconsideration in the Alternative.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the "Opinion and Order Granting Petition for Reconsideration" issued by the Workers' Compensation Appeals Board on September 7, 2021 is **VACATED**.

**IT IS FURTHER ORDERED** that the Petition for Removal or Reconsideration in the Alternative filed on August 10, 2021 is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**June 14, 2024**

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

**VANESSA NAVARRO SANCHEZ  
LAW OFFICES OF NADEEM MAKADA  
BRADFORD & BARTHEL**

**EDL/mc**

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