

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

VELEDA BURTON, *Applicant*

vs.

**SEE'S CANDIES;
TRAVELERS PROPERTY CASUALTY CO. OF AMERICA, *Defendants***

**Adjudication Numbers: ADJ13196307, ADJ13196308, ADJ13196309
Oakland District Office**

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

Both applicant and defendant seek reconsideration of the Findings and Order (F&O) of May 29, 2024, wherein the workers' compensation judge (WCJ) found in relevant part that exhibits A through D are inadmissible and ordered that applicant appear and cooperate with her deposition.

Applicant, in pro per, contends that the F&O is fraudulent.

Defendant contends that exhibits A through D should have been admitted into evidence. We have received an Answer from applicant in response to defendant's Petition.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petitions be denied.

We have considered the Petitions for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will dismiss the Petitions to the extent they seek reconsideration and deny the Petitions to the extent they seek removal.

I.

As an initial matter, we find applicant's Petition timely. There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California and 30 days if the decision has been served by mail upon an address outside of California but within the United States. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs.,

tit. 8, § 10605(a)(1).¹ This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).) The F&O was served on May 29, 2024, and applicant’s Petition was received on June 25, 2024. The F&O included service on an out of state party. Therefore, applicant’s Petition was timely filed as it was filed within 30 days of service of the F&O.

Further, we note that applicant’s Petition is longer than the page limit of 25 pages and her Answer is longer than the page limit of 10 pages. (Cal. Code Regs., tit. 8, § 10940(d).) We will accept applicant’s Petition and Answer on our own motion in this instance. (Cal. Code Regs., tit. 8, § 10940(d).) However, applicant must file a request to exceed the page limit or any subsequent Petitions longer than the page limit may not be accepted. We note that a “request to exceed the page limitations shall be made by a separate petition, made under penalty of perjury, that specifically sets forth reasons why the request should be granted.” (Cal. Code Regs., tit. 8, § 10940(d).)

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

¹ All further statutory references are to the Labor Code unless otherwise noted.

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 intermediate procedural or evidentiary issues: admissibility of evidence and applicant’s participation in a deposition. (F&O, pp. 1-2.) 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 Petitions will be dismissed to the extent they seek reconsideration.

III.

We will also deny the Petitions to the extent they seek 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).) Here, 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.

In its Petition, defendant requested leave to obtain and file the court reporter’s transcript of the hearing to show that applicant stated she had received exhibits A through D. As the F&O of May 29, 2024, is a non-final order, including as to the issue of admission of the exhibits, after receipt of the transcript, defendant can file a petition with the WCJ and have the WCJ consider in the first instance whether to admit exhibits A through D. Thus, delay of our decision to review the transcript is not warranted. We further note that any aggrieved party may seek removal in response to a new order, or as appropriate, seek reconsideration of any final order of the WCJ.

For the foregoing reasons,

IT IS ORDERED that the Petitions for Reconsideration are **DISMISSED** and the Petitions for Removal are **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 20, 2024

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

**VELEDA BURTON, IN PRO PER
LAURA G. CHAPMAN & ASSOCIATES**

JMR/mc

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