WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ALEJANDRA BERUMEN, ***Applicant***

vs.

AIS; TWIN CITY FIRE INSURANCE COMPANY/THE HARTFORD, and AON CORP; CNA INSURANCE/SEDGWICK CMS, ***Defendants***

Adjudication Number: ADJ7742588
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 Removal (Petition), defendant CNA Insurance's answer (Answer), and the contents of the Report and Recommendation (Report) of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, we will dismiss the Petition to the extent it seeks reconsideration and deny it to the extent it seeks removal.

In the Petition, applicant challenges the Order issued February 11, 2025, wherein the WCJ granted defendant CNA's Motion to Quash Subpoena Duces Tecum. The Order quashing was issued "pending determination of coverage."

Applicant asserts that the Order issued without prior notice of intention, that the Order is not based on substantial evidence, the Order will cause significant prejudice and irreparable harm if it remains in place, and that later reconsideration of the Order will not be an adequate remedy.

The WCJ's Report recommends the Petition be denied.

We will dismiss the Petition as one for reconsideration as the WCJ's decision solely resolves an intermediate procedural issue. We will also deny the Petition to the extent it seeks removal.

FACTS

Applicant filed an application for adjudication of claim (Application) on February 2, 2011, alleging that while employed by AIS as a "CSR," applicant sustained injury to the head, neck, arm, hand, fingers, back, shoulders, and trunk resulting from a cumulative injury during the period of August 25, 2003, to January 31, 2011. The insurance carrier was listed as "Cambridge Sacramento" and there was no entry for claims administrator.

Over the years applicant filed five amended Applications, with the most recent filed on March 1, 2018. Through these amended Applications, the body parts alleged now also include sleep, digestive and psyche. The last Application lists AIS as the employer and "Hartford Sacramento" as both insurance carrier and claims administrator.

On April 17, 2013, defense law firm Stockwell Harris filed an answer to application of claim which lists the employer as "AON CORP" insured by "CAN [*sic*] Insurance, Sedgwick CMS administering."

On June 21, 2013, defense law firm Armstrong & Sigel, LLP, filed a letter of representation listing the employer as "Mercury General Corp (AIS)" and party represented as "Twin City Insurance Co./The Hartford."

At an April 27, 2021, priority conference, the Minutes reflect "Accepted injury; parties have a new AME-Robert Wilson MD" and the matter went off calendar.

Multiple attorneys have represented applicant over the life of the case. The current counsel filed a notice of representation on November 26, 2024.

On January 9, 2025, applicant filed a declaration of readiness to proceed (DOR) requesting a status conference for March 20, 2025, with the principal issue of "service" and listing multiple additional discovery issues.

On January 13, 2025, applicant caused a subpoena duces tecum to issue seeking records from Sedwick Claims Management. (The subpoena is not in the record as evidence; instead, it is attached as Exhibit A to defendant's motion to quash subpoena filed February 3, 2025.)

Defendant CNA Insurance filed a verified Motion to Quash Subpoena Duces Tecum and Request for Protective Order (Motion), on February 3, 2025, noting "The claim is currently denied based on lack of coverage." (Motion, page 2, lines 2 – 3.) Defendant stated *inter alia* "Defendants have provided all medical records currently in possession over to Applicant's Attorney" (Motion,

page 3, lines 21 – 22) and "[d]efendants will produce the appropriate documents voluntarily within a reasonable period of time." (Motion, page 4, lines 21 to 22.)

On February 11, 2025, the WCJ issued the Order granting defendant's motion to quash "the subpoena directed to Sedgwick Claims Management Services, In., on February 03, 2025 PENDING DETERMINATION OF COVERAGE" (*sic*; capitalization in original). The Order shows email service on defense law firm Stockwell Harris on February 13, 2025, and designates Stockwell to serve.

The Electronic Adjudication Management System (EAMS) does not reflect a filed proof of service of the Order by Stockwell Harris.

On March 19, 2025, applicant and defense counsel for Twin City Insurance Co., filed a joint letter requesting the March 20, 2025, hearing be taken off calendar (OTOC).

On March 20, 2025, the WCJ issued an OTOC, and the Minutes reflect a notation next to applicant counsel's appearance of "tech problems with mute" and an indication in Comments that "A/A objects to quash order."

On March 28, 2025, applicant filed an objection to defendant's motion to quash subpoena duces tecum.

On April 1, 2025, applicant filed the Petition which is the subject of this Opinion and Order.

Thereafter, defendant CNA Insurance filed an answer and the WCJ filed a Report recommending that the Petition be denied.

DISCUSSION

I.

A.

Former Labor Code section 5909[1] provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Former Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

(b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(Lab. Code, § 5909.)

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events the case was transmitted to the Appeals Board on April 14, 2025, and 60 days from the date of transmission is Friday, June 13, 2025, which by operation of law means this decision is due by Friday, June 13, 2025. (Cal. Code Regs., tit. 8, § 10600.) This decision issued by or on June 13, 2025, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

According to the proof of service, the Report was served on April 14, 2025, and the case was transmitted to the Appeals Board on April 14, 2025.[2] Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 14, 2025.

[2] The Report was served by the Board. It appears the proof of service is not in FileNet. For clarity, we will add the proof of service for the Report to the record of proceedings in FileNet. (Cal. Code Regs., tit. 8, § 10803(a)(2)).

B.

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. (*Maranian*, *supra*, 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.

The WCJ's decision here solely resolves an intermediate evidentiary issue, a petition to quash subpoena duces tecum. 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.

II.
A.

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.

As noted above, the Order quashing is on its face a non-final order and as such subject to further consideration by the WCJ. The Order issued "pending determination of coverage." The WCAB may specifically defer issues for later determination; such issues remain pending and unresolved. (See *General Foundry Serv. v. WCAB* (*Jackson*) (1986) 42 Cal.3d 331, 337 [51 Cal.Comp.Cases 375].)

B.

Although we deny the Petition, as explained below, we treat it as timely filed.

There are 25 days allowed within which to file a petition for removal from a "non-final" decision that has been served by mail upon an address in California. (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10955(a).) 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 removal 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, §§ 10615(b), 10940(a).)

In the verified Petition, applicant's attorney states counsel first received notice of the Order quashing when reviewing EAMS in preparation for hearing on March 20, 2025. (Petition page 3, lines 2 to 5.)

Defendant, in the unverified Answer, states the Order quashing was served on February 14, 2025. (Answer, page 1, line 28, page 2, lines 17 to 19.)

The WCJ in the Report states "[o]n 02-11-2025 an Order Quashing applicant's SDT for the records of Sedgwick issued served by staff on 02-13-2025." (Report, page 4.) The Order on its face confirms the district office served Stockwell Harris by email on February 13, 2025. Per service of the Order, however, Stockwell Harris was designated to serve it on the other parties pursuant to WCAB Rule 10629 (Cal. Code Regs., tit. 8, § 10629).

The WCAB is required to serve a "final order, decision or award issued by it on a disputed issue after submission." (Cal. Code Regs., tit. 8, § 10628(a).) As the Order to quash was not a final order, there was no requirement for the WCAB to serve it, and designated service was appropriate.

WCAB Rule 10629 requires that "[w]ithin 10 days from the date on which designated service is ordered, the person designated to make service shall serve the document and shall file the proof of service." (Cal. Code Regs., tit. 8, §10629(d), emphasis added.) Here, the Electronic Adjudication Management System (EAMS) does not reflect a filed proof of service for the Order quashing. The verified Petition establishes applicant's notice of the Order first occurred on March 20, 2025. Despite Stockwell Harris being designated for service, the proof of service for the Order is not in EAMS as required.

From these events we draw the reasonable inference that the verified date of notice of the Order stated by applicant is correct. (*Hartford Accident & Indemnity Co. v. Workers' Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1 [43 Cal.Comp.Cases 1193] [where an order can be shown to have been defectively served, the time limit begins to run as of the date of receipt of the order]; see Cal. Ev. Code, § 600.)

Thus, for our purposes the verified first notice to applicant of the Order quashing occurred March 20, 2025, and therefore applicant's Petition filed twelve days later, on April 1, 2025, is timely. (Cal. Code Regs., tit. 8, § 10955(a)).

Although we deny removal based on the failure to establish substantial prejudice, irreparable harm and/or that later reconsideration will be inadequate, we briefly address the additional issues raised by the Petition.

The Appeals Board or a WCJ may issue a notice of intention for any proper purpose. (Cal. Code Regs., tit. 8, § 10832). Here, no notice of intention issued. A notice of intention is the proper procedure to follow, so that parties are given notice and an opportunity to object. Moreover, the notice of intention explains the basis for a potential order. Here, without more, it is unclear what the significance is of the phrase in the Order that the subpoena is quashed "pending determination of coverage."

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.*

(1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id*. at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal. 2d 753, 755 [33 Cal.Comp.Cases 350]).)

We observe that the lack of a record here means that we are unable to consider the actual merits of whether the WCJ properly granted defendant's petition to quash. Nonetheless, we see no reason to grant the extraordinary remedy of removal when the issue can be revisited after determination of coverage. Alternatively, applicant may simply issue a new narrowly tailored subpoena, if appropriate, that considers defendant's response to the February 11, 2025, subpoena duces tecum.

The WCJ's Report recommends the Petition be denied but also recommends "a straightforward assessment of discovery and execution of a joint Pretrial Conference Statement so the applicant may have a resolution of a case parties have demonstrated reluctance to finalize." (Report, page 5.) We encourage the parties to heed the WCJ's recommendation and move forward to resolve as many issues as may be currently possible.

It is not clear which entity or entities have "[a]ccepted injury." Defendant CNA Insurance, in the unverified Answer, states "coverage is in dispute by Defendant." (Answer, page 2, lines 5 to 7.) The Answer also identifies the employer only as AON Corp., and no mention is made of employer AIS. Counsel for codefendant, however, lists the employer as "Mercury General Corp. (AIS)" with insurance coverage provided by "Twin City Insurance Co./The Hartford." No adjusting agent is listed.

In any further proceedings the proper defendants and periods of coverage should be identified. Under WCAB Rule 10390 (Cal. Code Regs., tit. 8, §10390), all parties must provide their full legal name on all pleadings and at any appearance, including the names of the employer, insurance company and any third-party administrator. (See *Coldiron v. Compuware Corp.* (2002) 67 Cal.Comp.Cases 289 (Appeals Bd. en banc) [defendant attorneys must disclose proper legal names for the employer, insurance company and any third-party administrator and failure to do so may subject the offending party to sanctions].)

We otherwise express no opinion as to the merits of any issues in this matter. Accordingly, we dismiss the Petition as one for reconsideration and deny it as one for removal.

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/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 4, 2025

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

ALEJANDRA BERUMEN
LAW OFFICES OF KIMBERLEY J PRYOR
STOCKWELL HARRIS

PS/oo

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