

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

**CALVIN GRIGSBY, *Applicant***

**vs.**

**GRIGSBY AND ASSOCIATES;  
STATE FARM FIRE AND CASUALTY COMPANY, administered by SEDGWICK CMS,  
*Defendants***

**Adjudication Number: ADJ15495436  
Oakland District Office**

**OPINION AND ORDERS  
DISMISSING PETITION FOR RECONSIDERATION,  
DENYING PETITION FOR REMOVAL  
AND DISMISSING PETITION FOR REMOVAL**

We have considered the allegations of the December 9, 2024 Petition for Reconsideration and/or Removal (Petition) and the December 24, 2024 Petition for Removal 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 determine that the Petition seeks reconsideration of non-final orders and will be dismissed. In addition, based on our review of the record, we will deny removal. We will dismiss applicant's subsequent Petition for Removal.

**I.**

Former Labor Code section 5909<sup>1</sup> 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. (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.
- (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.

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<sup>1</sup> All section references are to the Labor Code, unless otherwise indicated.

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

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 December 19, 2024 and 60 days from the date of transmission is Monday, February 17, 2025. The next business day that is 60 days from the date of transmission is Tuesday, February 18, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Tuesday, February 18, 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 and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on December 19, 2024, and the case was transmitted to the Appeals Board on December 19, 2024. 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 December 19, 2024.

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<sup>2</sup> WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

## 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 (*Rymer*); *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd.* (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 December 4, 2024<sup>3</sup> orders solely resolve intermediate procedural or evidentiary issue or issues.<sup>4</sup> The orders do not determine any substantive right or liability and do not determine a threshold issue. Accordingly, they are not “final” decisions and the petition for reconsideration will be dismissed and we will treat the Petition as a petition for removal.

## III.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers’ Comp. Appeals Bd. (Cortez)* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers’ Comp. Appeals Bd. (Kleemann)* (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

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<sup>3</sup> Applicant challenged the WCJ’s December 6, 2024 orders. However, no orders were issued on that date. We will treat applicant’s petition as a challenge to the WCJ’s three orders signed on December 4, 2024.

<sup>4</sup> We observe that, pursuant to section 5955, there was no basis for applicant’s request to be referred to Superior Court. (Lab. Code § 5955 [“No court of this state, except the Supreme Court and the courts of appeal to the extent herein specified, has jurisdiction to review, reverse, correct, or annul any order, rule, decision, or award of the appeals board, or to suspend or delay the operation or execution thereof, or to restrain, enjoin, or interfere with the appeals board in the performance of its duties...”].) Although the request for a referral should have been dismissed, we will not disturb the order.

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*.) The petitioner must also 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).)

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, § 10566.)

Here, applicant did not demonstrate that irreparable harm will result if removal is not granted. Thus, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy. Once the parties proceed to trial, they will have an opportunity to create a record, raise all relevant issues, and submit evidence. The trial WCJ can then consider the evidence and the legal arguments raised by the parties and determine how best to proceed.

#### IV.

WCAB Rule 10964 requires,

(a) When a petition for reconsideration, removal or disqualification has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board.

(b) A party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading.

(c) Supplemental petitions or pleadings or responses other than the answer shall neither be accepted nor deemed filed for any purpose except as provided by this rule.

(Cal. Code Regs., tit. 8, § 10964.)

Here, applicant filed multiple additional filings, subsequent to his December 9, 2024 Petition for Reconsideration and/or Removal. On December, 24, 2024, applicant filed “Petition for Removal of Order Denying Motion to Strike and Deferring all issues under CCR Tit. 8 10955.”

We will dismiss this petition because it appears to challenge the same December 4, 2024 Order challenged in applicant's December 9, 2024 Petition. Regarding applicant's additional filings subsequent to the December 9, 2024 Petition, we do not accept the filing of these pleadings and have not considered them. (Cal. Code Regs., tit. 8, § 10964(a), (b).)

**V.**

WCAB Rule 10940, subd. (d) requires, that petitions for reconsideration or removal “shall not exceed 25 pages...” (Cal. Code Regs., tit. 8, § 10940(d).) Here, applicant's Petition is 27 pages in length, a fact applicant sought to obscure by failing to number the first two pages of the Petition. All persons appearing before the WCAB are expected to comply with all applicable statutes and regulations, and failure to comply with WCAB Rule 10940 and other WCAB rules could subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

Accordingly, we dismiss the Petition for reconsideration and deny it as a Petition seeking removal. We also dismiss the December 24, 2024 Petition for Removal.

For the foregoing reasons,

**IT IS ORDERED** that Applicant's December 9, 2024 Petition for Reconsideration is **DISMISSED** and Petition for Removal is **DENIED**.

**IT IS FURTHER ORDERED** that Applicant's December 24, 2024 Petition for Removal is **DISMISSED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**February 18, 2025**

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

**CALVIN GRIGSBY  
LAW OFFICES OF ANTHONY CHOE  
LUNA, LEVERING & HOLMES**

**MB/ara**

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