

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

**CARMEN FRANKLIN, *Applicant***

**vs.**

**LAW OFFICE OF LINDA FULLERTON;  
STATE FARM FIRE AND CASUALTY COMPANY,  
administered by SEDGWICK CLAIMS  
MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ10805554  
Oakland District Office**

**OPINION AND ORDER  
DENYING PETITION  
FOR RECONSIDERATION**

Defendant seeks reconsideration of the Findings, Award, and Order (F,A&O) issued by the workers' compensation administrative law judge (WCJ) on June 26, 2025, which found in pertinent part that the August 16, 2024 Award approving the Stipulations of the parties was set aside; and that applicant is owed permanent disability benefits from October 22, 2019 to the date of death with interest on the unpaid amount. The F,A&O also included a Notice of Intent (NIT) to issue sanctions to against defendant.

Defendant contends that the Award for Stipulations dated August 16, 2024 should not be set aside as the WCJ improperly found the stipulations were based upon a mutual mistake of fact, and that there were no grounds to support NIT.

We have not received an answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the WCJ with respect thereto. Based on our review of the record, we will deny the Petition as one seeking reconsideration.

## I.

Preliminarily, we note that former Labor Code<sup>1</sup> section 5909 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.

(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 July 18, 2025 and 60 days from the date of transmission is September 16, 2025. This decision was issued by or on September 16, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on July 18, 2025, and the case was transmitted to the Appeals Board on

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<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

July 18, 2025. 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 July 18, 2025.

## 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].) If a decision includes resolution of a “threshold” issue, then it is a “final” decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both final findings and non-final findings. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision makes a final finding or resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ’s determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes a finding regarding threshold issues, namely, injury arising out of and in the course of employment, parts of body injured, and the existence of an employment relationship. It also includes a final finding as to defendant's liability to pay permanent disability and awards payment of that permanent disability. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Defendant challenges the WCJ's decision to set aside the August 16, 2024 Award approving the Stipulations of the parties, as well as the WCJ's NIT. The order to set aside the Award of August 16, 2024 is an interlocutory finding because it is not a "final" decision as to defendant's liability to pay benefits. (*Maranian, supra*, 81 Cal.App.4th at p. 1075.) Thus, although the F,A&O contains findings that are final, defendant is only challenging an interlocutory finding/order therein. Therefore, we will apply the removal standard to our review. (See *Gaona, supra*.)

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 significant 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, based upon the WCJ's analysis of the merits of the petitioner's arguments, 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.

With respect to defendant's contentions regarding the NIT, no order has issued with respect to sanctions, so that at the present time, determination of the issue of whether sanctions should be imposed remains with the WCJ. Thus, we do not address the merits of the NIT.

Therefore, we will deny the Petition as one seeking reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

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

**JOSÉ H. RAZO, COMMISSIONER**  
**CONCURRING NOT SIGNING**



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

**September 12, 2025**

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

**CARMEN FRANKLIN  
LAW OFFICES ROBERT E. WOOD  
HAWORTH, BRADSHAW, STALLKNECHT & BARBER, INC.**

**SL/abs**

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