WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ELMER HERNANDEZ, et al., *Applicants*

vs.

TACO BELL, permissibly self-insured; administered by PENNSYLVANIA MANUFACTURERS ASSOCIATION INSURANCE COMPANIES, *Defendants*

Adjudication Number: ADJ16246113
Anaheim District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION AND DENYING PETITION FOR REMOVAL

Defendant seeks reconsideration of the "Findings and Order" (F&O) issued on July 8, 2025, by the workers' compensation administrative law judge (WCJ). The WCJ ordered defendant to serve on cost petitioner its market rate guidelines if a market rate has been established, and to provide the name of the person most knowledgeable as to its market rate guidelines.

Defendant, through its hearing representative, contends that its market rate guidelines are protected as a matter of attorney work product.

We have received an answer from cost petitioner. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below we will dismiss the Petition for Reconsideration as the F&O contains no final order and deny the petition to the extent that defendant seeks removal as defendant has not demonstrated substantial prejudice or irreparable harm.

FACTS

Per the WCJ's Report:

> Elmer Hernandez . . . while under the employment of Taco Bell on May 20, 2022, as a dishwasher filed an Application for Adjudication on June 2, 2022, alleging industrial injuries to his eye, nervous system (psych), nervous system (stress), nervous system (not specified), and head.
>
> The applicant settled his case by way of the Compromise and Release on October 25, 2023, which was read and translated to the applicant by LG Interpreting and Notary Services. The Order Approving was issued on November 13, 2023, by the Undersigned Judge. . . . LG Interpreting and Notary Services (cost petitioner) filed a petition for costs on September [18], 2024. The cost petitioner asserted that they had not been paid in full for the services provided and that the defendant failed to provide them with a clear description of any additional information that would facilitate full reimbursement and avoid litigation.
>
> On December 17, 2024, cost petitioner filed a Motion To Compel Production Of Relevant Documents requesting the Undersigned Judge order the defendant to produce: (1) all PMA Companies' Explanation of Bill Reviews (EOR) for invoices regarding Interpreter services for all dates of service on this Case; (2) all written procedures for PMA Companies reduction/ review/ rejection of Interpreter Invoices regarding 5811 Cost services under Board Rule 9795.3; (3) Any Internal Market Rate Payment Criteria that PMA Companies uses for payment of Interpreter Invoices; and (4) the name of the Person Most Knowledgeable to discuss EOR deficiencies and policies at Deposition regarding 5811 Interpreter Invoices and payments.
>
> The Undersigned Judge deferred action on the Motion To Compel, and the issue was set for hearing.
>
> The Motion to Compel was submitted to the Undersigned Judge on May 19, 2025. The issues presented for determination were: (1) Whether the Cost petitioner is entitled to billing guidelines used by defendant in determining payment for interpreting services; (2) Whether the Cost petitioner is entitled to market rate guidelines used by defendant to determine if market rate has been established; and (3) Whether the Cost petitioner is entitled to the name of the Person Most Knowledgeable on the review standards used by the defendant in determining payment for interpreting services.
>
> The Undersigned Judge issued his Finding and Order on July 8, 2025 finding that (1) the defendant's billing guidelines are not relevant to the Court's determination on the issue of the value of interpreting services; (2) the defendant's standards and/or principles used to determine if an interpreter has established a market rate are not relevant to the Court's determination of the issue

> market rate; (3) the disclosure of the market rate guidelines used by the defendant could lead to the discovery of admissible evidence on the issue of the applicable market rate; (4) the cost petitioner was not entitled to discovery of the defendant's billing guidelines; (5) the cost petitioner was entitled to the market rate guidelines used by the defendant to determine if the market rate has been established; and (6) the cost petitioner was entitled to the name of the Person Most Knowledgeable as it pertains to the market rate guidelines used by the defendant.

(WCJ's Report, pp. 2-3.)

DISCUSSION

I.

Former Labor Code[1] 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.

(§ 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 August 1, 2025, and 60 days from the date of transmission is Tuesday, September 30, 2025.

[1] All future references are to the Labor Code unless noted.

This decision is issued by or on September 30, 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 August 1, 2025, and the case was transmitted to the Appeals Board on August 1, 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 August 1, 2025.

II.

As stated in our en banc decision:

> 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, 260 Cal. Rptr. 76; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal. App. 3d 528, 534–535 [163 Cal. Rptr. 750, 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 [97 Cal. Rptr. 2d 418, 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.

(*Ledezma v. Kareem Cart Commissary and Mfg*, (2024) 89 Cal. Comp. Cases 462, 475 (En Banc).)

Here, the order issued by the WCJ is a decision solely addressing discovery. The decision contains no final order from which reconsideration may be sought, and thus we dismiss the petition as one seeking reconsideration. Defendant is admonished that filing petitions for reconsideration from non-final orders is not permissible and may be sanctionable. (See *id*.)

We treat the petition as one seeking removal. Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd*. (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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*.) A 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).)

Here, and for the reasons discussed below, defendant has not established substantial prejudice or irreparable harm. Accordingly, we deny the petition to the extent it seeks removal.

III.

The sole issue raised in the petition is the application of attorney work-product privilege. As noted by the WCJ in the report, no issue of privilege was raised at the trial level. The issues listed for trial were:

> 1. Whether the Cost Petitioner is entitled to billing guidelines used by defendant in determining payment for interpreting services.
>
> 2. Whether the Cost Petitioner is entitled to market rate guidelines used by defendant to determine if market rate has been established.
>
> 3. Whether the Cost Petitioner is entitled to the name of the Person Most Knowledgeable on the review standards used by the defendant in determining payment for interpreting services with all other issues deferred at this time.

(Minutes of Hearing and Summary of Evidence, May 19, 2025, p. 2, lines 13-19.)

Cost petitioner filed a trial brief which does not indicate that any issue of privilege was raised below. Defendant, in lieu of a trial brief, filed four cases for the WCJ to consider. None of the cases filed by defendant address the issue of privilege and thus the issue was not before the WCJ at the trial level.

The reconsideration process has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) The Appeals Board is not precluded from examining issues not raised at the trial level, including defendant's allegation of privilege, however, the Appeals Board generally exercises such authority reluctantly when the interests of substantial justice are warranted. Here, and perhaps because defendant failed to consider this issue at the trial level, defendant did not establish its burden to prove that the requested discovery is privileged.

In *Regents of University of California v. Workers' Comp. Appeals Bd*. (2014) 226 Cal.App.4th 1530 [173 Cal. Rptr. 3d 80] (*Lappi*) the court held that Evidence Code statutes prohibiting disclosure of assertedly privileged materials for the purpose of determining their related privilege claims apply to WCAB proceedings.

The attorney work-product is codified within Code of Civil Procedure 2018.030 as follows:

> (a) A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.
>
> (b) The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

In this case, defendant is not represented by an attorney, nor has defendant provided any evidence in the record to establish the existence of attorney work-product privilege. Defendant has not even asserted a basic essential fact: that its market rate analysis is the work product of an attorney. No attorney has asserted any privilege in this case. Defendant failed its burden of establishing a privilege.

Next, defendant argues within a single sentence that the work-product privilege also precludes disclosure of the identity of a person most knowledgeable. Defendant provided no legal citation at all to support its position. We consider defendant's argument on this point skeletal and thus waived. (See *Flores v. Cal. Dept. of Corrections and Rehab.* (2014) 224 Cal.App.4th 199, 204 ("an appellant must do more than assert error and leave it to the appellate court to search the record … to test his claim"); *City of Santa Maria v. Adam* (2012) 211 Cal. App.4th 266, 287 ("[r]ather than scour the record unguided, we may decide that the appellant has waived a point urged on appeal when it is not supported by accurate citations to the record"); *Salas v. Cal. Dept. of Transp.* (2011) 198 Cal.App.4th 1058, 1074 ("[w]e are not required to search the record to ascertain whether it contains support for [plaintiffs'] contentions"); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 ("[t]he appellate court is not required to search the record on its own seeking error" and "[i]f a party fails to support an argument with the necessary citations to the record, … the argument [will be] deemed to have been waived").)

Accordingly, we dismiss defendant's Petition for Reconsideration and deny the petition to the extent it seeks removal.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Order issued on July 8, 2025, by the WCJ is **DISMISSED**.

IT IS FURTHER ORDERED that defendant's Petition for Removal of the Findings and Order issued on July 8, 2025, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 15, 2025

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

LG INTERPRETING, INC.
GEORGE E. CORSON, IV, ESQ.
AM LIEN SOLUTIONS
ALVANDI LAW
ALBERT & MACKENZIE

EDL/mc

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