

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

ERIC BRAGER, *Applicant*

vs.

RKL TECHNOLOGIES, *Defendants*

**Adjudication Number: SAU8840977
Oxnard District Office**

***Real Parties in Interest:*
CENTER FOR BETTER HEALTH dba SOUTHLAND
SPINE AND REHABILITATION**

**OPINION AND ORDER DENYING
PETITION FOR RECONSIDERATION AND
GRANTING PETITION FOR REMOVAL AND
DECISION AFTER REMOVAL**

Liaison counsel for the insurance carriers, third-party administrators, and self-insured employers (carriers) seek reconsideration or alternatively removal of the Discovery Order issued on August 1, 2025 by a workers' compensation administrative law judge (WCJ). The WCJ ordered "all prior orders of Judge [Tammy] Homen...void" in the above-captioned matter [which was consolidated for purposes of common discovery on July 23, 2024]; ordered documents misfiled into the record of ADJ8840977 to be refiled into the record of SAU8840977 by Rod Pacheco of Pacheco & Neach, P.C. and Eric Danowitz of Mokri Vanis & Jones; ordered all documents to be filed into the record of SAU8840977 and any documents misfiled into the record of ADJ8840977 to be rejected and motions therein denied without prejudice to be reviewed once refiled into the record of SAU8840977; and, that the failure to properly file documents into the record of SAU8840977 would be "an unacceptable disruption of proceedings" and absent a showing of good cause, would be considered a basis for sanctions.

The carriers contend that reconsideration is appropriate because the Discovery Order was issued without jurisdiction given that the time for removal and/or reconsideration of the prior orders of WCJ Homen had already passed and the orders had become final decisions, and no party sought removal or reconsideration of any of the orders; the evidence does not support the act of

voiding all WCJ Homen's prior orders; and, the Discovery Order was issued without notice, an opportunity to be heard, findings of fact, or opinion on decision. The carriers contend in the alternative that removal is appropriate because the Discovery Order will cause substantial prejudice and irreparable harm.

Center for Better Health dba Southland Spine and Rehabilitation (lien claimant) filed an Opposition to Petition for Reconsideration or in the Alternative Removal (Answer), contending that California law requires orders issued by a disqualified judge to be vacated and the carriers had notice and the opportunity to be heard on lien claimant's Petition for Disqualification.

The WCJ filed a Report and Recommendation on Petitions for Reconsideration and Removal (Report), recommending denial.

We have reviewed the record in this consolidated proceeding, the allegations in the Petition for Reconsideration/Removal and the Answer, and the contents of the Report. For the reasons stated below, we deny reconsideration and grant removal. It is our decision after removal to rescind the Discovery Order and return this matter to the trial level for further proceedings consistent with this decision.

I.

Former Labor Code 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, Labor Code 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 Labor Code 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 September 3, 2025 and 60 days from the date of transmission is Sunday, November 2, 2025. The next business day that is 60 days from the date of transmission is Monday, November 3, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, November 3, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 September 3, 2025, and the case was transmitted to the Appeals Board on September 3, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 3, 2025.

II.

A petition for reconsideration is only properly taken from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) “An order, decision, or award of the WCAB or workers’ compensation judge is final for purposes of a petition for reconsideration where it

¹ 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.

determines any substantive right or liability of those involved in the case.” (*Rymer v. Hagler* (1989) 211 Cal. App. 3d 1171, 1180; see *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal. App. 3d 528, 534–535 [45 Cal.Comp.Cases 410].) In other words, an order is final when it determines a “threshold” issue fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070 [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*, 81 Cal.App.4th at p. 1075; *Rymer, supra*, 211 Cal.App.3d at p. 1180.) As further explained in *Maranian*:

A threshold issue is an issue that is basic to the establishment of the employee’s rights to benefits, such as the territorial jurisdiction of the Board, the existence of the employment relationship, and statute of limitations issues. Likewise, the term final order includes orders dismissing a party, rejecting an affirmative defense, granting commutation, terminating liability, and determining whether the employer has provided compensation coverage.

(*Maranian, supra*, 81 Cal.App.4th at 1075.)

Here, the Discovery Order voids prior *discovery* orders which are not final orders, decisions, or awards. The Discovery Order itself is also not a final order as it requires further litigation of discovery issues which are at the heart of the consolidation, and therefore does not “avoid the necessity of further litigation...” (*Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 citing *Pointer, supra*, 104 Cal.App.3d at p. 534.)

Accordingly, we deny reconsideration because the Discovery Order is not a final order, decision or award.

III.

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, § 10843(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, § 10843(a).)

Even though removal of interlocutory decisions is not required, certain interlocutory decisions may be difficult to undo. The more likely a decision cannot be undone, the more likely that decision will result in substantial prejudice or irreparable harm and a timely petition for removal should be filed. However, where a decision can be addressed adequately on reconsideration, parties need not seek removal to preserve their objections.

Here, the carriers contend that the WCJ issued the Discovery Order in violation of their right to due process, without providing findings of fact and a summary of evidence, and without issuing a decision containing the reasoning and evidence relied upon by the WCJ to void all of WCJ Homen's prior orders. These contentions have merit on removal.

Labor Code 5313 requires that after a matter is submitted, and together with findings of fact, orders, and/or awards, a WCJ "shall" serve "a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313.) The opinion on decision must be based on admitted evidence (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*)), and 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] (*Garza*); *Le Vesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16])). The WCJ's opinion on decision enables the parties to determine the basis for the WCJ's decision and makes seeking reconsideration or removal more meaningful. (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

In this matter, the WCJ did not issue an opinion on decision with the Discovery Order. However, a WCJ's report *may* cure any technical or alleged defect in satisfying the requirements of section 5313. (*City of San Diego v. Workers' Comp. Appeals Bd. (Rutherford)* (1989) 54 Cal.Comp.Cases 57 (writ den.); *Smales v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 1026 (writ den.)) In response to the Petition for Reconsideration/Removal, the WCJ filed the Report, which explains that the Discovery Order was issued because the prior orders of WCJ Homen were "tainted" based on the following grounds:

The prior WCJ Tammy Homen was disqualified, due to her failure to disclose the fact that her husband, Norman Homen, Esq., was involved in some of the

underlying consolidated cases, and in fact made referrals in some of the cases to the consolidated lien claimant CENTER FOR BETTER HEALTH DBA SOUTHLAND SPINE AND REHABILITATION.

Also, WCJ Tammy Homen made a comment off the record that was in part the basis for her disqualification,

“On March 6, 2025, both Carriers and Lien Claimants discussed the health concerns regarding Veronica Martin. That was the basis of the protective order and her sworn declaration. See Decl. of Rod Pacheco, ¶ 3. Mrs. Martin, in the declaration, stated that her health complications would make it difficult, if not impossible, for her to attend the court ordered deposition. In response and after analyzing the declaration, Judge Homen stated, “I just saw Veronica at a Workers Compensation Convention Event in Vegas... if she can do that, then she can sit in at a deposition.” See Decl. of Marquis Stepteau, ¶ 7; see Decl. of Irasema Rocha, ¶ 5. The remarks were heard by Lien Claimants and were made off the record. The comments were made with little regard to the complications and health concerns of Mrs. Martin.” See petition for disqualification, dated 5/7/2025, page 6 line 25 to page 7 line 6.

The foundation of the legal system is that Judges act fairly.

The undersigned cannot emphasize how important it is to be fair to all parties.

The fact that WCJ Tammy Homen did not file a report on said petition to disqualify her from this case is important. The allegations set forth in the petition to disqualify had merit, and therefore the order disqualifying said judge issued.

(Report, pp. 1-2.)

In addition, the WCJ wanted to fix the problem of documents being improperly filed in the record of ADJ8840977 instead of SAU8840977, while maintaining the due process rights of the parties by permitting the improperly filed motions to be addressed after proper filing in the proper record of proceedings. (Report, at p. 2.)

However, WCJ Homen was not disqualified based on an adjudication of the lien claimant’s Petition for Disqualification because *only the Appeals Board has jurisdiction to act on a petition to disqualify a WCJ*. (Lab. Code, § 5311 [“**the objection shall be heard and disposed of by the appeals board**”], emphasis added.) WCJ Homen does appear to have recused herself when she admitted that lien claimant stated good cause for her disqualification in its Petition for Disqualification. (See Petition for Disqualification, May 7, 2025; WCJ Homen’s purported Order Granting Petition for Disqualification, May 13, 2025.) Indeed, this consolidated matter was

thereafter reassigned to WCJ Michael Greenberg by presiding WCJ William E. Gunn on July 17, 2025. (Order Reassigning Case to WCJ Greenberg and Notice of Hearing, July 17, 2025.)

Consequently, although the WCJ's Report in this consolidated matter *may* have cured the failure of the WCJ to issue an opinion on decision, the WCJ's Report did not and could not cure the lack of a fair hearing on lien claimant's Petition for Disqualification **or the failure of the WCJ to provide notice or fair hearing prior to issuing the Discovery Order**. In other words, there has been no adjudication of the factual and legal basis for his determination that WCJ Homen's prior orders were "tainted" by her alleged failure to disclose her husband's involvement in some of the cases in this consolidated proceeding and/or by her husband's involvement in those cases including referrals to lien claimants; or, that she failed to act fairly in relation to applicant Veronica Martin.

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "one of 'the rudiments of fair play' assured to every litigant...." (*Id.*, at p. 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission...must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.*, at p. 577.) A fair hearing includes but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, 82 Cal.App.4th at pp. 157-158.)

As there was no adjudication of the factual and legal basis for the WCJ's determination that WCJ Homen's prior orders were "tainted," and further, because there was no notice of hearing or hearing prior to the Discovery Order being issued, we cannot interpose our own findings and conclusions in this matter without violating the parties' rights to due process. (*Gangwish, supra*, 89 Cal.App.4th at p. 1295 citing *Rucker, supra*, 82 Cal.App.4th at pp. 157-158).

Accordingly, we grant removal as the Discovery Order was issued in violation of both the notice and hearing guarantees of due process, which necessarily caused substantial prejudice and irreparable harm to all parties in this consolidated proceeding, which no reconsideration later in proceedings would be able to cure. It is our decision after removal to rescind the Discovery Order

and return this consolidated matter to the trial level for further proceedings consistent with this decision. Further proceedings should include but are not limited to proper notice to all parties in this consolidated matter for a fair hearing and adjudication of whether any and/or all of WCJ Homen's prior orders were "tainted" by what are currently only "good cause" *allegations* against WCJ Homen.

For the foregoing reasons,

IT IS ORDERED that the carrier's Petition for Reconsideration of the Discovery Order issued on August 1, 2025 by a workers' compensation administrative law judge is **DENIED**.

IT IS FURTHER ORDERED that the carrier's Petition for Removal of the Discovery Order issued on August 1, 2025 by a workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Discovery Order issued on August 1, 2025 by a workers' compensation administrative law judge is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 3, 2025

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

**PACHECO & NEACH, P.C
MOKRI VANIS & JONES, LLP**

AJF/mc

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