WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FAREED ROSHANDELL, *Applicant*

vs.

TRANSFORM SR HOLDING MANAGEMENT LLC/TRANSFORMCO (FORMERLY SEARS HOLDINGS CORPORATION); ACE AMERICAN INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ1631280 (SJO 0254770)
San Bernadino District Office

OPINION AND ORDERS DISMISSING PETITION FOR RECONSIDERATION, GRANTING PETITION FOR REMOVAL AND DECISION AFTER REMOVAL

Applicant seeks reconsideration of the June 3, 2025 decision, issued by the workers' compensation administrative law judge (WCJ) wherein the WCJ found that the report upon which the Request for Authorization (RFA) is based is not a valid medical report; that the signature on the RFA is not legible; and that the Utilization Review (UR) determination was untimely and not served appropriately because it lacked applicant's complete address; the WCJ ordered that the matter be taken off calendar; that the issue of sanctions is deferred; and that a medical-legal report must be provided by Dr. Andrew W. Hesseltine, rather than by the physician's assistant; and the WCJ described in detail the information that must be included in the doctor's report. (June 3, 2025 Minutes and Supplement.)

Applicant, proceeding in pro per, contends in his petition that the WCJ erred when she took the matter off calendar without proceeding to trial or resolving the pending issues, including applicant's request for sanctions. Applicant requests that the matter be reset for trial to address penalties and sanctions against defendant, and for defendant to be ordered to provide a home health aide as requested.

We received an Answer from defendant.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that reconsideration be dismissed and removal be denied.

We have reviewed the record, applicant's Petition, defendant's Answer, and the contents of the WCJ's Report with respect thereto. For the reasons discussed below, we will dismiss applicant's Petition for Reconsideration, grant the petition as a Petition for Removal, rescind the June 3, 2025 Minutes and Supplement, and return this matter to the trial level for further proceedings consistent with this opinion.

BACKGROUND

Applicant[1] sustained an injury to his lumbar spine, cervical spine, neck and headache on June 10, 2005, while working as a customer service manager for Sears. (4/6/2005 Stipulations with Request for Award, at pp. 1 and 4.) The parties entered into Stipulations with Request for Award, on April 6, 2011, granting applicant temporary disability, permanent disability and medical treatment. (*Ibid*.) The WCJ approved the Stipulations on the same day. (*Ibid*.)

There have been numerous additional filings and court appearances in the years since the April 2011 Stipulations were approved. The filings include applicant's requests for the WCJ to order defendant to provide needed medications and medical care, and applicant's motions for penalties and sanctions against defendant for denials of medical care and medications and failure to properly serve applicant with medical documents. On multiple occasions, stipulations were entered into, or orders issued by the WCJ, requiring defendant to provide the necessary medical records or medical care. (See, for example, 9/10/19 MOH; 10/8/19 MOH; 1/9/20 Stipulation; 6/3/20 Stipulation; 11/10/20 Order of Admonishment; 11/10/20 Stipulation; 4/29/21 MOH; 9/28/21 MOH; 10/27/21 MOH; 1/5/22 Notice of Intention [NIT] to Impose Sanctions; 12/5/22 MOH; 1/30/23 MOH; 5/21/24 MOH.) In 2022, the WCJ described the case as follows: "This matter has a very long and contentious history. Mr. Roshandell has long complained that he is not receiving copies of the medical reports generated in this matter, he has not received recommended treatment, and he is unable to find physicians willing to treat him." (1/5/22 NIT.)

There have also been repeated Utilization Review (UR) determinations, Independent Medical Review (IMR) determinations, appeals by applicant of UR and IMR treatment denials, and concerns raised by applicant about service irregularities that led to him missing appeal

[1] We note that applicant's name at the start of this case was Gholamali Roshandell. He later changed his name to Fareed Roshandell. (9/7/2017 Applicant's Notice of Change of Name.)

deadlines, dating back to at least 2017. (See, for example, 11/20/17 UR; 11/29/17 MOH; 1/24/2018 MOH; 6/3/2019 MOH; 7/9/19 IMR Appeal; 8/1/19 Pre Trial Conference Statement [PTCS]; 9/10/19 Supplement to MOH; 10/8/19 Supplement to MOH; 6/3/20 Stipulation and Award; 3/24/21 IMR Appeal; 11/26/21 IMR determination; 10/18/21 UR determination [filed 11/26/21]; 4/6/22 IRM appeal; 5/3/22 F&O granting applicant's IMR appeal; 7/14/22 IMR Decision [filed 4/19/23]; 1/30/23 MOH; 3/16/23 Applicant's Request for Sanctions; 3/27/23 MOH.)

The current dispute involves the UR denial of applicant doctor's request for a home health aide for applicant. (12/13/24 UR Denial, filed 4/24/25.) On January 15, 2025, applicant filed a Declaration of Readiness to Proceed (DOR) requesting a status conference, in which he wrote:

> On 12/06/2024, the defendant has received RFA for IN HOME HEALTH AID, The defendant did not serve the medical documents to applicant, defendant have sent the RFA to UR and UR rejected the doctor request. The defendant refused to serve the UR denial to applicant on purpose so the applicant won't get chance to appeal the UR decision. Applicant had doctor appointment on 01/07/2025 and that's when the applicant found out that was RFA on 12/06/2024 and have been denied by UR. As we know the defendant has long history of not serving medical report to applicant (it happened more than 20 times) and as we know the WCAB have not imposed any sanction or any penalties on defendant no matter how many times applicant requested (it's been requested at least 20 times). The WCAB have not taken any action to fix the problem. The applicant is respectfully requesting full amount of sanction of $25000 to be imposed on defendant for not serving the medical documents to applicant for over 20 times (labor code 5813) and purposely preventing the applicant to receive necessary medical care. Please note that the applicant has not received copies of RFA and UR denial therefore he is not able to submit copies of these documents with this DOR, since the defendant has copies of RFA and UR denial on his possession, applicant is requesting the defendant to file copies of RFA and UR denial to WCAB and applicant for this matter.

(1/15/25 DOR.)

A status conference was held on February 24, 2025. The WCJ found that the UR decision and proof of service challenged by applicant were invalid. (2/24/25 Status Conf.) The WCJ directed applicant to contact I&A for help with preparing the pretrial conference statement and petition for penalties and/or sanctions, fees and costs, if needed. (*Ibid*.)

On April 8, 2025, applicant filed a petition for penalties and sanctions.

The April 24, 2025 pre-trial conference statement indicates that the issues for trial were 1) whether the request for a home health aide per the December 6, 2024 RFA is reasonable and

necessary medical treatment, and 2) applicant's April 8, 2025 petition for penalties and sanctions. (4/24/25 PTCS.) The WCJ noted that defendant did not serve the UR decision in a timely matter.

The matter proceeded to trial on June 3, 2025. On that date, no Minutes of Hearing/Summary of Evidence was prepared. Instead, the matter was ordered off calendar. (June 3, 2025 Minutes and Supplement.) The Minutes indicate, further, that the WCJ found that the report upon which the RFA is based is not a valid medical report; that the signature on the RFA is not legible; that the UR determination was not served appropriately and was not timely; that the WCJ requires a report from Dr. Hesseltine, not from a PA-C; and that sanctions are deferred. (*Ibid*.)

In the Supplement to the June 3, 2025 Minutes, the Court included the following observations and findings:

> The undersigned WCALJ has serious concerns with what has been going on in this case. The Utilization Review denying home health care (Review #699334 dated 12/13/2024) was not appropriately served on Mr. Roshandell at the correct apartment number and thus is NOT a timely UR denial. The issue of defendant sending information to Mr. Roshandell at the incorrect address is something that has been addressed numerous times in the past, but without any success in getting the issue finally corrected….
>
> Another issue noted by this Judge is the fact that the purported medical report upon which the UR denial is based, the Interval Report of "Appointment Provider" Francisco J. Felix, PA-C, dated 10/29/2024 is NOT a valid medical report insofar as it is not signed by a physician (namely, Andrew W. Hesseltine, M.D.). This not being a valid medical report means that it is not substantial medical evidence upon which a determination can be made. Frankly, it is not even a report upon which a UR should be based, insofar as it is not authored by nor co-signed by the supervising physician.
>
> Additionally, this report cannot support a recommendation for treatment in the form of home health care, insofar as the recommendation does not meet the requirements for said treatment per the Medical Treatment Utilization Schedule.
>
> This Judge specifically requests a narrative report from Dr. Andrew Hesseltine and since this is requested by the Court, it may be construed as a medical-legal report and billed as such by Order of the Court. It must meet the requirements of a valid medical-legal report.

(June 3, 2025 Minutes and Supplement, at p. 2.)

The Supplement to the June 3, 2025 minutes included orders that Dr. Hesseltine's report must specifically address a list of topics, including the medical condition or conditions that necessitate home health services; the expected services that will be required; an estimate of the

frequency and duration of such services; the level of expertise, professional qualifications or licensure required to provide the services; whether applicant is "homebound;" an evaluation to determine the necessity for the services needed; and a re-assessment of the medical necessity for continued services approximately every 30 days. (*Id*. at pp. 2-3.) It also included an order that "Dr. Hesseltine must re-issue a valid RFA, signed by a physician and NOT a PA-C, which signature should be either legible or the name typed below it, that reflects the requirements per the MTUS for the treatment requested." (*Id*. at p. 3.)

Lastly, the Supplement included the following additional orders: "Matter is ordered off calendar at this time, pending supplemental report at court's request from Dr. Hesseltine. Sanctions are deferred at this time, but defendant should be prepared to explain to the court why their UR determinations are not being served on Mr. Roshandell correctly, with the full appropriate address on the Proof of Service; If this matter is set in the future over similar issues of UR determinations (or other correspondence) not being served on Mr. Roshandell appropriately, the claims adjuster may be required to appear in person." (*Ibid*.)

Applicant timely filed his petition for reconsideration, challenging the findings and orders entered on June 3, 2025.

DISCUSSION

I.

Former Labor Code section 5909[2] 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.

[2] All section references are to the Labor Code, unless otherwise indicated.

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 2, 2025 and 60 days from the date of transmission is Sunday, August 31, 2025. The next business day that is 60 days from the date of transmission is Tuesday, September 2, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on Tuesday, September 2, 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 WCJ, the Report was served on July 2, 2025, and the case was transmitted to the Appeals Board on July 2, 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 2, 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 (*Rymer*); *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.*

[3] 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.

(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 findings and orders included in the June 3, 2025 Minutes and Supplement were pre-trial, interlocutory orders that did not determine any substantive right or liability and did not determine a threshold issue. Accordingly, the June 3, 2025 decision is not a "final" decision. We will, therefore, dismiss applicant's Petition for Reconsideration and treat applicant's 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 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).)

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 Supreme Court of California 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].)

Section 5313 requires the WCJ to "make and file findings upon all facts involved in the controversy and [make and file] an award, order, or decision stating the determination as to the rights of the parties … [and include] a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (Lab. Code, § 5313.) The WCJ's decision "must be based on admitted evidence in the record" (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Bd. en banc)), and the decision 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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) In *Hamilton*, we held that the record of proceedings must contain, at a minimum, "the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton*, *supra*, at p. 475.)

Here, the June 3, 2025 proceeding was set as a trial, but no Minutes of Hearing/Summary of Evidence was prepared, no documentary evidence was admitted, no testimony was heard, nor were the stipulations and issues framed for trial addressed. Instead, the minutes indicate that the WCJ issued an order taking the matter off calendar. (June 3, 2025 Minutes and Supplement.)

However, the June 3, 2025 decision cannot be affirmed because, in addition to taking the matter off calendar, the WCJ issued detailed findings and orders, as described above. These include findings about specific documents—the RFA, the medical report upon which the RFA was based, and the UR denial—despite the fact that these documents had not been admitted into evidence. (June 3, 2025 Minutes and Supplement; 12/6/24 RFA, filed 5/29/25; 10/29/24 Report of Francisco J. Felix, PA-C, filed 5/29/25; 12/13/24 UR Denial, filed 4/24/25.) Due process requires that findings and orders must be based upon an adequate record, after providing the parties an opportunity to be heard. (Lab. Code § 5313; *Hamilton*, *supra*, at p. 476; *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) Here, however, since no exhibits were entered into evidence, no testimony under oath was admitted into the record,

and there was no summary of the evidence received and relied upon, there is no evidence upon which we could base a decision. Without an evidentiary record, we are unable to determine whether the WCJ's decision is supported by substantial evidence, as required. (*Hamilton*, *supra*, at p. 476; Lab. Code, §§ 5903, 5952(d); *Lamb, supra,* 11 Cal.3d at 280-281.) Therefore, we return this matter to the trial level for the WCJ to conduct an evidentiary hearing and create a record upon which a decision can be made.

Accordingly, we will grant applicant's Petition for Removal, rescind the June 3, 2025 Minutes and Supplement, and return this matter to the trial level. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration or removal.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the June 3, 2025 Minutes of Hearing and Supplement is **DISMISSED**.

IT IS FURTHER ORDERED that the Petition for Removal of the June 3, 2025 Minutes of Hearing and Supplement is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Removal of the Workers' Compensation Appeals Board, that the June 3, 2025 Minutes of Hearing and Supplement is **RESCINDED** and this matter **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 2, 2025

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

FAREED ROSHANDELL
FLOYD SKEREN MANUKIAN LANGEVIN, LLP

MB/*ara*

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