

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

GERARDO MEDEROS, *Applicant*

vs.

**AG FORCE, LLC;
CALIFORNIA FARM MANAGEMENT SELF INSURED GROUP,
administered by INTERCARE, *Defendants***

**Adjudication Number: ADJ8766908
Fresno District Office**

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

Cost petitioner Supreme Copy Service (cost petitioner) seeks removal, or in the alternative, reconsideration of the “Notice of Defective Hearing Representative Notice of Representation for Supreme Copy Services, Inc. and Orders,” issued on April 30, 2025, wherein the workers’ compensation administrative law judge (WCJ) found cost petitioner’s notice of representation did not comply with Cal. Code Regs., tit. 8, § 10401(c)(1)(C) and (D). The WCJ ordered the lien trial off calendar and ordered that cost petitioner’s non-attorney hearing representative file a conforming Notice of Representation. The WCJ further deferred issues of penalties and indicated that defendant may seek costs and fees related to their appearance at trial.

Cost petitioner avers the WCJ did not adequately identify the alleged deficiencies in its notice of representation, and disallowed cost petitioner from appearing at lien trial based on the retroactive application of an unstated standard that deprived cost petitioner of notice and the opportunity to be heard on the issue.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Removal (Report), recommending that cost petitioners’ petition be denied.

We have considered the allegations of the 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 and for the reasons discussed below, we will dismiss the petition to the extent that it seeks reconsideration, grant the Petition for Removal, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision.

Former Labor Code¹ 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 June 30, 2025 and 60 days from the date of transmission is Saturday, August 2, 2025. The next business day that is 60 days from the date of transmission is Monday, August 4, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on August 4, 2025, so that we have timely acted on the petition as required by section 5909(a).

¹ All further references are to the Labor Code unless otherwise noted.

² 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.

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 June 3, 2025, and the case was transmitted to the Appeals Board on June 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 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 June 3, 2025.

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].)

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, interlocutory orders regarding evidence, discovery, trial setting, venue, or similar issues. 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 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*.) 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, the WCJ's decision solely resolves an intermediate procedural or evidentiary issue or issues. The decision does not determine any substantive right or liability and does not determine a threshold issue. Accordingly, it is not a "final" decision and the petition will be dismissed to the extent it seeks reconsideration. We will consider the petition as one seeking removal and apply the removal standard, accordingly.

Applicant, while employed on January 12, 2013 as a farm laborer by AG Force, LLC, insured by the California Farm Management Self Insured Group, administered by Intercare Insurance Services, claimed to have sustained injury to his back and reproductive systems. The parties settled the case in chief by way of Compromise and Release approved on October 1, 2014.

On January 9, 2025, cost petitioner filed a Petition for Determination of Medical-Legal Expense Dispute arising out of services performed in 2013 and 2014.

On March 5, 2025, cost petitioner filed a "Notice of Change of Representation" which authorized Shayne McDaniel to appear on its behalf.

On April 30, 2025, the parties appeared at lien trial. The WCJ issued the following order:

A LIEN TRIAL was scheduled on April 30, 2025 at 8:30 am in Department 7.

At trial, lien claimant Shayne McDaniel appeared on behalf of Supreme Copy Service, Inc and Marie Soto of Exceptionality Inc appeared representing Defendant. At trial, Ms. Soto argued that Supreme Copy Service, Inc and their representatives were not in compliance with 8 CCR §10401. The notice of representation was defective.

After reviewing Supreme Copy's notice of representation (NOR) the Court found that the NOR was defective and not in compliance with 8 CCR §10401(c)(1)(C) and (D).

Ms. McDaniel was advised that due to the defective NOR, she had no standing to appear for trial. The court also advised Ms. McDaniel that Supreme Copy Service's NOR was not in compliance with the above regulations at the Mandatory Settlement Conference.

GOOD CAUSE APPEARING; IT IS ORDERED THAT:

1. The lien trial is off calendar for defective NOR.
2. Ms. McDaniel shall file a new NOR in compliance with 8 CCR §10401(c)(1)(C) and (D).
3. Penalties are deferred.
4. Defendant may file a Petition for attorney's fees and costs for her appearance, as well as a Declaration of Readiness to Proceed.
5. Discovery remains closed.

(Order, dated April 30, 2025.)

Cost petitioner seeks removal in response to the Order, averring that on the day of lien trial the WCJ did not adequately articulate the deficiencies in cost petitioner's notice of representation, and only identified specific deficiencies after concluding that cost petitioner's representative had no "standing" to appear and ordering the matter off calendar. (Petition, at p. 6:1.) Cost petitioner further contends the WCJ has incorrectly applied the applicable standards for a notice of representation for a non-attorney representative pursuant to Workers' Compensation Appeals Board (WCAB) Rule 10401 (Cal. Code Regs., tit. 8, § 10401).

The WCJ's Report responds that irrespective of the merits of the Petition, cost petitioner was provided with the means by which to cure any deficiencies in the notice of representation and has not established it will suffer substantial prejudice or irreparable harm arising out of the WCJ's orders. The WCJ further states that insofar as the non-attorney hearing representative does not appear to be an employee of cost petitioner, the March 5, 2025 notice of representation is deficient. (Report, at p. 6.)

WCAB Rule 10401 provides:

- (a) Except as prohibited by rule 10445, a non-attorney representative may act on behalf of a party in proceedings before the Workers' Compensation Appeals Board if the party has been informed that the non-attorney representative is not licensed to practice law by the State of California.
- (b) A non-attorney representative shall be held to the same professional standards of conduct as an attorney.
- (c) A non-attorney representative shall file and serve a notice of representation before filing a document or appearing on behalf of a party unless the information required to be included in the notice of representation is set forth on an opening document.

(1) If the non-attorney representative is appearing pursuant to an agreement between a law firm or other entity that provides non-attorney representatives and a party, the notice of representation shall include:

- (A) The name of the represented party;
- (B) The legal name, mailing address, email address, telephone number and form of the law firm or other entity;
- (C) The name, mailing address and email address of the law firm or other entity's agent for service of process;
- (D) The name of the person who entered into an agreement on behalf of the law firm or other entity with the party to provide non-attorney representatives; and
- (E) The name of the non-attorney representative responsible for assuring that appearances are made on behalf of the party.

(2) If a non-attorney representative is appearing as an individual pursuant to an agreement between the non-attorney representative and a party, the notice of representation shall include the name of the represented party and the non-attorney representative's name, mailing address, email address and telephone number.

(d) The name of the non-attorney representative and any entity responsible for providing a party with the non-attorney representative shall be set forth on the record of proceedings at all appearances and on any pleading, document or lien prepared or filed by a non-attorney representative.

(e) If an attorney is responsible for supervising a non-attorney representative, the attorney shall be identified in all documents. The supervising attorney's specific written authorization must be included with all Compromise and Release agreements and Stipulations with Request for Award.

(f) A non-attorney representative whose name is not on the notice of representation must file a notice of appearance as provided in rule 10751 before appearing before the Workers' Compensation Appeals Board.

(g) Non-attorney representatives of lien claimants shall also comply with the requirements set forth in rule 10868.

(Cal. Code Regs., tit. 8, § 10401.)

Here, the Notice of Change of Representation filed by cost petitioner on March 5, 2025 identifies Shayne McDaniel, an individual, as the designated representative for cost petitioner. Pursuant to WCAB Rule 10401(c)(2), the notice provides the name of the represented party and the non-attorney representative's name, mailing address, email address and telephone number. (Notice of Change of Representation, dated March 5, 2025, at p. 2:12.) We therefore conclude that the Notice of Change of Representation complies with Rule 10401.

The WCJ's Report states that rule 10401(c)(2) "only applies if the non-attorney hearing representative is employed by [cost petitioner] Supreme." (Report, at p. 6.) However, the legal authority underlying this assertion is not clear, as the WCJ cites to no relevant statute or regulation underlying the stated employment requirement, nor do we discern any such requirement in the text of the rule. However, even were (c)(1) applicable, we would find that the Notice of Change of Representation filed on March 5, 2025 substantially complies with Rule 10401(c)(1) by providing the name of the represented party, the legal name and service address of the representative, an email address and telephone number of the representative, and further listing the parties to the agreement including the lien representative and the individual entering into the agreement on behalf of the represented party. (Notice of Change of Representation, dated March 5, 2025, at p. 2:12.) Under either analysis, cost petitioner has met the notice requirements set forth under WCAB Rule 10401.

We also wish to address the assertion contained in the Order that "due to the defective [notice of representation, cost petitioner's representative] had no standing to appear for trial." (Order, dated April 30, 2025, para. 4.) Section 5700 provides in pertinent part that parties "may be present at any hearing, in person, by attorney, *or by any other agent*, and may present testimony pertinent under the pleadings." (Lab. Code, § 5700, italics added.) Thus, parties are permitted to appear in person, by attorney, or through "any other agent" in hearings before the Appeals Board. The standing of the parties is not otherwise abrogated under our rules or applicable statute except in the case of a loss of right to appear under section 4907, a determination of which can only be made after notice and the opportunity to be heard, and which, in any event, is not at issue in the present matter.

Accordingly, we conclude that the Notice of Change of Representation filed by cost petitioner on March 5, 2025 complied with WCAB Rule 10401. Because the WCJ's April 30, 2025 Order taking the matter off calendar arose out of a determination that the cost petitioner's Notice did not comply with WCAB Rule 10401, we will rescind the April 30, 2025 Order and return this matter to the trial level for further proceedings. Following the return of this matter, we recommend the WCJ set the matter for lien trial.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Notice of Defective Hearing Representative Notice of Representation for Supreme Copy Service, Inc. and Orders, dated April 30, 2025, is **DISMISSED**.

IT IS FURTHER ORDERED that the Petition for Removal filed in response to the April 30, 2025 decision is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the decision of April 30, 2025 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 1, 2025

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

**SUPREME COPY SERVICE, INC.
EXCEPTIONALITY INC.**

SAR/abs

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