

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

JOHN GARCIA, *Applicant*

vs.

**ROMAN CATHOLIC BISHOP OF ORANGE DBA ST. JULIANA;
CHURCH MUTUAL INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ11145757; ADJ11145758
Anaheim District Office**

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

Applicant seeks removal, or in the alternative, reconsideration of the workers' compensation administrative law judge's (WCJ) July 16, 2025 minute order denying applicant's request for automatic reassignment.

Applicant contends that the WCJ erred because he satisfied the requirements for automatic reassignment.

We did not receive an answer from lien claimant, applicant's prior attorney.

The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and as discussed below, we will dismiss the Petition as one for reconsideration and deny the Petition as one for removal.

FACTUAL BACKGROUND

Applicant claimed specific injury to multiple body parts arising out of and during the course of employment by defendant as a custodian on August 3, 2017, and cumulative injury from November 19, 1997 to August 3, 2017.

An expedited hearing was scheduled for October 16, 2024 before WCJ Finete, but it was ordered taken off calendar (OTOC) at the request of the parties. The parties then proceeded to an expedited hearing on January 13, 2025 before WCJ Finete on the issue of primary and secondary treating physician authorization. (Pre-Trial Conference Statement, January 13, 2025, p. 3.) The matter was OTOC upon applicant's request to develop the record and with agreement from defendant. (MOH, January 13, 2025, p. 1.)

Applicant's cases were subsequently settled by way of compromise and release (C&R), approved on June 25, 2025 by WCJ Finete. The joint order approving compromise and release (OAC&R) signed by WCJ Finete provided in relevant part:

* * *

The parties to the above-entitled action having filed a Compromise and Release herein, and requesting that it be approved, and this Judge having considered the entire record, including said Compromise and Release:

IT IS ORDERED that said Compromise and Release be approved and AWARD IS HEREBY MADE in favor of the above-named applicant against the above-named defendants payable as follows:

1. LIEN CLAIMS ARE TO BE ADJUSTED BY DEFENDANTS WITH JURISDICTION RESERVED BY THE BOARD: *In accordance with paragraph #8 and/or any other provisions of the C & R.*

2.

3. GROSS TO APPLICANT BEFORE ANY DEDUCTIONS. \$ 252,412.82

Less attorney's fees of: \$ 37,861.92

■ Attorney fee to be withheld by the defendant pending written agreement of the parties or further Order of the Court.

* * *

(OAC&R, June 25, 2025, p. 1.)

On June 30, 2025, applicant submitted a Declaration of Readiness to Proceed (DOR) requesting a mandatory settlement conference to address the sole issue of attorney fee division between applicant's current attorney and applicant's prior attorney/lien claimant.

At a mandatory settlement conference before WCJ Burden on July 16, 2025, the parties were notified that WCJ Finete would be assigned to a trial set for October 16, 2025. (Minutes, July 16, 2025, p. 1.) At that time, applicant made an oral motion for automatic reassignment, which was denied by WCJ Burden.

Thereafter, applicant sought review of the denial of applicant's oral motion for automatic reassignment.

DISCUSSION

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 July 30, 2025 and 60 days from the date of transmission is Sunday, September 28, 2025. The next business day that is 60 days from the date of transmission is Monday, September 29, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, September 29, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

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.

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 July 30, 2025, and the case was transmitted to the Appeals Board on July 30, 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 July 30, 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].) 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 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 we will dismiss the Petition as one for reconsideration.

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).)

The issue before us is whether the WCJ improperly denied applicant's oral motion for automatic reassignment. As discussed below, we conclude that the MSC WCJ's decision that the matter should be assigned to WCJ Finete was proper.

Labor Code section 5700 requires that where a hearing is adjourned it, "shall be continued to be heard by and *shall* be concluded and the decision made *by the workers' compensation judge who previously heard it.*" (Lab. Code, § 5700, emphasis added.) WCAB Rule 10346(c), which interprets or makes specific Labor Code section 5700 provides, "To the extent practicable and fair, supplemental proceedings *shall* be assigned to the workers' compensation judge who heard the original proceedings." (Cal. Code Regs., tit. 8, § 10346 (c), emphasis added.)

It is a principle of statutory construction that the word "shall," as used in the Labor Code, ordinarily connotes a mandatory duty. (Lab. Code, § 15 ["[s]hall' is mandatory and 'may' is permissive"]; see also, *Jones v. Tracy School Dist.* (1980) 27 Cal.3d 99, 109; *Morris v. County of Marin* (1977) 18 Cal.3d 901, 907.) Applying this principle to Labor Code section 5700, it is clear that there is a mandatory duty for the same WCJ to hear subsequent matters related to issues previously heard by them.

Labor Code sections 5001 and 5002 require that all settlements of workers' compensation cases be approved by a WCJ or the Appeals Board. Thus, a WCJ must individually consider the adequacy of each settlement before approval. If the WCJ determines that the settlement should not be approved for any reason, they may set a hearing, have the parties personally appear, and create

an evidentiary record. (Cal. Code Regs., tit. 8, § 10700.) As well, Labor Code section 4061(h)(2) requires the WCAB to determine if a settlement agreement is in the best interest of the employee.

In this case, WCJ Finete considered the adequacy of the C&R, and approved it by way of the OAC&R. Accordingly, any issues related to the OAC&R should remain with him for adjudication, consistent with Labor Code section 5700. Specifically, as part of his review, he made the initial decision regarding attorney's fees, and the pending issue of division of attorney's fees involves interpretation of the C&R approved by him. Thus, the associated trial is properly assigned to WCJ Finete.

Because our opinion rests on other grounds, we do not reach a determination as to whether the specific requirements of WCAB Rule 10788 were met here.

In this case, 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 if the matter ultimately proceeds to a final decision adverse to petitioner. Notably, applicant has other avenues for relief, including filing a petition for disqualification of WCJ Finete.

Accordingly, we dismiss the Petition as one for reconsideration and deny the Petition as one for removal.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that the Petition for Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 29, 2025

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

**JOHN GARCIA
ENGLISH, LLOYD & ARMENTA
VALENCIA & CASTILLO
GOLDMAN MAGDALIN STRAATSMA**

DC/cs

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