

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

JOSE PEREZ LEDESMA, et al., *Applicants*

vs.

**RUIZ & SON;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ11350389
Santa Barbara District Office**

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

Cost petitioner seeks removal of the “Findings and Orders” (F&O) issued on July 1, 2025, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that cost petitioner, Marjorie Martinez Interpreting, was not entitled to obtain relevant documents from defendant via a notice to produce as such a notice is invalid and that cost petitioner must issue a subpoena for any requested documents.

Cost petitioner contends that it is proper to obtain relevant documents from a party to the litigation via a notice to produce pursuant to WCAB Rule 10642. (Cal. Code Regs., tit. 8, § 10642.)

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations of the Petition for Removal and the contents of the WCJ’s Report. Based on our review of the record we will treat the petition as seeking reconsideration of the F&O, as the F&O contains both final and non-final orders. We will grant cost petitioner’s petition for reconsideration and as our Decision After Reconsideration, we will rescind the July 1, 2025 F&O and substitute a new Findings and Order, which orders defendant to produce the relevant documents.

FACTS

Per the WCJ's Report:

Applicant, JOSE PEREZ LEDESMA, Aged 41 on the date of injury, while employed as a Landscaper at Santa Barbara, California by RUIZ & SON, sustained injury arising out of and in the course of said employment on 04 April 2018. Cause petitioner in this case seeks to recover interpreter cost for their services. As part of the discovery process in this case the attorney for cost petitioner served a request for production of documents seeking to obtain all the amounts of the various interpreter settlements entered into by SCIF. They also seek to obtain the explanations of review (EOR's) in all cases. Specifically, they sought the following:

1. Benefit Printout of all payments made to all Interpreters on this case.
2. All SCIF Explanation of Bill Reviews (EOR) for invoices regarding Interpreter services for all dates of service on this Case.
3. All written procedures for SCIF reduction/review/rejection of Interpreter Invoices regarding 5811 Costs services under Board Rule 9795.3.
4. Any Internal Market Rate Payment Criteria that SCIF uses for payment of Interpreter Invoices.
5. The name of the Person Most Knowledgeable to discuss EOR deficiencies and policies at Deposition regarding 5811 Interpreter Invoices and payments.
6. Should SCIF fully or partially object to production of any listed information, Defendant is requested to Meet and Confer with Petitioner Counsel on these issues." (See Exhibit 1.)

It would appear that cost claimant seeks to compare these amounts with the amounts being offered to them in this case.

(WCJ's Report, p. 2.)

Defendant objected to the notices to produce on various grounds (Defendant's Exhibits B and C), however, at trial the issues were listed as whether defendant had a substantial good faith basis to withhold the documents requested. (Minutes of Hearing and Summary of Evidence, June 11, 2025, p. 2, lines 10-13.) In the Opinion on Decision, the WCJ generally agreed with cost petitioner and overruled defendant's objections to the production of documents, however the WCJ

found that a notice to produce was not a valid mechanism of discovery in workers' compensation proceedings and that cost petitioner should have proceeded by issuing a subpoena. (Opinion on Decision, July 1, 2025, pp. 5-6.)

DISCUSSION

I.

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.

(§ 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 July 30, 2025, and 60 days from the date of transmission is Sunday, September 28, 2025, which by operation of law means this decision is due by Monday, September 29, 2025. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on September 29, 2025, so that we have timely acted on the Petition as required by section 5909(a).

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

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 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 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 30, 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 hybrid decision that included final findings on issues of employment and industrial injury. While these findings were not challenged, the inclusion of final findings renders the decision a final order for purposes of reconsideration, and thus we treat the petition as one seeking reconsideration.

Although we treat the petition as one seeking reconsideration, the petition only challenges the non-final portion of the decision. In this case, we apply the standard for 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, the decision of the WCJ completely precludes a permissible and valid avenue of discovery to the parties, which is expressly authorized by regulation. Accordingly, we find that the decision rises to the level of substantial prejudice, which warrants a grant of removal.

III.

The question presented is whether parties in workers' compensation proceedings may obtain documents via a notice to produce. The WCJ found that a subpoena was required and based his finding, in part, upon section 5708, which states:

All hearings and investigations before the appeals board or a workers' compensation judge are governed by this division and by the rules of practice and procedures adopted by the appeals board. In the conduct thereof they shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division. All oral testimony, objections, and rulings shall be taken down in shorthand by a competent phonographic reporter.

(§ 5708 (emphasis added).)

WCAB Rule 10642 expressly states: “A notice to appear or produce in accordance with Code of Civil Procedure section 1987 is permissible in proceedings before the Workers' Compensation Appeals Board.” (Cal. Code Regs., tit. 8, § 10642.) Both the Opinion and the Report fail to address that notices to produce are expressly authorized by regulation.

Pursuant to Code of Civil Procedure 1987:

(b) In the case of the production of a party to the record of any civil action or proceeding or of a person for whose immediate benefit an action or proceeding is prosecuted or defended or of anyone who is an officer, director, or managing agent of any such party or person, the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend before a court, or at a trial of an issue therein, with the time and place thereof, is served upon the attorney of that party or person. The notice shall be served at least 10 days before the time required for attendance unless the court prescribes a shorter time. If entitled thereto, the witness, upon demand, shall be paid witness fees and mileage before being required to testify. **The giving of the notice shall have the same effect as service of a subpoena** on the witness, and the parties shall have those rights and the court may make those orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the court.

(Code. Civ. Proc, § 1987(b), (emphasis added).)

The WCJ notes that there is no provision in the Labor Code authorizing a notice to produce; however, there is no provision precluding the use of a notice to produce. Furthermore, the Labor Code expressly permits the Appeals Board to adopt discovery procedures by regulation, and the regulation expressly permits a notice to produce.

We would further note, as stated in a recent en banc opinion:

The workers' compensation system “was intended to afford a simple and nontechnical path to relief.” (*Elkins v. Derby* (1974) 12 Cal.3d 410, 419 [39 Cal.Comp.Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) . . . “[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits.” (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal. App.4th 485, 490 [67 Cal.Comp.Cases 1273].)

(*Perez v. Chicago Dogs* (2025) 2025 Cal.Wrk.Comp. LEXIS 29 at *15, (Appeals Board en banc).)

Given the policy of workers' compensation to allow a simple and nontechnical path to relief and the expressed authorization found in the Rules of Practice and Procedure, we find that parties of record in a case are permitted to request documents via a notice to produce. Just like a subpoena, a WCJ has the ability to narrow the scope of a request for production or to otherwise rule on any objections regarding such a notice; however, for the reasons discussed by the WCJ in both the Opinion and the Report, we agree that defendant's objections in this case are without merit.

Accordingly, we grant cost petitioner's petition for reconsideration and as our Decision After Reconsideration, we rescind the July 1, 2025 F&O and substitute a new Findings and Order, which orders defendant to produce the relevant documents.

For the foregoing reasons,

IT IS ORDERED that cost petitioner's petition for reconsideration of the Findings and Orders issued on July 1, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Orders issued on July 1, 2025, by the WCJ is **RESCINDED** with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant, JOSE PEREZ LEDESMA, Aged 41 on the date of injury, while employed as a landscaper on April 4, 2018, at Santa Barbara, California by RUIZ & SON, sustained injury arising out of and in the course of employment to his left leg.
2. Cost petitioner issued a proper notice to produce in this case.
3. Defendant did not provide a substantial good faith basis to withhold a printout of interpreter payments made in this case.
4. Defendant did not provide a substantial good faith basis to withhold interpreter explanations of review made in this case.

ORDER

IT IS ORDERED that defendant reasonably comply and provide the documents requested by cost petitioner in the July 20, 2024 Notice to Produce.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 23, 2025

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

**MARJORIE MARTINEZ INTERPRETING
GEORGE E. CORSON, IV, ESQ.
STATE COMPENSATION INSURANCE FUND, LEGAL**

EDL/mc

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