WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIA CORDOVA, ***Applicant***

vs.

GRUMA CORPORATION, dba MISSION FOODS;
ARCH INDEMNITY INSURANCE,
administered by GALLAGHER BASSETT, ***Defendants***

Adjudication Number: ADJ15407478
San Francisco District Office

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

Defendant's Petition for Reconsideration and/or Removal (Petition) challenges the Order Quashing Notice to Produce (Order) issued by the workers' compensation administrative law judge (WCJ) on February 19, 2025, wherein the WCJ quashed applicant's petition to compel the out-of-state adjuster to appear.

Defendant contends that based on a discussion by the WCJ in the Order, the WCJ lacked authority to order an in-state adjuster who was unfamiliar with the case to testify; that there was no good cause for the in-state adjuster to be required to make an in-person appearance; and that any appearance should be virtual.

We have received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration recommending that the petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, and for the reasons stated below, we will dismiss the Petition for Reconsideration, treat it as one for removal, and dismiss the Petition for Removal.

I.

Former Labor Code section 5909[1] 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.
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> (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 March 24, 2025, and 60 days from the date of transmission is May 23, 2025. This decision is issued by or on May 23, 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 workers' compensation administrative law judge, the Report was served on March 24, 2025, and the case was transmitted to the Appeals Board on March 24, 2025. Service of the Report and transmission

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

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 March 24, 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. (*Maranian*, *supra*, 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.

In our en banc opinion in *Ledezma v. Kareem Cart Commissary and Mfg* (2024) 89 Cal.Comp.Cases 462, we observed that:

> The above language [explaining the difference between final orders and non-final orders] has been used in dozens, if not hundreds of panel decisions issued by the Appeals Board. . . . (See e.g., *Navroth v. Mervyn's Stores* 2023 Cal. Wrk. Comp. P.D. LEXIS 318; *Mendoza v. Rapid Manufacturing* 2023 Cal. Wrk. Comp. P.D. LEXIS 240*, Ramirez v. Vons, PSI*, 2022 Cal. Wrk. Comp. P.D. LEXIS 316.) The Appeals Board has consistently issued opinions stating that orders affecting trial setting are not final orders subject to reconsideration.
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> [W]here there is **genuine** confusion as to whether a decision is final, a party may file a petition seeking both reconsideration and/or removal. **A party may only file an alternative petition for reconsideration where good cause exists to believe that a final decision, order, or award issued.** When a petition is titled as a petition for reconsideration, even in the alternative, the Appeals Board must process it as a petition for reconsideration, which halts proceedings at the trial level. (Cal. Code Regs., tit. 8, § 10961 [limiting the WCJ's power to act upon filing a petition for reconsideration].) Filing an alternative petition for reconsideration when it is not warranted is sanctionable.

(*Id.* at p. 476 (Emphasis in original).)

Here, the February 19, 2025 Order was not a final order. Rather, this was a pre-trial, interlocutory order regarding an evidentiary issue, that did not determine any substantive right or liability and did not determine a threshold issue. We will, therefore, dismiss defendant's Petition for Reconsideration and treat it as a Petition 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, 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, 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.

III.

Defendant's Petition challenging the February 19, 2025 Order must also be dismissed as moot, for the three reasons discussed below.

First, there was no longer a valid Notice to Produce after November 18, 2024. Applicant's "Notice to Produce Witness Adjuster" was filed September 9, 2025, demanding that the witness be produced for the November 18, 2024 trial date. (9/9/25 Notice to Produce.) WCAB Rule 10642 and California Code of Civil Procedure section 1987 require that a Notice to Appear be issued for a specific time and place. (Cal. Code Regs., tit. 8, § 10642; Code Civ. Proc., § 1987(b) [No subpoena is 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"].) Here, the Notice to Produce demanded that the adjuster appear on November 18, 2024 specifically, not on any future date. While the Notice to Produce expired on November 18, 2024, based on the WCJ's order on that day to brief this issue, we consider that it was purportedly still valid when the WCJ ruled on the defendant's Objection on February 19, 2025. In other words, had the WCJ ruled that it was valid, applicant would not have been required to re-issue it.

Second, there was no longer a valid Notice to Produce after it was quashed by the Court on February 19, 2025. Defendant filed an Objection to Notice to Appear asserting that the adjuster was outside of California. (9/10/24 Objection.) On November 18, 2024, the WCJ ordered both parties to file trial briefs addressing "whether the adjuster is subject to a notice to produce and [whether] this court has jurisdiction on the issue." (11/18/24 MOH.) The WCJ then issued an Order Quashing Notice to Produce," which ordered:

> **GOOD CAUSE APPEARING,**
>
> **IT IS ORDERED THAT** the notice to produce the handling claims adjuster at the February 25, 2025 trial is **QUASHED**.

(2/19/25 Order Quashing Notice.)

Pursuant to this Order, the Notice to Produce was no longer in effect after February 19, 2025.

Third, although the February 19, 2025 Order contained a discussion in which the WCJ suggested that defendant "will have the opportunity to identify another adjuster or claims supervisor…[to] provide testimony at an in person trial solely on the penalty issue," that discussion was not included in the order itself, and did not constitute a valid court order.

Even if these suggestions to defendant had been a valid court order, any such order would have become moot after the February 25, 2025 trial, since there was no discussion on the record on February 25, 2025 about whether an adjuster would be required to appear, and no party preserved this issue. (3/10/25 Minutes of Hearing and Summary of Evidence, at p. 2.) The parties thus waived any objection to the Order by failing to timely litigate the issue while taking part in the trial on the merits.

We note that going forward, if applicant seeks to have an adjuster appear, applicant must issue a new notice to appear, and defendant will have an opportunity to challenge it at that time.

Accordingly, defendant's Petition challenging the February 19, 2025 Order is now moot. Since the Petition became moot, defendant should have withdrawn it. As defendant did not do so, we will dismiss the Petition as moot.

IV.

Finally, we find it necessary to admonish defendants and their attorneys.

We admonish defendant Gruma Corporation, doing business as Mission Foods, its insurance carrier Arch Indemnity Insurance, and its attorney Lalo Garcia, with Manning & Kass, Ellrod, Ramirez, Trester LLP, for failing to follow the applicable statutes and WCAB Rules for workers' compensation proceedings and causing delays, including seeking reconsideration in response to a non-final order; presenting arguments that are without merit and result in delay; and filing a reconsideration petition in response to a moot order. (Cal. Code Regs., tit. 8, §§ 10421(b)(2) and (b)(4).) Defendant's attorney is aware of the scarce resources of the Appeals Board, and defendant's attorney is reminded that petitioning parties are expected to promptly withdraw a petition that has been rendered moot so as to conserve those resources. Future compliance with the WCAB Rules is expected, and failure to do so will subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

Accordingly, we dismiss defendant's Petition for Reconsideration and we dismiss defendant's Petition for Removal.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 22, 2025

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

MARIA CORDOVA
LAW OFFICES OF NADEEM MAKADA
MANNING & KASS, ELLROD, RAMIREZ, TRESTER LLP

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