

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

SURINDER SINGH, *Applicant*

vs.

**S LINE TRANSPORTATION, AJAIB SINGH KAHLON;
UNINSURED EMPLOYERS BENEFIT FUND, *Defendants***

**Adjudication Number: ADJ16790828
Oakland District Office**

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

Defendant seeks reconsideration and/or removal of our “Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration” (Opinion) issued on November 10, 2025 wherein we rescinded the Findings & Order (F&O) of the workers’ compensation administrative law judge (WCJ) that found that applicant was not an employee of defendant. We returned the matter to the trial level for further proceedings, including as appropriate, development of the record.

Defendant contends that we may not set aside the credibility determination made by the WCJ at the trial level. Defendant also contends that allowing further development of the record will lead to irreparable harm because applicant did not request development of the record.

We have considered the allegations of the Petition for Reconsideration and/or Removal (Petition). Based on our review of the record, and for the reasons stated in the WCJ’s report, which we adopt and incorporate, we will dismiss the petition to the extent it seeks reconsideration and deny it to the extent it seeks removal.¹

¹ WCAB Rule 10940 (a) (Cal. Code Regs., tit. 8, § 10940(a)) currently states that: “Petitions for reconsideration of decisions after reconsideration of the Appeals Board shall be filed with the office of the Appeals Board.” Here, defendant filed the Petition in EAMS as required but failed to file with the Appeals Board. Defendant is reminded that

I.

Former Labor Code section 5909² 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 December 4, 2025 and 60 days from the date of transmission is February 2, 2026. This decision is issued by or on February 2, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Here, the Petition seeks reconsideration of our prior decision and therefore no report and recommendation was required to be filed by a WCJ. A notice of transmission was served by the district office on December 4, 2025, which is the same day as the transmission of the case to the Appeals Board on December 4, 2025. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1), and consequently they had actual notice as to the commencement of the 60-day period on December 4, 2025.

the purpose of the rule is to ensure that the Appeals Board promptly receives notice of the Petition. However, the Presiding WCJ promptly transmitted the Petition to us on December 4, 2025.

² All further statutory references will be to the Labor Code unless otherwise indicated.

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 Appeals Board’s Opinion and Order does not determine any substantive right or liability and does not determine a threshold issue. On the contrary, the Appeals Board’s Opinion and Order **rescinded** the Findings and Order issued by the WCJ. Accordingly, it is not a “final” decision and defendant’s Petition for Reconsideration will be dismissed.

We will also deny the petition to the extent it seeks 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, for the reasons stated in the WCJ’s report, we are not persuaded that substantial 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.

As outlined in our Opinion, items presented at trial and cited in the WCJ's report were not admitted into evidence. Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) Defendant contends that the photographs were presented as impeachment evidence only. However, WCAB Rule 10787(c)(3) requires a descriptive listing of all exhibits received for identification or in evidence with the identity of the party offering the same. Thus, at a minimum, the record is incomplete from a procedural standpoint. No prejudice will result from returning the matter to the district office to complete the record.

Defendant also contends that we may not disregard a WCJ's finding of credibility. While credibility assessments are a piece of judicial decision making, a decision must still be supported by substantial evidence. Here, the WCJ's recitation of the record contained errors that were not supported by the documentary evidence.

For example, the WCJ noted that Sukhbinder Singh Sibhu (Bobby) testified credibly that he has never given money to the applicant, but he has to Ajaib [Khlon]." (Opinion on Decision, p. 8.) Defendant in the Petition states that "Sukhbinder Singh testified that he sent the money Ajaib requested to borrow to applicant's account on Ajaib's behalf." (Petition, 4:10-12 citing MOH, 09/11/2024, 2:20-22) Yet, at various points in the Petition, defendant refers to credits from S-Line, not Ajaib Khlon, to *applicant's* bank account not Ajaib Khlon. Further, Exhibit 2, applicant's bank statements, show two payments directly from S-Line consistent with the period of time applicant alleges employment.³

While there are many denials by defendant regarding whether applicant stayed on site after the injury, there is no information as to why he was there on the date of injury AND performing a

³ Defendant further notes that Exhibit 2 only says that payment was for "security" only. In fact, the statement says, "S Line yard security guard month of 10/15/20." Defendant contends that this was denoted in this manner for the accountant to "log it as a business deduction." (Petition, 9:1-2.) It is concerning that defendant's alternative explanation for a direct payment from S Line to applicant is taking a deduction for a service or business expense they attest was not actually provided.

task that would have been consistent with his alleged position as a yard security guard. Notably, this information is contained in Exhibit C, an exhibit submitted by defendant. These are significant discrepancies in the documentary evidence, clarification of which would benefit defendant as the current record tends to support a conclusion that applicant was defendant's employee. On the current record, the employer's testimony also contains discrepancies that undermine the credibility determinations. The record is not substantial, and the evidence does not support the WCJ's findings or opinion.

Lastly, the WCJ only rendered a finding as the employment relationship between S Line and applicant. However, without a determination as to the possible employment relationship between Ajaib Khlon and applicant, and then a determination as to Ajaib Khlon and S Line, a finding as to whether S Line is applicant's employer is premature.

All 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 California Supreme Court 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.) Proceeding with a hearing on the matter without the proper joinder of an additional potential defendant violates the due process rights of the parties.

Accordingly, we dismiss defendant's Petition for Reconsideration of our decision and deny 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 **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 2, 2026

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

**SURINDER SINGH
DANDRE LAW
FLETCHER BROWN**

TF/md

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