

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

VERONICA RINCON, *Applicant*

vs.

**THE PERMANENTE MEDICAL GROUP, INC.; permissibly self-insured,
administered by ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Numbers: ADJ10616694; ADJ12184014; ADJ11612609
San Jose District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant, in pro per, seeks reconsideration¹ of the Order Taking the Mandatory Settlement Conference off calendar, issued by the workers' compensation administrative law judge (WCJ) on January 14, 2026.

Applicant contends: "I was not permitted to speak at a hearing noticed as an MSC. The WCJ relied solely on defense counsel's statements. I was falsely accused of violating a communication restriction that does not exist in any written WCAB order. The finding that 'no issues were pending' is incorrect."

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied. We have considered the allegations in the Petition and the contents of the Report. Based on our review of the record, and as discussed below, we will dismiss the Petition.

BACKGROUND

As stated by the WCJ in her Report,

¹ We admonish applicant for attaching documents that were either already part of the record in violation of WCAB Rule 10945(c)(1) (Cal. Code Regs., tit. 8, §10945(c)(1)) or that were never admitted into evidence in violation of WCAB Rule 10945(c)(2). (Cal. Code Regs., tit. 8, §10945(c)(2).)

Most recent hearing resulted from the defense counsel filing Declaration of Readiness to Proceed on 12/3/2025 to which applicant objected on 12/15/2025.² Matter was set for Mandatory Settlement Conference on 1/14/2026. Both parties appeared via CourtCall. At the inception of the matter being called, defense counsel Mr. James Witkop stated that his office filed the DOR as status of whether applicant attended re-evaluation with Dr. Fujimoto occurred or not per Judge Padilla's order. His office has now been advised that applicant did attend the evaluation, and report is now pending and parties are now waiting for Dr. Fujimoto's report. As no other issues are pending until parties receive Dr. Fujimoto's report, Mr. Witkop requested that matter be taken off calendar.

(Report, pp. 1-2.)

The WCJ issued an Order taking the matter off calendar and it is from this Order that applicant filed a Petition for Reconsideration.

DISCUSSION

I.

Former Labor Code³ 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 under the Events tab in the Electronic Adjudication Management System (EAMS). Specifically, in Case

² While ADJ10616694 was listed on defendant's DOR as well as applicant's Petition for Reconsideration, ADJ10616694 was previously resolved by way of Compromise and Release Agreement, therefore will not be reviewed nor discussed.

³ All further statutory references are to the Labor Code, unless otherwise noted.

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 February 5, 2026, and 60 days from the date of transmission is April 6, 2026. This decision was issued by or on April 6, 2026, 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 February 5, 2026, and the case was transmitted to the Appeals Board on February 5, 2026. 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 February 5, 2026.

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, on January 14, 2026, the WCJ issued an Order taking matter off calendar (OTOC) which is not a final order. According to the January 14, 2026, minutes of hearing from the mandatory settlement conference (MSC) applicant, Veronica Rincon and attorney for defendant, Jim Witkop appeared via CourtCall. (Minutes of Hearing, 1/14/2026.) As stated above, on December 3, 2025, Mr. Witkop filed a Declaration of Readiness to Proceed on various issues and applicant objected on December 15, 2025. At the MSC, Mr. Witkop stated that his office filed the DOR to determine the status of applicant’s re-evaluation with Dr. Fujimoto per WCJ Padilla’s Order and informed the Court that his office had been advised that applicant did attend the re-evaluation and the report is pending and parties are waiting for Dr. Fujimoto’s report. Mr. Witkop requested that the matter be taken off calendar. As stated by the WCJ in her Report,

“Applicant was asked to confirm if she was in agreement to take the matter off calendar as applicant did object to defendant’s DOR. Applicant asked if she could speak, which was granted. However, applicant started with statement that she did not violate the Protective Order and that she was being accused of things that were not true. What applicant wished to discuss were not at issue as it was confirmed that applicant attended re-evaluation with Dr. Fujimoto. Anything else would be beyond the scope of the hearing and premature, pending Dr. Fujimoto’s report. Applicant then asked to write to the undersigned, which was granted and applicant was reminded to send a copy to defendant with any written communication being filed with our office. Applicant confirmed her understanding and agreed to matter being taken off calendar. Order taking matter off calendar was issued where Mr. Witkop was designated to serve.”

(Report, 2/5/2026, p. 2.)

As discussed above, applicant agreed at the hearing to the matter being taken off calendar. Accordingly, the petition will be dismissed.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 6, 2026

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

**VERONICA RINCON
WITKOP LAW
THE PERMANENTE MEDICAL GROUP
ATHENS ADMINISTRATORS**

DLM/oo

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