

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

GAIL WIGGAN, *Applicant*

vs.

LOS ANGELES COUNTY OFFICE OF EDUCATION, *Defendant*

**Adjudication Number: ADJ10254909
Van Nuys District Office**

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

Applicant, in pro per, filed a Petition for Reconsideration on May 12, 2021 and a supplemental pleading on June 17, 2021. Pursuant to our authority, we accept applicant's supplemental pleading.¹ (Cal. Code Regs., tit. 8, former § 10848, now § 10964 (eff. Jan. 1, 2020).) However, we caution applicant that “[a] party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading.” (Cal. Code Regs., tit. 8, former § 10848, now § 10964 (eff. Jan. 1, 2020).) We expect applicant to comply with this requirement in the future.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record and for the reasons stated below, we will dismiss the petition to the extent it seeks reconsideration from a non-final order, treat the petition as a Petition for Removal, and dismiss the Petition for Removal as untimely.

¹ Former Commissioner Brass and former Deputy Commissioner Newman, who were on the panel that issued a prior decision in this matter, are not available to participate further in this case. Other panel members have been assigned in their place.

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 April 8, 2021 Order denying applicant’s petition for change of venue solely resolves a non-final, intermediate procedural issue. 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 the petition will be dismissed to the extent it seeks reconsideration.

Nevertheless, we will treat the petition as one seeking removal and dismiss removal as untimely. There are 25 days allowed within which to file a petition for removal from a “non-final” decision that has been served by mail upon an address in California. (Cal. Code Regs., tit. 8, former § 10843(a), now § 10955(a); former § 10507(a)(1), now § 10605(a)(1) (eff. Jan. 1, 2020).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, former § 10508, now § 10600 (eff. Jan. 1, 2020).) To be timely, however, a petition for removal must be *filed* with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, former § 10845(a), now § 10940(a); former § 10392(a), now § 10615(b) (eff. Jan. 1, 2020).)

In this case, the WCJ issued the Order Denying Petition to Change Venue on April 8, 2021. Based on the authority cited above, applicant had until Monday, May 3, 2021 to seek removal in a timely manner. Therefore, the petition filed on May 12, 2021 is untimely and will be dismissed.

If the petition had been timely, we would have denied it on the merits for the reasons stated in the WCJ's report, which we would have adopted and incorporated.

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/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 1, 2021

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

**GAIL WIGGAN
PEETZ LAW, P.C.**

PAG/ara

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