

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

GONZALO CEDILLO LOPEZ, *Applicant*

vs.

**BRIGHTVIEW AND CHUBB, administered by ESIS;
CLEARY BROTHERS LANDSCAPE, CYPRESS INS. CO.,
C/O BHHC, *Defendants***

**Adjudication Numbers: ADJ11002814, ADJ11003667
Oakland District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

We have considered the allegations of the Petition for Reconsideration or in the Alternative Petition for Removal. Based on our review of the record, and based upon the WCJ's analysis of the merits of the petitioner's arguments in the WCJ's report, and for the reasons stated below, we will vacate our grant of reconsideration, dismiss the petition to the extent it seeks reconsideration, grant removal, rescind the July 13, 2021 Order Changing Administrators, and return these matters to the trial level for further proceedings as the WCJ determines appropriate.

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 July 13, 2021 Order Changing Administrators is an intermediate procedural order. 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.

However, based upon the WCJ’s analysis of the merits of the petitioner’s arguments, we are persuaded that significant prejudice or irreparable harm will result if removal is denied. Therefore, we grant removal, rescind the July 13, 2021 Order Changing Administrators, and return these matters to the trial level for further proceedings as the WCJ determines appropriate.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board, that the October 5, 2021 Opinion and Order Granting Petition for Reconsideration is **VACATED** and that defendant’s Petition for Reconsideration of the July 13, 2021 Order Changing Administrators is **DISMISSED**.

IT IS FURTHER ORDERED that defendant’s Petition for Removal of the July 13, 2021 Order Changing Administrators is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board, that the July 13, 2021 Order Changing Administrators is **RESCINDED** and that these matters are **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 9, 2022

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

**GONZALO CEDILLO LOPEZ
LAW OFFICES OF RYAN D. SUTHERLAND
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN
FINNEGAN, MARKS, THEOFEL & DESMOND**

PAG/abs

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