

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

FNU HAMEEDULLAH, *Applicant*

vs.

**KING INTERNATIONAL MARKET, ILLEGALLY UNINSURED; UNINSURED
EMPLOYERS BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ17675359
Sacramento District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant in pro per seeks reconsideration of the Order Dismissing Application For Adjudication of Claim (Order) with prejudice issued by a workers' compensation administrative law judge (WCJ) on October 16, 2023.

Applicant contends the following:

"I Fnu Hameedulla the victim of work injury, ~~and~~ wages [*sic*] theft and assault by employer. The reason why I Appeal this matter is the Following: 1-I got injured while I was at the job and I have not received my work componsition [*sic*] 2-The employer, King international circled my house and ~~threaten treat~~ threaten and started bullying me. 3-The employer owed me money, like my wages and I got injured at [*sic*] job. 4-I need some financial assistance and medical recovery for my injury and loss of wages."

We received a Report and Recommendation (Report) from the WCJ, wherein he recommends:

"Based on the foregoing, it is respectfully recommended that the Petition for Reconsideration be dismissed as skeletal and without any support. However, the matter should be remanded so that the Petition for Reconsideration can be treated as an objection to the Notice of Intention to Dismiss. In the alternative, the Petition for Reconsideration should be dismissed and the matter remanded so the Petition for Reconsideration can be treated as a Petition to Set Aside the Dismissal. Thereafter, a hearing on the issue can be held and any aggrieved by that new decision can file an appropriate petition for reconsideration."

We did not receive an Answer from defendant.

We have considered the allegations of the Petition and the contents of the Report with respect thereto. For the reasons discussed below, we will dismiss applicant's petition as one for reconsideration, and return the matter to the trial level so that the WCJ can consider the Petition as one to set aside the Order Dismissing applicant's case in the first instance.

BACKGROUND

Applicant claimed a specific injury to various body parts while employed as a Stocker, Butcher for defendant on February 21, 2022.

On August 31, 2023, applicant filed a document cover sheet with the following: A Declaration of Readiness to Proceed (DOR) on the issue of AOE/COE; A Petition To Join Party Defendant where Petitioner requested that Uninsured Employers Benefit Trust Fund (UEBTF), 1515 Clay Street, 17th Floor, Oakland, CA 94612 be joined as party defendant; and Special Notice of Lawsuit to Defendant, Illegally Uninsured Employer.

On September 5, 2023, the WCJ issued a Notice of Intention to Order Joinder of a Necessary Party (Uninsured Employer's Benefit Trust Fund-UEBTF) which states:

Applicant's undated Petition for Joinder has been reviewed.

NOTICE IS HEREBY GIVEN, absent a good cause objection, filed and served within forty-five (45) days of service, the following order(s) will issue:

The State of California Uninsured Employer's Benefit Trust Fund (UEBTF) is hereby Joined as a party defendant in this matter.

After the time period set forth herein, taking into account the statutory requirements regarding service has elapsed then the moving party shall submit a new proposed order, Limited to the language referenced above, granting the petition. However, if any objection is filed, then the moving party shall file a declaration of readiness to proceed to a status conference on the issue.

Service of this document was not delegated to any party, and the WCJ served the Order on September 5, 2023 on the parties on the official address record, which was applicant and the alleged employer.

On September 21, 2023, a settlement conference was held. Defendant appeared through an interpreter, applicant did not appear, and the WCJ on his own motion issued an OTOC. The minutes of hearing list defendant, Koosham Alam (EE) next to the Others appearing line, and on the interpreter line, Modafia Mustafa (EE) is listed. Under other/comments it states: "NOI to

dismiss app to issue as EE (not app) indicate [sic] case settle [sic].” (Minutes of Hearing, 9/21/2023, p.1.)

On September 25, 2023, the WCJ issued a Notice of Intention to Dismiss the Application For Adjudication Of Claim (NOI) which states:

Neither Applicant nor a representative for applicant appeared for a duly noticed status conference on September 21, 2021 at 1:30 p.m.

GOOD CAUSE APPEARING:

NOTICE IS HEREBY GIVEN that is the intention of this Court, after the expiration of ten (10) days, absent the filing of a written objecting [sic] showing good cause, to issue the following order:

The Application for Adjudication of Claim in ADJ17675359 is hereby dismissed with prejudice.

After the time period set forth herein, taking into account the statutory requirements regarding service has elapsed, then the above referenced order will issue. (Notice of Intention To Dismiss The Application For Adjudication Of Claim, 9/25/2023, p. 1.)

On October 16, 2023, the WCJ issued an Order Dismissing Application For Adjudication of Claim (Order) which states:

A Notice of Intention to dismiss Application for Adjudication of Claim with prejudice (failure to appear) was issued and served on September 25, 2023. There has been no objection to the Notice of Intention to Dismiss the Application.

GOOD CAUSE APPEARING:

Pursuant to Title 8, California Code of Regulations, §10756 and Title 8, California Code of Regulations, §10832, the Application for Adjudication of Claim in ADJ17675359 is hereby dismissed with prejudice. (Order Dismissing Application for Adjudication of Claim, 9/25/2023, p. 1.)

On October 27, 2023, applicant filed and served a Petition For Reconsideration (Petition) asserting the order, decision, or award was procured by fraud and the evidence does not justify the findings of fact. (Petition for Reconsideration, 10/27/2023, p. 1.)

DISCUSSION

“The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of [Division 4] . . . At any time, upon notice and after the opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.” (Lab. Code, § 5803.¹)

Labor Code section 5900(a) states “[a]ny person aggrieved directly or indirectly by any final order, decision, or award... may petition the appeals board for reconsideration...,” and a petition for reconsideration may properly be taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.²) 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.

Pursuant to WCAB Rule 10832:

The Workers’ Compensation Appeals board may issue a notice of intention for any proper purpose, including but not limited to: . . . (a)(5) Dismissing an application. . . (c) If an objection is filed within the time provided, the Workers’ Compensation Appeals Board, in its discretion may: (1) Sustain the objection; (2) Issue an order consistent with the notice of intention together with an opinion on decision ; or (3) Set the matter for hearing. (Cal. Code Regs., tit. 8, § 10832(a) and (c).)

¹ All further references are to the Labor Code, unless otherwise noted.

On October 16, 2023, the WCJ issued an Order with prejudice because applicant did not appear at the status conference nor object to the Notice of Intent issued on September 25, 2023, after applicant failed to appear at the status conference on September 21, 2023. The Order is a final order since it dismissed applicant's case with prejudice.

We observe that there are 20 days allowed within which to file a petition for reconsideration from a "final" decision plus 5 calendar days if a party has been served by mail upon an address in California. (Lab. Code Regs., tit. 8 §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) 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 § 10600.)

Here, applicant filed a timely Petition for Reconsideration on October 27, 2023. We agree with the recommendation of the WCJ that the Petition for Reconsideration should be dismissed as premature and treated as a Petition to Set Aside the dismissal.

Accordingly, we dismiss applicant's Petition as one for reconsideration, and return the matter to the WCJ for further proceedings so that the WCJ may treat applicant's Petition as a Petition to set aside the Order of Dismissal, including setting a hearing so applicant can provide evidence in support of his arguments and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, any aggrieved person may then seek reconsideration of that decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration filed on October 27, 2023 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 26, 2023

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

**FNU HAMEEDULLAH
OD LEGAL**

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*