

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

**PAMELA FIEHMANN, *Applicant***

**vs.**

**EL CAMINO HOSPITAL, Permissibly Self-Insured;  
CORVEL CORPORATION, THIRD PARTY ADMINISTRATOR, *Defendants***

**Adjudication Number: ADJ17888876  
San Jose District Office**

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

Applicant seeks reconsideration of an Order Granting Change of Venue (Order), issued by the presiding workers' compensation administrative law judge (PWCJ) on July 28, 2023, wherein the PWCJ granted defendant's petition to change venue to the San Jose District Office pursuant to Labor Code sections 5501.5(a)(2).

Applicant contends that defendant filed an Objection to applicant's selection of venue in San Diego but neither applicant nor her attorney were served with a copy of said Objection.

We have not received an Answer from defendant. The PWCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we dismiss applicant's Petition for Reconsideration because the petition seeks reconsideration of a non-final order, and deny applicant's Petition as a Petition for Removal because applicant has not shown significant prejudice or irreparable harm.

## BACKGROUND

Applicant claimed a specific injury on April 15, 2021, to various body parts while employed by defendant as a Clinical Nurse Manager of the ER and the ICU.

On June 29, 2023, applicant's attorney filed an application for adjudication dated June 16, 2023, with a venue authorization for her case to be filed at the San Diego Workers' Compensation Appeals Board. Per the application, applicant resides in Rockwall, Texas. The injury occurred in Los Gatos, California. Venue was based on the county of the principal place of business of applicant's attorney, which is San Diego, California.

On July 26, 2023, defendants' attorney filed a Notice of Representation and a verified Petition to Transfer Venue. Proof of service for the Petition to Transfer Venue is in the Electronic Adjudication Management System (EAMS) adjudication file and applicant's attorney is listed on the service list.

On July 28, 2023, the PWCJ issued an Order For Change of Venue from San Diego to San Jose.

On July 31, 2023, applicant's attorney filed a Petition for Reconsideration.

## DISCUSSION

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 decision solely resolves an intermediate procedural or evidentiary issue or issues. 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.

As discussed below, 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, applicant’s attorney filed the application in San Diego because it is the location of his principal place of business and when the application was filed (and currently) applicant lived in Rockwall, Texas. (Labor Code section 5501.5(a)(3).)

If an employer timely objects to venue in the county of the employee’s attorney’s principal place of business, Labor Code section 5501.5(a)(3) mandates that venue be *automatically* transferred to the employee’s county of residence or *the county where the injury occurred*. (Labor Code section 5501.5(c) [emphasis added])

Here, defendant filed a timely Petition to Transfer Venue pursuant to Labor Code section 5501.5(a)(2) and WCAB Rule 10488 (Cal. Code Regs., tit. 8, § 10488). As noted above, the language of the statute mandates that upon objection the venue **must** be transferred to the employee’s county of residence or *the county where the injury occurred*. (Lab. Code, § 5501.5(c) [emphasis added].) Here, applicant resides out of state, thus venue is proper in the county where the injury allegedly occurred. The claimed injury occurred in Los Gatos, which is in Santa Clara county and is serviced by the San Jose district office. In response to the Petition, the WCJ issued the mandated Order for Change of Venue from the San Diego office to the San Jose office.

Applicant's attorney sought reconsideration to challenge the WCJ's Order changing venue from San Diego to San Jose asserting that, ". . . neither the Applicant nor the undersigned [Scott M. Blumen, Esq.] have been served with a copy of said Objection, thus making it impossible to respond to or oppose said objection." (Petition for Reconsideration, July 31, 2023, p. 1.) Further applicant asserts that the claim is accepted and it is "neither anticipated nor likely that there will be employer or percipient witnesses needed for any proceedings." (Petition for Reconsideration, July 31, 2023, p. 1.) Since the WCJ's Order was required by Labor Code section 5501.5, we do not consider the merits of applicant's contentions. Upon return, applicant may raise her objections to the venue change by filing a petition to change venue for good cause. (See Lab. Code, § 5501.6).

Thus, 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.

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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**September 29, 2023**

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

**PAMELA FIEHMANN  
SCOTT BLUMEN  
MANNING KASS**

**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*