

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

RANDY ELLEDGE, *Applicant*

vs.

**KADON TRUCKING, BARRETT BUSINESS SERVICES, INC.;
ACE AMERICAN INSURANCE COMPANY, administered by CORVEL, *Defendants***

**Adjudication Numbers: ADJ11139633; ADJ14079853; ADJ14079324
Santa Rosa District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

On July 14, 2023, applicant, in pro per, filed a Petition for Reconsideration (Petition) in response to a Minute Order issued by a workers' compensation administrative law judge (WCJ) on June 21, 2023. In his Petition, applicant asserts that the findings of fact do not support the Minute Order.

We received an Answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that reconsideration be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons discussed below, we will dismiss the petition for reconsideration.

BACKGROUND

The WCJ's Report provides the following factual background, which we hereby incorporate for ease of reference:

Applicant filed an application alleging a cumulative injury to his back, knee or knees, and ear/hearing. In addition, he had several other claims alleging specific injuries to some overlapping body parts. He was evaluated by panel QME Dr. Shaw on May 31, 2019 and found to have reached MMI.

In late 2022 applicant's then attorney and the defendant were exploring the possibility of a settlement. Shortly thereafter, applicant parted ways with his attorney and is currently in pro per. The case went to a hearing on January 24, 2023 at which time the case was continued to allow the possibility of settlement or possible further discovery. At that point the report of PQME Shaw was three and a half years old, and probably needed to be updated. Defendant set an appointment with Dr. Shaw for April 13, 2023 at noon in Petaluma. (See Exhibit A to defendant's Petition to Compel dated May 17, 2023).

The case was back on calendar March 21, 2023 and set before WCJ Boriolo. At that time, the case was again continued for 90 days with the following comment by Judge Boriolo: "Another continuance is granted for Mr. Elledge to obtain treatment from a PTP [primary treating physician] and a QME evaluation. Do not set within 90 days."

Notwithstanding, applicant failed to attend the appointment for reasons that remain obscure. On May 17, 2023 the defendant filed a Petition to Compel, seeking to compel Mr. Elledge to set and attend an appointment with Dr. Shaw. That petition was partially granted by WCJ Hengel on May 31, 2023, ordering Mr. Elledge to attend an appointment but declining to order Dr. Shaw to schedule same. It is the understanding of the court that Dr. Shaw's office declined to reschedule the appointment because applicant had not appeared for the prior appointment. The court believes that no appointment is currently set.

The case then returned to calendar before WCJ Schaumberg, undersigned, on June 21, 2023, and the court's actions at that time are the subject of the Petition for Reconsideration. Following the conference on June 21, 2023, the case was ordered off calendar with the following notation by the court: "Applicant agrees to contact PQME Dr. Shaw to schedule a re-evaluation at his earliest convenience. Defendant has previously authorized treatment for the back at Boomerang Medical." Under "Orders", the court ordered as follows: "The Medical Unit is ordered [*sic*, should be "to"] issue an additional panel in the specialty of otolaryngology (MTO) in case ADJ11139633"[.] This additional panel was ordered for the purpose of evaluating applicant's claim for hearing loss.

(Report, pp. 2-3.)

DISCUSSION

Applicant contends that the findings of fact do not support the June 21, 2023 Minute Order. By that Order, the WCJ issued an order taking off calendar, noted that applicant agreed to contact PQME Shaw "to schedule a re-evaluation at his earliest convenience" and that defendant "previously authorized treatment for the back at Boomerang Medical," and ordered the Medical Unit to issue an additional panel in the specialty of otolaryngology in ADJ11139633. Applicant

contends that the June 21, 2023 Minute Order “does not fully support the facts, since there were two hearings on this matter.” Specifically, applicant contends that a second hearing was held on the same day before WCJ Boriolo, who ordered applicant to “see a PTP ‘first’ (i.e., before a QME visit).” (Petition, p. 3.) Applicant contends that a “stenographic transcript” from the conference before WCJ Boriolo would prove this to be true. Applicant claims that he cannot comply with the challenged Minute Order’s requirement to schedule a reevaluation with the QME without running afoul of the order allegedly issued by WCJ Boriolo to see a PTP *before* the QME.

However, as the WCJ correctly notes in his Report, there is no “stenographic transcript” from any conference before WCJ Boriolo on June 21, 2023, nor does the record contain any order issued by WCJ Boriolo on that date. Instead, the only order issued by WCJ Boriolo is dated March 21, 2023, which simply states: “Another continuance is granted for Mr. Elledge to obtain treatment from a PTP and a QME evaluation. Do not set within 90 days.” (Minutes of Hearing, March 21, 2023, p. 1.) Contrary to applicant’s assertion, nothing in WCJ Boriolo’s order establishes a mandatory sequence for the PTP and QME visits, such that applicant could not comply with the requirement that he schedule a QME reevaluation “at his earliest convenience,” pursuant to the Minute Order challenged herein.

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 for Reconsideration will be dismissed.

Moreover, applicant has failed to articulate any grounds for relief, and our review of the record provides us with no reason to disturb the June 21, 2023 Minute Order. Thus, if we had not dismissed the Petition on the grounds that the Order was a non-final order, we would have dismissed it on those grounds.

Accordingly, we dismiss the Petition for Reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 7, 2023

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

**RANDY ELLEDGE
LENAHAN, SLATER, PEARSE & MAJERNIK
CORVEL**

AH/es

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