

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

**JOSE FAUSTO AGUIRRE, *Applicant***

**vs.**

**TAYLOR FARMS FLORIDA, INC.;  
ZURICH AMERICAN, *Defendants***

**Adjudication Number: ADJ14425732  
Fresno District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION,  
GRANTING PETITION FOR REMOVAL,  
AND DECISION AFTER REMOVAL**

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, treat the petition as one seeking removal, and grant removal to grant defendant's request to change venue to the Salinas District Office.

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 20, 2021 Order denying defendant’s Objection to 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 grant removal because we are persuaded that petitioner has shown that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020); see also *Cortez v. Workers’ Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155].)

Labor Code<sup>1</sup> section 5501.5(a) sets forth the locations where an application for adjudication of claim may be filed: 1) the county where the injured employee or the dependent of a deceased employee resides, 2) the county where the injury allegedly occurred, and 3) the county where the employee’s attorney maintains his or her principal place of business. (Lab. Code, § 5501.5(a).) Subsection 5501.5(c) provides that, if the employer objects to venue selected on the basis of the employee’s attorney’s principal place of business, within 30 days of receipt of the information request form, then the application shall be filed pursuant to the first two paragraphs of subdivision (a), i.e., in the county where the employee, or dependent of a deceased employee, resides or where the injury allegedly occurred. WCAB Rule 10488 provides that, a timely objection to venue pursuant to section 5501.5(c) must be filed within 30 days of receipt of the notice of the adjudication number. “A timely objection shall result in venue being assigned in accordance with Labor Code section 5501.5(a)(1) or (a)(2).” (Cal. Code Regs., tit. § 10488.)

In this case, the Notice of Application, indicating venue in Fresno, issued on March 26, 2021. In its verified petition, defendant asserts that it received the Notice of Application on March 26, 2021. (Petition for Reconsideration, at p. 1:28.) Thereafter, defendant timely objected within 30 days on April 14, 2021. Accordingly, pursuant to section 5501.5(c), we will order venue transferred to Salinas.

---

<sup>1</sup> All further statutory references are to the Labor Code, unless otherwise noted.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DISMISSED** and the Petition for Removal is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the April 20, 2021 Order is **RESCINDED** and that **VENUE** is **TRANSFERRED** to the Salinas District Office.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



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

**June 28, 2021**

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

**JOSE FAUSTO AGUIRRE  
HAWORTH BRADSHAW  
PRUSSAK WELCH & AVILA  
TAYLOR FARMS  
TAYLOR FRESH  
ZURICH AMERICAN (2)**

**abs**

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