

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

**LEONCIO GARCIA, *Applicant***

**vs.**

**CITY OF BAKERSFIELD; administered by AIMS, *Defendants***

**Adjudication Numbers: ADJ10956751; ADJ10956748  
Bakersfield District Office**

**OPINION AND ORDERS  
DISMISSING PETITION FOR  
DISQUALIFICATION,  
DISMISSING PETITION FOR  
RECONSIDERATION,  
AND DENYING PETITION  
FOR REMOVAL**

Applicant filed a Petition for Disqualification on May 24, 2021 and a Petition for Reconsideration or in the alternative Petition for Removal on May 28, 2021. We have considered the allegations of the Petitions and the contents of the June 29, 2021 Report and Recommendation on Petition for Reconsideration/Removal of the workers' compensation administrative law judge (WCJ) with respect thereto. 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, we will dismiss the Petition for Reconsideration and deny the Petition for Removal. We will also dismiss the Petition for Disqualification.

Preliminarily, we note the former WCJ has recused herself from this matter rendering applicant's Petition for Disqualification moot and subject to dismissal.

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.

In this case, no final order has issued and therefore there are no grounds to seek reconsideration. As such we will dismiss the petition to the extent it seeks reconsideration.

We also deny the petition as one seeking 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, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020); 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, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020).) Contrary to the WCJ, we found the Petition for Removal timely. However, based upon the WCJ's analysis of the merits of the petitioner's arguments, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Disqualification is **DISMISSED**.

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

**WORKERS' COMPENSATION APPEALS BOARD**

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

I CONCUR,

**/s/ DEIDRA E. LOWE, COMMISSIONER**

**MARGUERITE SWEENEY, COMMISSIONER**  
PARTICIPATING NOT SIGNING



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

**AUGUST 9, 2021**

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

**LEONCIO GARCIA  
GARRETT LAW GROUP  
HANNA BROPHY**

**PAG/pc**

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