

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

ESTHER DOMINGUEZ, *Applicant*

vs.

**VENTURE HR; STATE NATIONAL INSURANCE CO.;
administered by CANNON COCHRAN, *Defendants***

**Adjudication Number: ADJ11700609
Los Angeles 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, the petition seeks reconsideration of a non-final order and will be dismissed. Instead, the petition will be treated solely as a petition for removal and we will grant removal.

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. As the WCJ’s decision resolved an intermediate procedural or evidentiary issue, we will treat the petition solely as a petition for removal.

Based on our review of the record, and for the reasons stated in the WCJ’s report, which we adopt and incorporate, we will grant removal, rescind the WCJ’s decision, and return this matter to the WCJ for further proceedings and decision.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that the Petition for Removal of the Order Compelling Attendance at Panel Qualified Medical Evaluation issued by the WCJ on May 11, 2022 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Order Compelling Attendance at Panel Qualified Medical Evaluation issued by the WCJ on May 11, 2022 is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

MARGUERITE SWEENEY, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 29, 2022

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

**ESTHER DOMINGUEZ
CIPOLLA CALABA
DJG LAW GROUP
GARRETT LAW GROUP**

JMR/pc

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION Or in the alternative
PETITION for REMOVAL

1.
INTRODUCTION

According to the Application for Adjudication of Claim, the applicant Esther Dominguez, who is now 45 years old, did sustain injury during the period October 12, 2017 to October 12, 2018, to foot, back, trunk and head and other body systems while employed as a production. The applicant was injured at work as a result of repetitive job duties.

On May 10, 2022 the court issued an order for the applicant to attend a medical evaluation with Jennifer W. Hsu, M.D. on June 2, 2022.

On June 2, 2022, the applicant filed a timely petition for reconsideration. The Petition for Reconsideration states that the parties appeared for trial regarding the QME issue on July 13, 2020 and that the Minutes of Hearing for that hearing stated. "Parties agree to go to QME Yanagahara from Panel List 7301425." According to the petition, the court's order to compel the applicant to attend a QME evaluation with a QME in conflict with the prior trial agreement of the parties.

According to the Petition for Reconsideration. the applicant will suffer substantial prejudice and irreparable harm by being forced to undergo a claimed QME evaluation with an improper QME.

2.
DISCUSSION

If Dr. Hsu was the wrong QME for the applicant to go to then the court probably should not have signed the Order for the applicant to go to a medical evaluation with that QME.

RECOMMENDATION

It is respectfully recommended that the Petition for Reconsideration, filed on June 2, 2022 (and dated June 1, 2022), be granted, and that the Order Compelling Attendance at Panel Qualified Medical Evaluation dated May 10, 2022 be vacated.

DATE: 06-08-2022
Kacey Keating
WORKERS' COMPENSATION LAW JUDGE