

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

JAMES HARLOW, *Applicant*

vs.

**OXNARD UNION HIGH SCHOOL DISTRICT;
ATHENS ADMINISTRATORS CONCORD, *Defendants***

**Adjudication Number: ADJ13628082
Oxnard District Office**

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

Applicant seeks reconsideration of the Order Denying Change of Venue (Order), issued by the workers' compensation administrative law judge (WCJ) on August 30, 2023, wherein the WCJ denied applicant's Petition for Change of Venue.

Applicant contends that good cause exists to transfer venue to the Marina del Rey district office. We received an Answer from defendant.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the WCJ with respect thereto. Based on our review of the record, we will dismiss the petition to the extent it seeks reconsideration and grant it to the extent it seeks removal, rescind the Order, and return this matter to the WCJ for further proceedings consistent with this decision.

FACTS

Applicant claimed industrial injury to her neck, back, trunk, hand, multiple body parts, and sleep due to a slip and fall at work on March 13, 2018. She selected Marina del Rey as the venue on the Application for Adjudication as it was the county of the principal place of business of the employee's attorney pursuant to Labor Code¹ section 5501.5(c) or (d). On October 8, 2020, defendant filed an Objection to Venue of Marina del Rey based on section 5501.5(c) and requested

¹ All further statutory citations will be to the Labor Code unless otherwise noted.

that the venue be changed to Oxnard as both the injury occurred and the employer was located in Ventura within the venue of the Oxnard board. On October 9, 2020, the WCJ in Marina del Rey issued a Notice of Intention to Change Venue to Oxnard. Applicant filed an objection to that Notice of Intention on October 19, 2020. The case was transferred to Oxnard. Applicant subsequently moved to Texas and filed a notice of change of address on March 8, 2022.

On August 1, 2023, applicant filed a Petition to Change Venue from Oxnard to Marina del Rey. Applicant made this request for the following relevant reasons: applicant's case was originally filed at the Oxnard board but applicant now lives in Texas; as a result, the airport that applicant will fly into is Los Angeles International Airport (LAX), which is nearest the Marina del Rey board. On August 9, 2023, the WCJ issued a Notice of Intention to Grant Petition to Change Venue.

Defendant filed an Objection to the Change of Venue on August 24, 2023. Defendant provided the following reasons for its objection: applicant resided in Ventura County when injured and voluntarily moved to Texas while his claim was pending; applicant was injured in Oxnard; the employer is in Oxnard; most potential employer witnesses reside in the Ventura County area; rather than Petition for Change of Venue, applicant should petition for a remote appearance on behalf of applicant in the event that the case ever proceeds to trial; and that applicant has not provided sufficient good cause to change venue to Marina del Rey pursuant to section 5501.6.

The WCJ issued the Order Denying Change of Venue on August 30, 2023, based on defendant's objection setting forth good cause. The Order was served on August 31, 2023, through the mail on applicant and applicant's attorney. (POS for Order dated 8/31/23, p. 1.) On September 1, 2023, applicant filed a letter objecting to the WCJ's denial of the petition for change of venue. Applicant again objected to the denial of the petition for change of venue by letter on September 18, 2023. In both letters, applicant noted that he had moved to Texas, there was an admitted injury, and no witnesses in this case.

DISCUSSION

I.

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”].) An order denying a petition to change venue is not a final order from which reconsideration may be sought. (*Buschman v. Gary D. Davis, Inc.* (August 12, 2016, ADJ2957106) [2016 Cal.Wrk.Comp. P.D. LEXIS 391, *5], citing *California Casualty Indemnity Exchange and California Rotogravure v. Workers' Compensation Appeal Board (Siegwart)* (1979) 44 Cal.Comp.Cases 1112, 1114.)

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. Instead, we will treat the petition as one for removal.

II.

The petition was timely filed. A petition for removal must be filed within 20 days after the service of the order or decision. (Cal. Code Regs., tit. 8, § 10955.) An additional five calendar days are provided when service is through the United States mail to in-state recipients and an extra 10 calendar days are provided when service includes out of state recipients. (Cal. Code Regs., tit. 8, § 10605.) The Order was served on August 31, 2023, through the mail on the out of state applicant and the in-state applicant's attorney. (POS for Order dated 8/31/23, p. 1.) On September 1, 2023, applicant filed a letter objecting to the WCJ's denial of the petition for change of venue. Applicant again objected to the denial of the petition for change of venue by letter on September 18, 2023. We will treat applicant's September 1, 2023 letter as a timely filed petition for removal.

We will grant 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, we are persuaded that substantial prejudice or irreparable harm will result if removal is denied and that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

Section 5501.6 states:

(a) An applicant or defendant may petition the appeals board for a change of venue and a change of venue shall be granted for good cause. The reasons for the change of venue shall be specifically set forth in the request for change of venue.

(b) If a change of venue is requested for the convenience of witnesses, the names and addresses of these witnesses and the substance of their testimony shall be specifically set forth in the request for change of venue.

(Lab. Code § 5501.6.)

Applicant alleged good cause for a change of venue, including that applicant now lives in Texas; as a result, the airport that applicant will fly into is LAX, which is nearest the Marina del Rey board; and that there will likely be no employer witnesses at trial. On August 9, 2023, the WCJ issued a Notice of Intention to Grant Petition to Change Venue. Defendant filed an Objection to the Change of Venue on August 24, 2023, providing its own reasons why the venue should not be changed. Without issuing an opinion on decision or holding a hearing, the WCJ issued the Order Denying Change of Venue on August 30, 2023, based on defendant's objection setting forth good cause. The WCJ failed to address applicant's alleged good cause.

The statutory and regulatory duties of a WCJ include the issuance of a decision that complies with Labor Code section 5313. "The Labor Code and the Board's rules set forth what must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 475 (Appeals Bd. en banc) (*Hamilton*)). The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain

the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Id.* at p. 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].) “For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record.” (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 476.)

Since the WCJ did not issue an opinion on decision or hold a hearing, we do not have a sufficient record to consider the issue in the first instance. Accordingly, we grant the Petition, rescind the Order, and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the August 30, 2023 Order Denying Change of Venue is **DISMISSED**.

IT IS FURTHER ORDERED that the Petition for Removal of the August 30, 2023 Order Denying Change of Venue is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the August 30, 2023 Order Denying Change of Venue is **RESCINDED**, and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 8, 2023

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

**JAMES HARLOW
BERKOWITZ AND COHEN
KARLIN, HIURA & LASOTA, LLP**

JMR/ara

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