

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

MARGARITA RODRIGUEZ, *Applicant*

vs.

**SANTA BARBARA UNIFIED SCHOOL DISTRICT;
SELF-INSURED SCHOOLS OF CALIFORNIA, *Defendants***

**Adjudication Numbers: ADJ11177542 (MF); ADJ11177494
Santa Barbara District Office**

**OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION AND
DECISION AFTER RECONSIDERATION**

Defendant seeks reconsideration of the Joint Findings of Fact and Order (F&O) issued by a workers' compensation administrative law judge (WCJ) on August 7, 2023, wherein the WCJ found in pertinent part that applicant sustained injury to her left shoulder while employed by defendant as a clerk on "September 11, 2017" (ADJ11177542); that applicant claims injury to various body parts while employed by defendant as a clerk on September 11, 2017 (ADJ11177494); and that applicant is entitled to an additional qualified medical evaluator (QME) in rheumatology.

Defendant contends that applicant is not entitled to an additional QME panel in rheumatology because the existing QME in internal medicine is sufficient; and that the date of injury in ADJ11177494 should be corrected to January 1, 2007, to January 25, 2018, as stipulated at the time of trial.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the 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 grant the Petition as one seeking reconsideration, affirm the F&O, except that we amend it to correct the date of injury in ADJ11177494 to January 1, 2007, to January 25, 2018.

Preliminarily, we observe that if a decision includes resolution of a “threshold” issue, then it is a “final” decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ’s determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, petitioner is challenging both a finding as to a threshold issue and an interlocutory finding/order in the decision. The finding with respect to the date of injury is a final finding. Accordingly, the WCJ’s decision is a final order subject to reconsideration rather than removal.

However, the finding with respect to the additional QME is an interim order, and we will apply the removal standard to our review of that issue. (See *Gaona, supra*.)

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 significant 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, 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.

Therefore, we will grant the Petition as one seeking reconsideration, affirm the F&O, except that we amend it to correct the date of injury in ADJ11177494 to January 1, 2007 to January 25, 2018 (Finding of Fact 4).

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration/Removal in response to the Joint Findings of Fact and Order issued by the WCJ on August 7, 2023, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings of Fact and Order issued by a WCJ on August 7, 2023, is **AFFIRMED** except that it is **AMENDED** as follows:

Margarita Rodriguez, while employed from January 1, 2007, to January 25, 2018, as a clerk, at Santa Barbara, California by Santa Barbara Unified School District, claims to have sustained injury arising out of and in the course of employment to her upper extremities, wrist, hands, shoulders, dental, internal, fibromyalgia and psych.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 13, 2023

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

**MARGARITA RODRIGUEZ
LAW OFFICE OF JIM T. RADEMACHER
HANNA, BROPHY, MacLEAN, McALEER & JENSEN, LLP**

AS/mc

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