

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

**RICHY COLLIGAN, *Applicant***

**vs.**

**DEPARTMENT OF CORRECTIONS AND REHABILITATION/ IRONWOOD STATE  
PRISON legally uninsured; administered by STATE COMPENSATION INSURANCE  
FUND, *Defendants***

**Adjudication Number: ADJ14369903  
Riverside District Office**

**OPINION AND ORDER  
DISMISSING PETITION FOR  
RECONSIDERATION  
AND DENYING PETITION  
FOR REMOVAL**

We have considered the allegations of the Petition for Reconsideration and Removal 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 in the WCJ's report, which we adopt and incorporate, we will dismiss the petition to the extent it seeks reconsideration and deny it to the extent it seeks 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 will be dismissed to the extent it seeks reconsideration.

We will also deny 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, for the reasons stated in the WCJ’s report, we are not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ NATALIE PALUGYAI, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**May 22, 2023**

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

**RICHY COLLIGAN  
LAW OFFICES OF FERRONE & FERRONE  
STATE COMPENSATION INSURANCE FUND**

**JMR/abs**

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

**REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION / REMOVAL**

**I**

**INTRODUCTION**

<u>Date of Injury:</u>	06/10/2010-03/12/2021
<u>Age on DOI:</u>	56
<u>Occupation:</u>	Correctional Officer
<u>Parts of Body Injured:</u>	prostate cancer, erectile dysfunction, urinary system and reproductive system
<u>Identity of Petitioner:</u>	Defendant (Petitioner)
<u>Type of Petition:</u>	Petition for Reconsideration and/or Removal
<u>Timeliness:</u>	The petition was timely filed on 03/24/2023
<u>Verification:</u>	The petition was verified
<u>Date of Order:</u>	March 07, 2023
<u>First Petitioner's Contentions:</u>	Petitioner contends the WCJ erred by issuing: A. A rescission of the July 29, 2022 discovery Order.

Petitioner, Defendant, by and through his attorney of record, Carisa Barnes, State Compensation Insurance Fund, filed a timely verified Petition for Reconsideration or, in the alternative, Removal on March 24, 2023, challenging the Findings and Order dated March 7, 2023.

Petitioner contends the Workers' Compensation Administrative Law Judge ("WCJ") erred by issuing the Order rescinding of the July 29, 2022 discovery Order.

Respondent, Applicant has not filed an answer.

This Petition should have been filed only as a removal because the Order contained no threshold issue, but rather an interlocutory discovery order which rescinded the July 29, 2022 discovery Order.

Based on the following discussion, Petitioner has not shown that substantial prejudice or irreparable harm will result if removal is not granted.

Thus, it is recommended that the Petition for reconsideration or removal be denied.

**II**

**FACTS**

Applicant, Richy Colligan, filed only this case, ADJ14369903, which proceeded to trial on the limited issue of whether the discovery Order of 7/29/2022 should be enforced.

The only issue presented at trial and subject to applicant's Petition for Reconsideration or Removal is whether the discovery Order of July 29, 2022 should be enforced.

### III

#### DISCUSSION

Petitioner filed the Petition requesting reconsideration or, alternatively, removal.

Since a petition for reconsideration can only be taken from a final order, decision or award (Lab. Code §§ 5900(a), 5902, 5903), it is incumbent on the practitioner to make sure the decision actually determines a substantive right or liability of those involved in the case (*Rymer v. Haglen* (1989) 211 Cal. App. 3d 1171; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal. App. 3d 528 [45 Cal. Comp. Cases 410]) or that it determines a threshold issue that is fundamental to the claim for benefits (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal. App. 4th 1068 [65 Cal. Comp. Cases 650]; *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* 5 Cal. App. 5th 658, 81 Cal. Comp. Cases 1122.) If, on the other hand, the decision only concerns interlocutory procedural or evidentiary decisions, such as pre-trial orders, evidentiary rulings, and venue decisions, then removal may be sought. (Title 8, California Code of Regulations, § 10955 ("CCR").)

The sole issue before the court pertains to the Order for Discovery dated 7/29/2022 which the court rescinded as it was felt to be overbroad.

Such an order is an interlocutory decision, and therefore, the petition for reconsideration should be denied on its face.

Removal is an extraordinary remedy rarely granted and then only when substantial prejudice is shown or if irreparable harm will result if it is not granted. (CCR section 10955.) Applicant has not shown substantial prejudice or irreparable harm by virtue of the rescission of the Discovery Order of July 29, 2022.

In this case, once the discovery order of July 29, 2022 issued, applicant by applicant's attorney did attempt to comply with all requested discovery and in fact applicant agreed to comply with all releases provided by State Compensation Insurance Fund documented by email exchange (Defendant's Exhibit C).

Further, based on the exhibits offered by defendant (Exhibits A, B and C) there were multiple discussions in an attempt to comply with all requested discovery by the applicant. Applicant offered to sign a declaration under penalty of perjury that he did not receive any treatment at the VA (Defendant's Exhibit B).

It would appear that defendant is dissatisfied with the medical records that have been provided to date and believes there are additional records which they have not been able to obtain by subpoena thus far. Based on Defendant's Exhibits A, B and C, it appeared to the court that applicant has complied with all attempts at discovery and that the original discovery order as signed by the court is overbroad as it goes beyond the intention of Labor Code Section 4663 (d)

which states “An employee who claims an industrial injury shall, upon request, disclose all previous permanent disabilities or physical impairments.”

It is felt by the court after further review of this discovery Order that the language in the Order of 7/29/2022, which was prepared by State Compensation Insurance Fund, requesting a disclosure of all medical treatment for the last 20 years, is overbroad as it does not state that the medical records should be relevant only as to previous permanent disabilities or physical impairments per Labor Code Section 4663(d).

As stated in its opinion on decision, under Labor Code Sections 5803 and 5804, the Worker's Compensation appeals Board (WCAB) has continuing jurisdiction over all its orders, decisions, and awards for a period of five years from the date of injury. During this period of time, the WCAB may, pursuant to labor code section 5803, rescind, alter or amend any order, decision or award, good cause appearing therefor.

Well established case law including Britt v. Superior Court (1978) 20 Cal.3d 844, 15 Cal Rprt.90 and the subsequent Court of Appeal Decision in Allison v. Workers Comp. Appeals Bd.(1999) 72 Cal.App.4th 654, 64 Cal Comp Cases 624 concluded that appropriate discovery was limited to the body parts placed at issue by the employee when filing the claim.

Defendant in its post-trial brief, impermissibly on page 6, refers to medical reports of PQME Dr. Jason Phillips not offered into evidence. The petition for removal should not address Exhibits which were not offered or entered into evidence at time of trial on the limited issue of the Discovery Order for 07/29/2022.

#### IV

#### **RECOMMENDATION**

It is respectfully recommended that the Petition for Reconsideration be denied including the Removal because applicant has failed to show substantial prejudice or irreparable harm pursuant to Title 8, California Code of Regulations, §10955.

Respectfully submitted,

**Sharon Renzi**  
Workers' Compensation  
Administrative Law Judge

Date: 04/03/2023