

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

HONG GUO DAI, *Applicant*

vs.

**BARON HR;
ZURICH AMERICAN INSURANCE COMPANY,
administered by ZURICH et al.,
*Defendants***

**Adjudication Number: ADJ8320332
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration (Petition) 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 based upon the WCJ's analysis of the merits of the petitioner's arguments in the WCJ's report, we will deny the Petition.

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, the WCJ's decision includes a finding regarding a threshold issue. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains a finding that is final, the petitioner is only challenging interlocutory findings in the decision. Therefore, we will apply the removal standard to our review. (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 the petition is denied and/or that reconsideration will not be an adequate remedy. We observe that based on our review, the WCJ correctly analyzed the provisions of Labor Code section 4600 and Cal. Code Regs., tit. 8, § 9767.5(f)-(h) in the WCJ's Report and Opinion on Decision.

Therefore, we will deny the Petition as one seeking reconsideration.

Additionally, we disagree with defendant's contention that the WCJ is without jurisdiction in this matter. In *Patterson v. The Oaks Farm*, [79 Cal. Comp. Cases 910, 2014 LEXIS 98 (*Patterson*)], we held in pertinent part that:

An employer may not unilaterally cease to provide approved nurse case manager services when there is no evidence of a change in the employee's circumstances or condition showing that the services are no longer reasonably required to cure or relieve the injured worker from the effects of the industrial injury. . . . [And] It is not necessary for an injured worker to obtain a Request for Authorization to challenge the unilateral termination of the services of a nurse case manager. (79 Cal. Comp. Cases at p. 917.)

We concluded that:

Unilaterally terminating medical treatment that was earlier authorized as reasonably required to cure or relieve the injured worker from the effects of the industrial injury is contrary to section 4600(a) unless supported by substantial medical evidence. (Ibid.)

The Second District Court of Appeal in *National Cement Co., Inc. v Workers' Comp. Appeals Bd. (Rivota)* affirmed that an applicant was not required to provide ongoing requests for authorization for an ongoing inpatient stay, that a defendant could not force applicant to be discharged from the facility by obtaining utilization review without showing a change in applicant's condition or circumstance, and that applicant's continued inpatient stay absent a change in circumstances was required to prevent disruption of their medical care and promote continuity in their living situation. (*Nat'l Cement Co., Inc. v Workers' Comp. Appeals Bd. (Rivota)* (2021) 86 Cal. Comp. Cases 595, 2021 Cal. Wrk. Comp. LEXIS 21.)

Thus, it is well established that the WCJ maintains jurisdiction to examine whether defendant is liable for continuing applicant's outpatient physical rehabilitation and whether these services are no longer reasonably required to cure or relieve the effects of the injury. (Lab. Code § 4600.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 22, 2024

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

**HONG GUO DAI
TINA ODJAGHIAN LAW GROUP
LAW OFFICE OF JOYCE MAVREDAKIS
TAPPIN & ASSOCIATES**

LN/pm

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