

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

TAMARAH DECKER, *Applicant*

vs.

**HOME CARE PROVIDERS, INC., dba ASPIRE HOME HEALTHCARE;
BENCHMARK INSURANCE COMPANY, administer by BENCHMARK
ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ17732618
Redding District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant seeks removal in response to the Findings and Order issued by a workers' compensation administrative law judge (WCJ) on February 5, 2024, wherein the WCJ found that while employed by defendant on March 15, 2021, applicant sustained injury to her lumbar spine; and that applicant's injury caused permanent disability but that the opinions of the qualified medical evaluator (QME) were not substantial evidence on the issue of apportionment. The WCJ ordered that the parties return to the QME for further reporting on the issue of apportionment.

Subsequently, after applicant filed her Petition on February 14, 2024, the WCJ issued an "Order Rescinding and Vacating Submission to Develop the Medical Record" on February 22, 2024.

We have considered the allegations of the Petition for Removal and the contents of the Report. Based on our review of the record, we will dismiss the Petition as one seeking reconsideration.

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 F&O of February 5, 2024 contained a final order that applicant sustained industrial injury so that we treat the Petition for Removal as one seeking reconsideration.

Although the decision contains a finding that is final, the petitioner is only challenging an interlocutory finding/order in the decision. Therefore, the removal standard would have applied to our review. (See *Gaona, supra.*)

However, WCAB Rule 10961 (Cal. Code Regs., tit. 8, § 10961) provides that jurisdiction remains with the district office for 15 days after the timely filing of a petition for reconsideration and sets forth the following actions that a WCJ may take in response: (a) The WCJ may prepare a report and transfer jurisdiction to the Appeals Board to address the merits of the petition (Cal. Code Regs., tit. 8, § 10961(a); see Cal. Code Regs., tit. 8, § 10962); (b) The WCJ may rescind the entire order, decision or award and initiate proceedings within 30 days (Cal. Code Regs., tit. 8, § 10961(b)); or (c) The WCJ may rescind the order, decision or award and issue an amended order, decision or award, and a new petition for reconsideration must be filed in response to the amended order, decision or award. (Cal. Code Regs., tit. 8, § 10961(c).)

Consequently, if the order, decision or award is rescinded pursuant to subdivision (b) or subdivision (c) within the 15-day period wherein the WCJ retains jurisdiction, the original petition is deemed moot because the order, decision or award that is the subject of the petition no longer exists. Accordingly, under those circumstances, it is not necessary to prepare a report or transfer jurisdiction to the Appeals Board to issue an order with respect to the petition.

Here, the WCJ rescinded the original order and issued an amended order within the 15-day period, rendering the Petition moot. Since jurisdiction has been transferred to the Appeals Board, the Petition for Reconsideration will be dismissed.

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

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

CRAIG SNELLINGS, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 15, 2024

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

**TAMARAH DECKER
LAW OFFICE OF FREDERICK J. GIBBONS
COLEMAN CHAVEZ & ASSOCIATES**

JMR/ara

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