

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

VINCENT UNTO, *Applicant*

vs.

**DROMY INTERNATIONAL INVESTMENT CORPORATION;
EMPLOYERS COMPENSATION INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ12435218
Van Nuys District Office**

**OPINION AND DECISION AFTER
RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration, or in the alternative removal, regarding of the October 12, 2020 Findings and Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that the selection of Steven Meier, M.D., as panel qualified medical examiner (PQME) from panel number 7354140 is valid.

Defendant contends that the WCJ erred in denying its request for a replacement panel where both parties struck the same name and applicant scheduled an appointment with Dr. Meier, one of the two remaining physicians.

Applicant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration, or in the Alternative, Removal recommending that reconsideration be dismissed and removal be denied. We have considered the allegations of the petition and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. We will treat the Petition as one seeking reconsideration. Based on our review, and under the circumstances as set forth in the record before us, we decline to disturb the WCJ's decision, and 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 employment, 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 an interlocutory finding/order 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, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020); 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, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020).) Here, based on our review of the record, and under the circumstances as set forth in the record before us, 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. Thus, we decline to disturb the WCJ's decision.

Therefore, as our decision after reconsideration, we will affirm the October 12, 2020 Findings and Order.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the October 12, 2020 Findings and Order is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 3, 2021

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

**VINCENT UNTO
LARSON, LARSON AND DAUER
GREENUP, HARTSTON & ROSENFELD**

PAG/abs

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