

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

**DAVID CARTER, *Applicant***

**vs.**

**CARPENTER COMPANY; ZURICH NORTH AMERICA INSURANCE COMPANY;  
CIGA by TRISTAR RISK MANAGEMENT for LUMBERMAN'S MUTUAL  
INSURANCE COMPANY IN LIQUIDATION, *Defendants***

**Adjudication Numbers: ADJ911350 (AHM 0132668); ADJ2771708 (AHM 0134049);  
ADJ2113066 (AHM 0092053)  
Anaheim 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, Zurich North America seeks removal of the July 3, 2019 Joint Findings and Order issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ found that applicant while employed during the periods November 19, 2000 to November 28, 2005, November 19, 2000 to November 20, 2001 and on February 3, 2001 sustained injury arising out of and in the course of his employment to multiple parts of the body. The WCJ also found that there is no good cause to dismiss applicant's cases for lack of prosecution.

Defendant contends that the WCJ erred in denying their petition to dismiss, arguing that applicant has not pursued his claim and that applicant's attorney has not taken actions to move the case forward and applicant has not cooperated with obtaining a medical-legal evaluation in the field of cardiology.

The WCJ issued a Report and Recommendation on Petition for Removal. 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. 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, 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 Findings and Order.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 3, 2019 Joint Findings and Orders is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**JANUARY 31, 2022**

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

**DAVID CARTER  
GOLDMAN MAGDALIN & KRIKES  
LAUGHLIN FALBO LEVY & MORESI  
LAW OFFICE OF SUNIL SHAH**

**MWH/oo**

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