

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

**MARIA DEL CARMEN CASTRO, *Applicant***

**vs.**

**BARRETT BUSINESS SERVICES; ACE AMERICAN INSURANCE COMPANY,  
Administered by CORVEL, *Defendants***

**Adjudication Number: ADJ12041587  
Van Nuys District Office**

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

We have considered the allegations of the Petition for 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 based upon the WCJ's analysis of the merits of petitioner's arguments in the WCJ's Report, we will dismiss the petition to the extent it seeks reconsideration and deny it to the extent it seeks removal.<sup>1</sup>

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.*

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<sup>1</sup> The Petition for Removal was filed in the Electronic Adjudication Management System (EAMS) and the title selected was "Petition for Reconsideration/Removal." When the WCJ issued the Report, it was titled "Report and Recommendation of Workers' Compensation Administrative Law Judge on Petition for Reconsideration." In an abundance of caution and in accord with due process, when a petition or a Report refers to reconsideration, the petition is treated by the Appeals Board as filed in the alternative.

*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.

Finally, current WCAB Rule 10759 states in relevant part that:

(b) The parties shall meet and confer prior to the mandatory settlement conference and, absent resolution of the dispute(s), the parties shall complete a joint Pre-Trial Conference Statement setting forth the issues and stipulations for trial, witnesses, and a list of exhibits by the close of the mandatory settlement conference.

(e) The joint Pre-Trial Conference Statement, the disposition, and any orders shall be completed by the close of the mandatory settlement conference and shall be filed by the workers' compensation judge in the record of the proceedings on a form

prescribed and approved by the Appeals Board and shall be served on the parties.

(Cal. Code Regs., tit. 8, § 10759(b), (e) (amended as of January 1, 2022.)

Here a WCJ issued an order at the May 3, 2022 mandatory settlement conference, which states that: “Parties are to file PTCS in 20 days.” The matter was then set for trial on June 27, 2022, before a different WCJ. The parties appeared, but due to ongoing settlement negotiations, trial was continued to August 24, 2022. Yet, when the parties appeared on August 24, 2022, applicant had not yet participated in preparing the PTCS.

All parties are expected to comply with orders by a WCJ and by the Appeals Board, and if they are unable to comply, they must seek the appropriate relief. Parties are reminded that a willful failure to comply with an order could subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.) With respect to the notice of intention issued by the WCJ on August 30, 2022, the issue of sanctions may properly be heard at the time of trial in the case in chief, and a record can be created. (See *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc) [decisions of the Appeals Board “must be based on admitted evidence in the record”]; Cal. Code Regs., tit. 8, §§ 10787, 10803.)

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/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**OCTOBER 31, 2022**

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

**MARIA DEL CARMEN CASTRO  
KFL LAW GROUP, APC  
GILSON DAUB**

**AS/ara**

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

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