

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

**BAUDILIO LOPEZ CANSINOS, *Applicant***

**vs.**

**A PHO 21, INC.; JOHN CHO, ANGIE CHO and SAMUEL CHO,  
Substantial Shareholders, *Defendants***

**Adjudication Numbers: ADJ9937224, ADJ9937229  
Anaheim District Office**

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

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the presiding workers' compensation administrative law judge (PWCJ) with respect thereto. Based on our review of the record and based upon the PWCJ's analysis of the merits of the petitioner's arguments in the WCJ's report, we will dismiss the petition to the extent it seeks reconsideration, treat the petition as one seeking removal, and dismiss removal.

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. 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 orders being challenged are not final orders. Accordingly, the petition will be dismissed to the extent it seeks reconsideration and we will treat it as one seeking removal.

We found no record of service on petitioner for the Minutes of Hearing dated April 27, 2022 and July 13, 2022. Where, the service of a decision is defective, the statutory time period for filing a petition for reconsideration does not begin to run until the decision is actually received. (See *Hartford Acc. & Indem. Co. v. Worker’s Comp. Appeals Bd. (Phillips)* (1978) 86 Cal.App.3d 1, 3 [43 Cal.Comp.Cases 1193], *Baker v. Worker’s Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 1315, 1318 (writ den.)) In the Report, the PWCJ states:

The Petition is Untimely. Petitioner asserts that he was not even aware of the January 11, 2021, order joining him as a party defendant until July 30, 2022. The undersigned accepts that as true in light of Judge Gordon’s comments regarding OD Legal’s failure to serve the order as set forth in Minutes of Hearing dated April 27, 2022, and July 13, 2022. However, whether the petition is treated as one for reconsideration or for removal, the aggrieved party is allowed 20 days from service of the order to file their petition (Labor Code section 5903; Rule 10955). The instant petition was filed five months after the date when petitioner himself acknowledges being served with the order. As a result, the petition is clearly untimely.

(Report, at p. 3.)

We agree with the PWCJ that the Petition for Removal is untimely. If we were not finding the petition untimely, we would have denied it based upon the Report’s analysis of the merits of petitioner’s arguments.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



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

**February 28, 2023**

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

**ANGIE CHO INDV AND AS SSH OR BIH OF A PHO 12 INC A DISSLVD CA CORP  
SAMUEL CHO INDV AND AS SSH OR BIH OF A PHO 12 INC A DISSLVD CA CORP  
JOHN CHO INDV AND AS SSH OR BIH OF A PHO 12 INC A DISSLVD CA CORP  
HAEWON KIM  
OD LEGAL LOS ANGELES  
TELLERIA & TELLERIA  
BAUDILIO LOPEZ CANSINOS**

**PAG/mc**

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