

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

**GENE SAWAYA, *Applicant***

**vs.**

**ENTERPRISE HOLDINGS, INC.; TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA, administered by SEDGWICK CLAIMS  
MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ11148904  
Van Nuys District Office**

**OPINION AND ORDER  
GRANTING RECONSIDERATION ON BOARD MOTION  
AND DECISION AFTER RECONSIDERATION**

On January 3, 2023, a decision was issued by the Workers' Compensation Appeals Board. It has come to our attention that the decision issued with an incorrect panel member.<sup>1</sup> We now grant reconsideration of that decision on our own motion to correct the error. (Lab. Code, §§ 5900(b); 5911.) We will rescind the January 3, 2023 Opinion and Order Denying Petition for Reconsideration, and substitute a new decision with a new panel member. We make no other substantive changes to the decision.

We have considered the allegations of the Petition for Reconsideration 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 the petitioner's arguments in the WCJ's report, we will deny 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

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<sup>1</sup> Commissioner Sweeney, who was on the panel that issued the decision, no longer serves on the Appeals Board. Another panel member has been assigned in her place.

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 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, § 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, based upon the WCJ's analysis of the merits of the petitioner's arguments, 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.

Therefore, we grant reconsideration, rescind our January 3, 2023 decision, and substitute a new decision denying the Petition as one seeking reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that Reconsideration is **GRANTED** on Board motion.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Opinion and Order Denying Petition for Reconsideration issued by the Workers' Compensation Appeals Board on January 3, 2023 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

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

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



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

**January 17, 2023**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT**

**GENE SAWAYA  
LAW OFFICES OF JIM T. RADEMACHER  
CBE LAW GROUP**

**AS/ara**

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