

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

ISRAEL FUENTES CARILLO, *Applicant*

vs.

**ALL AMERICAN ASPHALT;
ZURICH NORTH AMERICA, *Defendants***

**Adjudication Number: ADJ15599369
San Bernardino District Office**

**OPINION AND ORDER
GRANTING PETITIONS FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant and defendant each filed a Petition for Reconsideration of the March 30, 2023 respective Orders for Sanctions issued by the Arbitrator. We have considered the allegations of the Petitions for Reconsideration and the contents of the Arbitrator's Reports with respect thereto. Based on our review of the record, and for the reasons stated below, we will grant reconsideration of both petitions, rescind the arbitrator's decisions, and return this matter to the arbitrator for further proceedings and decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the arbitrator's new decision.

Contrary to the Arbitrator, we find that the parties properly sought reconsideration from final orders. 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 Arbitrator issued orders imposing sanctions on each party. The imposition of sanctions clearly affects the liability of the parties sanctioned and are, therefore, final and subject to reconsideration.

Moreover, we found the parties' Petitions for Reconsideration timely filed. There are 25 days allowed within which to file a petition for reconsideration from a "final" decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10605(a)(1).) To be timely, however, a petition for reconsideration must be filed with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a), 10615(b).) In this case, the WCJ issued his decisions and served them by mail on March 30, 2023. Pursuant to the authority above, the parties had until Monday, April 24, 2023 to seek reconsideration. Therefore, defendant's petition filed in EAMS¹ on April 12, 2023 and applicant's petition filed in EAMS on April 20, 2023 are timely.

Following the filing of the Petitions for Reconsideration, it appears the parties reached a proposed settlement and the Arbitrator purported to issue an Order Approving Compromise and Release (OACR) on April 27, 2023. However, the Arbitrator is precluded from acting on a case while it is pending on reconsideration beyond the actions allowed in WCAB Rule 10961. (Lab. Code, § 5272; Cal. Code Regs., tit. 8, § 10961). Therefore, the April 27, 2023 OACR is void *ab initio*.

¹ EAMS is an acronym for Electronic Adjudication Management System, a computerized system used by the Division of Workers' Compensation (DWC) to store and maintain Appeals Board electronic case files. (See Cal. Code Regs., tit. 8, §§ 10269(p), 10215 et seq.)

Upon this matter's return to the Arbitrator, he may again consider the parties proposed settlement and issue a new order approving.

For the foregoing reasons,

IT IS ORDERED that applicant's and defendant's Petitions for Reconsideration of the March 30, 2023 Orders for Sanctions are **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the March 30, 2023 Orders for Sanctions are **RESCINDED** and that the matter is **RETURNED** to the arbitrator for further proceedings and decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 12, 2023

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

**ISRAEL FUENTES CARILLO
THE LAW OFFICES OF ANTONY E. GLUCK
MICHAEL SULLIVAN & ASSOCIATES
LEONARD J. SILBERMAN, ARBITRATOR**

PAG/abs

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