

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

**SANDRA NORTH, *Applicant***

**vs.**

**SEE'S CANDY SHOPS, INC.; ZURICH NORTH AMERICA, *Defendants***

**Adjudication Numbers: ADJ3211105 (SDO 0356939);  
ADJ10676096; ADJ11436669; ADJ15508883; ADJ15509791  
San Diego District Office**

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

Applicant's current attorney seeks reconsideration of the minute order taking the matter off calendar (OTOC), issued by the workers' compensation administrative law judge (WCJ) on January 18, 2024, wherein the WCJ found in pertinent part that the case already had a March 20, 2024 trial date on the issues raised by applicant's attorney at the January 18, 2024 status conference, and thus the matter should be taken off calendar.

The crux of applicant's contentions appears to be as follows: although trial is ongoing on the sole issue of the proper split of attorneys' fees across multiple cases, applicant's attorney contends that she is undisputedly entitled to a portion of the attorneys' fees at issue. Applicant also contends that the WCJ should have ordered defendants to 'promptly distribute the undisputed funds' at a status conference, pursuant to State Bar Rule 1.15(d)(7), despite the ongoing trial on the issue of attorneys' fees.

We have not received an answer from any party.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record, and as discussed herein, we will dismiss applicant's attorney's Petition for Reconsideration, treat it as petition for removal, and deny it as a petition for removal.

### **BACKGROUND**

Applicant filed Applications for Adjudication in case numbers ADJ3211105, ADJ10676096, ADJ11436669, ADJ15508883, and ADJ15509791. The parties entered into a joint compromise and release (C&R) to resolve all five cases. The C&R was signed by applicant and her current attorney on June 17, 2022 and by attorneys for defendants on June 29, 2022 and July 5, 2022 respectively.

On August 1, 2022, WCJ Clifford Levy issued an Order Approving Compromise and Release (OACR) in case numbers ADJ3211105, ADJ11436669, ADJ15509791, ADJ10676096, and ADJ15508883. The attorney fee set forth in Paragraph 7 was approved. "The defendant is ordered to withhold the attorney fee pending presentation of a fee split agreement executed by present and prior counsel in this matter, as set forth in Paragraph 8 of the C&R." (OACR, p. 1.)

Subsequently, multiple status and mandatory settlement conferences were held.

On December 4, 2023, it appears that the matter proceeded to trial in case numbers ADJ3211105, ADJ11436669, and ADJ10676096. The minutes are partially illegible, but trial was continued to March 20, 2024, and the minutes state:

In person trial, WCJ went [illegible] stips + issues + spoke w/ parties re: outstanding att fee issue. WCJ encourages parties to resolve ADJ11436669. There are three case numbers with an outstanding attorney fee dispute. ADJ11436669 the amount in dispute is \$1,530. Prior attorney Max Agha agrees to take \$530 and attorney Jennifer Scott agrees to take \$1,000. (See Stipulation and Award signed by the parties).

The other two case numbers ADJ10676096, ADJ3211105 still involve a fee dispute between the Law Office of Jennifer Scott, Max Agha, Leslie Shaw and Matt Russell (Gerry Brody Office). The matter will proceed to Trial on the attorney fee.

Parties are encouraged to resolve.

(December 4, 2023 minutes, served December 12, 2023, pp. 1-2.)

On December 5, 2023, applicant's attorney filed a declaration of readiness (DOR) in case number ADJ3211105, on the issue of "undisputed AA fee." In the comments section, applicant's attorney states:

Pursuant to State Bar rule 1.15 assistance of the WCAB is hereby requested to issue an order to defendant to release undisputed fees in case ADJ10676096; ADJ3211105 hearing on Dec 4, 2023 a determination was made in the following cases defining disputed fees as follow(s): ADJ106766096 total fee 3600.00 disputed amount 2550.00 undisputed amount 1050, ADJ3211105 total fee 5000 disputed amount 3740 undisputed 1260 undisputed fees should be paid to Law Office of Jennifer Scott in the amount of 2310.

(Declaration of readiness dated December 5, 2023, p. 7, original in all-caps.)

On December 13, 2023, the WCJ issued an amended stipulation and award in case number ADJ11436669:

The remaining attorney fee balance on this ADJ is \$1,530. Prior attorney Max Agha agrees to accept \$530 in full satisfaction of his att fee lien. Jennifer Scott agrees to accept \$1,000 in full satisfaction of this lien. Defendants will have 25 days to issue payment.

(Amended Stipulation and Award in case number ADJ11436669, dated December 13, 2023, p. 1.)

On January 18, 2024, the matter proceeded to status conference in case number ADJ3211105. The matter was ordered taken off calendar and the minutes state:

This matter is already set on the Trial calendar and has day #2 of Trial set on March 20, 2024 regarding an attorney fee dispute. Ms. Scott's office filed another DOR regarding the "undisputed" attorney fee dispute that she would like released per Judge Levy/ Atcherely MOH. HOWEVER, THIS CASE SHOULD NEVER HAVE BEEN SET FOR a Status conference with the trial pending on the disputed attorney fee dispute issue. It was a mistake to have been set. In addition, the WCJ advised Ms. Scott (representative Ms. Smith) that although Judges Levy/ Atcherly may have opined that the undisputed attorney fee should be released, the defendant Zurich disagrees.

Defendant Zurich asserts there is no written agreement and this ADJ is NOT Listed on the Order to release the funds that Ms. Smith is asserting should be relased. The WCJ attempted to explain to Ms. Scott that as per the above, the case should never have been set on this issue with the case already on the trial calendar and the WCJ will NOT issue an Order to release the funds as the defendant disputes this. Thus, it is a contested issue that will have to be litigated AFTER the attorney fee disputed case on calendar for March 20, 2024 has been concluded.

(January 18, 2024 minutes, pp. 1-2, capitalization in original.<sup>1</sup>)

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<sup>1</sup> The WCJ designated service of the minutes pursuant to WCAB Rule 10629. However, as a proof of service was not filed, as required by WCAB Rules 10610 and 10625(c), we are unable to determine the date of service. (Cal. Code Regs., tit. 8, §§ 10610, 10625(c).)

On February 7, 2024, petitioner filed a Petition for Reconsideration of the OTOC.

## DISCUSSION

A petition for reconsideration may only be taken from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.<sup>2</sup>) 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].) Threshold issues include, but are not limited to, the following: injury AOE/COE, 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].) Here, the January 18, 2024 minute order taking the matter off calendar is not a final order.

Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian, supra*, at 1075 (“interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not ‘final’”); *Rymer, supra*, at 1180 (“[t]he term [‘final’] does not include intermediate procedural orders or discovery orders”); *Kramer, supra*, at 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.

As the WCJ notes in the Report, petitioner is challenging an interlocutory issue. Thus, we will dismiss it as a petition for reconsideration and treat it as one for 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.,

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<sup>2</sup> All statutory references are to the Labor Code unless otherwise noted.

tit. 8, § 10955(a); *Cortez*, supra; *Kleemann*, supra.) Additionally, 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, the issue of how to split attorneys' fees was already set for trial when applicant's attorney requested a status conference on the same issue. 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.

Petitioner's contention that the WCJ should have ordered the release of "undisputed" fees pursuant to State Bar Rule 1.15(d)(7) is puzzling, given that the sole issue at trial is a dispute over how to split attorney fees. We observe that the State Bar and the courts—and not the WCAB—are authorized to discipline attorneys for professional misconduct. (*Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 345 [46 Cal.Comp.Cases 1284].) By the same logic, only the State Bar and the courts, but not the WCAB, are authorized to adjudicate or compel compliance with State Bar rules.

Accordingly, we dismiss applicant's attorney's Petition for Reconsideration, and we deny it as one seeking removal. Upon return of this matter to the trial level, we recommend that the matter be returned to the trial calendar.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Order Taking Off Calendar issued by the WCJ on January 18, 2024 is **DISMISSED**.

**IT IS FURTHER ORDERED** that applicant's Petition for Removal of the Order Taking Off Calendar issued by the WCJ on January 18, 2024 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

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

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



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

**APRIL 15, 2024**

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

**SANDRA NORTH  
JENNIFER SCOTT  
JACKSON LEWIS  
JACOB AUSTIN  
LESLIE SHAW  
MARRIOTT ASSOCIATES  
MAXWELL AGHA  
STOCKWELL HARRIS  
LAW OFFICE OF JOYCE L. MAVREDAKIS**

**JB/cs**

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