

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

**JOSE JORGE POBLANCO RAMIREZ, *Applicant***

**vs.**

**BORUE O'BRIEN;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ10421975  
Santa Rosa District Office**

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

Applicant requests removal regarding an October 24, 2023 Order Denying Applicant's Petitions for Sanctions issued by the workers' compensation administrative law judge (WCJ). Therein, the WCJ stated:

**IT APPEARING THAT** applicant's attorney Kenneth Martinson filed two petitions for sanctions against defendants dated October 3, 2023 and October 20, 2023 respectively, and;

**GOOD CAUSE APPEARING;**

**IT IS ORDER THAT** both petitions be, and hereby are **DENIED**....

Applicant contends that the WCJ erred by failing to afford him due process and a fair hearing.

Defendant filed an answer. The WCJ issued a Report and Recommendation on Petition for Removal recommending that we deny the petition.

Based on our review of the record and for the reasons discussed below, we will treat the petition as a Petition for Reconsideration, grant reconsideration, rescind the October 24, 2023

Order Denying Applicant’s Petitions for Sanctions, and return this matter to the trial for further proceedings.

A petition for reconsideration is the proper remedy to be taken 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 WCJ’s decision determines a substantive right and liability for sanctions as between the parties. Therefore, it is a final order from which the proper remedy is reconsideration and not removal.

Turning to the merits, we note that the Report provides the following statement of facts:

Jose Jorge Poblano Ramirez, born [] sustained injury arising out of and in the course of his employment on October 29, 2014 to his bilateral hips and low back while working for Borue O’Brien, who is insured by State Compensation Insurance Fund (SCIF) for this specific date of injury. Trial on the case-in-chief is set for November 28, 2023.

Applicant’s attorney filed a Petition for Sanctions on October 4, 2023 seeking sanctions against defendant SCIF for language stated in the addenda to the proposed Compromise and Release. SCIF filed an Answer on October 5, 2023.

Applicant's attorney filed a second Petition for Sanctions on October 20, 2023 seeking further sanctions against defendant SCIF for its objection to a continuance of the Trial set on October 17, 2023.

On October 24, 2023, the undersigned WCJ issued an Order denying both petitions for sanctions. On October 30, 2023, Applicant's attorney filed a Petition for Removal of the October 24, 2023 Order.

(Report, at p. 2.)

Workers' compensation judges are empowered to impose sanctions for "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813(a); see also Cal. Code Regs., tit. 8, § 10421.) However, in this case, we are not able to provide meaningful review here because there is no record of proceedings. It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An evidentiary hearing is not required to afford due process. Due process requires notice and an opportunity to be heard before sanctions may be imposed. (Cal. Code Regs., tit. 8, §10561.) Due process, however, does not require a formal trial-type hearing where the presentation of argument and evidence can be fairly accomplished by a paper record or other means. (See, *Mathews v. Eldridge* (1976), 424 U.S. 319, 334 [96 S. Ct. 893] (due process is not a technical conception with a fixed content, but it is flexible and calls for such procedural protections as the particular situation demands); see also *Federal Deposit Ins. Corp. v. Mallen* (1988), 486 U.S. 230, 247 [108 S. Ct. 1780] (due process does not guarantee an opportunity to present oral testimony; due process is satisfied where party entitled to submit written materials); *State of Pennsylvania v. Riley* (3d Cir. 1996), 84 F.3d 125, 130 (evidentiary hearing not required where there are no disputed material issues of fact or where dispute can be adequately resolved from the paper record).)

Regardless, whether by notice of intention that elicits documentary evidence or by way of an evidentiary hearing, an adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10787.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence." (*Hamilton, supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id.* at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).)

In this case, we are not able to provide meaningful review because there is no record of proceedings. Accordingly, we return this matter to the trial level for the WCJ to conduct further proceedings as they determine necessary to ensure a proper record is created.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the October 24, 2023 Order Denying Applicant's Petitions for Sanctions is **RESCINDED**, and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**December 29, 2023**

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

**JOSE JORGE POBLANCO RAMIREZ  
KENNETH MARTINSON, ESQ.  
STATE COMPENSATION INSURANCE FUND, LEGAL**

**PAG/mc**

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