

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

SILVIA ZUCCHI PAZ, *Applicant*

vs.

**STATE OF CALIFORNIA, TINCO SHEET METAL; STATE COMPENSATION
INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ4622929 (VNO 0500653)
Van Nuys District Office**

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

Defendant filed a Petition for Reconsideration of our December 17, 2020 Opinion and Decision After Reconsideration. Therein, we rescinded the October 18, 2019 Findings of Fact issued by the workers' compensation administrative law judge (WCJ) and returned this matter to the trial level for further proceedings. Based on our review of the record, we will dismiss the petition as seeking reconsideration from a non-final order, treat the petition as one seeking removal, and deny removal for the reasons stated below.

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Here, our December 17, 2020 Opinion and Decision After Reconsideration rescinded the October 18, 2019 Findings of Fact issued by the WCJ and returned this matter to the trial level for further proceedings. It did not determine any substantive right or liability or any threshold issue. Accordingly, we will dismiss the petition to the extent that it seeks reconsideration.

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., tit. 8, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020); 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, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020).) In this case, we are not persuaded that defendant has established substantial prejudice or irreparable harm. Accordingly, we will deny the Petition as one seeking removal.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR



/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 25, 2021

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

**SILVIA ZUCCHI PAZ
GLAUBER BERENSON VEGO
STATE COMPENSATION INSURANCE FUND**

PAG/bea

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