

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

CESAR CRUZ, *Applicant*

vs.

UNITED PARCEL SERVICE, INC.; LIBERTY MUTUAL, *Defendants*

**Adjudication Number: ADJ13752411
San Diego District Office**

**OPINION AND ORDERS
DISMISSING PETITION FOR
RECONSIDERATION AND
DISMISSING PETITION FOR REMOVAL
AND DENYING PETITION
FOR DISQUALIFICATION**

Applicant, in pro per, filed a Petition for Reconsideration on December 7, 2023 regarding the November 3, 2023 Order Rejecting Declaration of Readiness for Priority Conference; Order Rejecting Declaration of Readiness to Proceed to Expedited Hearing issued by the workers' compensation administrative law judge (WCJ). We have considered the allegations of applicant's petition and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons stated in the Report, which we adopt and incorporate, and for the reasons stated below, we will dismiss applicant's request for reconsideration, treat the petition as one seeking removal and disqualification of the WCJ, dismiss the request for removal as untimely, and deny the request for disqualification.

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 November 3, 2023 Order is solely an intermediate procedural order. It does not determine any substantive right or liability and does not determine a threshold issue. Accordingly, it is not a "final" decision. Therefore, the petition will be dismissed to the extent it seeks reconsideration.

To the extent applicant requests removal, we note that there are 25 days allowed within which to file a petition for removal from a "non-final" decision that has been served by mail upon an address in California. (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10955(a).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for removal 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, §§ 10615(b), 10940(a).)

In this case, the WCJ issued the Order on November 3, 2023. Based on the authority cited above, applicant had until Tuesday, November 28, 2023 to request removal. Therefore the petition filed on December 7, 2023 is untimely and will be dismissed.

Finally, we address to the apparent request for disqualification. Labor Code section 5311 provides that a party may seek to disqualify a WCJ upon any one or more of the grounds specified in Code of Civil Procedure section 641. (Lab. Code, § 5311; see also Code Civ. Proc., § 641.) Among the grounds for disqualification under section 641 are that the WCJ has "formed or expressed an unqualified opinion or belief as to the merits of the action" (Code Civ. Proc., § 641(f)) or that the WCJ has demonstrated "[t]he existence of a state of mind ... evincing enmity against or bias toward either party" (Code Civ. Proc., § 641(g)).

Under WCAB Rule 10960, proceedings to disqualify a WCJ "shall be initiated by the filing of a petition for disqualification supported by an affidavit or declaration under penalty of perjury

stating in detail facts establishing one or more of the grounds for disqualification” (Cal. Code Regs., tit. 8, former § 10452, now § 10960 (eff. Jan. 1, 2020), italics added.) It has long been recognized that “[t]he allegations in a statement charging bias and prejudice of a judge must set forth specifically the facts on which the charge is predicated,” that “[a] statement containing nothing but conclusions and setting forth no facts constituting a ground for disqualification may be ignored,” and that “[w]here no facts are set forth in the statement there is no issue of fact to be determined.” (*Mackie v. Dyer* (1957) 154 Cal.App.2d 395, 399, italics added.)

WCAB Rule 10960 provides that when the WCJ and “the grounds for disqualification” are known, a petition for disqualification “shall be filed not more than 10 days after service of notice of hearing or after grounds for disqualification are known.”

Here, the petition for disqualification does not set forth facts, declared under penalty of perjury, that are sufficient to establish disqualification pursuant to Labor Code section 5311, WCAB Rule 10960, and Code of Civil Procedure section 641(f) and/or (g). Moreover, the petition is untimely pursuant to WCAB Rule 10960. Accordingly, the request for disqualification is denied.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that the Petition for Disqualification is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 5, 2024

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

**CESAR CRUZ
MICHAEL SULLIVAN & ASSOCIATES**

PAG/ara

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

The petitioner, Cesar Cruz, in pro per, filed a verified Petition for Reconsideration on December 7, 2023. The petitioner is aggrieved by the November 3, 2023, Order Rejecting Declaration of Readiness for Priority Conference; Order Rejecting Declaration of Readiness to Proceed to Expedited Hearing.

The petition should be regarded as a Petition for Removal under Title 8, California Code of Regs., Section 10955, as the petitioner is appealing a nonfinal intermediate procedural decision to reject two Declarations of Readiness filed on the same day (November 2, 2023).

The petition was filed in violation of multiple provisions of CCR section 10920. It was filed in a double-sided format. In single-sided format, the petition is in excess of 150 pages containing duplicate copies of documents previously filed with the Board.

The petition is untimely. The time limit to appeal from the November 3, 2023, was November 28, 2023 (twenty days plus 5 days for mail). The petition was filed on December 7, 2023, 34 days after the date of service of the November 3, 2023, Order.

The petition is without merit and should be denied, as addressed below.

PETITIONER'S CONTENTIONS

Mr. Cruz claims that he was not served with the Order rejecting his Declarations of Readiness. He stated that the WCAB in San Diego intentionally delayed and “derailed” him from pursuing his rights and remedies. He believes that he is the victim of discrimination based on his being self-represented. He states that he is homeless. He believes that the Board is biased against him and is corrupt. He asserts his right to a speedy trial. He makes non-specific allegations of conspiracy, obstruction, torture, fraud, bribery, retaliation, and elder abuse. He asserts he is the victim of an “obvious revolving door of a workers compensation fraud scheme.” He wants his case to put on calendar “at the soonest possible convenience.” He wants all issues addressed. He attached “122 unanswered emails” to his petition. He demands that his case be set for a Priority Conference “for the pending penalty petition. He notes that his case was set for trial on January 2, 2024; however, he wants an earlier trial date. He wants “immediate attention” paid to his 132(a) petition and serious and willful misconduct claim. He intends to seek the “disbarment” of defense counsel. He believes he is the victim of “cruel and unusual punishment.” He claims that medical facts have been concealed, and that his rights under the United States Constitution have been violated.

DISCUSSION

At the October 30, 2023, Mandatory Settlement Conference, the parties jointly requested that the case be set for trial. A trial date was set for January 2, 2024 (Minutes of Hearing, October 30, 2023).

On November 2, 2023, Mr. Cruz filed two Declarations of Readiness, one for a Priority Conference and one for an Expedited Hearing. By order dated November 3, 2023, these were rejected. As

noted in the order, the case was already on-calendar for a regular trial on January 2, 2024, Minutes of Hearing, the case was taken off-calendar due to the pending Petition for Reconsideration.

Mr. Cruz does not explain why he filed multiple requests to set his case on-calendar when the case was already set for trial on January 2, 2024. The unfortunate consequence of the filing of this petition is that the judge may not make or issue any order until the Appeals Board has denied [t]o dismissed the Petition for Reconsideration or issued a decision after reconsideration (CCR Section 10961).

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied and that the case be returned to the San Diego District Office so that it can be restored to the trial calendar.

DATE: January 5, 2024,

CLIFF LEVY
PRESIDING WORKERS' COMPENSATION JUDGE