

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

MARIE GUTIERREZ, *Applicant*

vs.

THE VONS COMPANIES, INC., Permissibly Self-Insured, *Defendant*

**Adjudication Number: ADJ4503477
Los Angeles District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of our Order Granting Reconsideration and our Decision After Reconsideration of February 25, 2022, wherein we rescinded a workers' compensation administrative law judge's (WCJ) Findings and Order of September 7, 2021, and returned this matter to the trial level for further proceedings and decision. In the Findings and Order of September 7, 2021, it was found that, while employed as a claims examiner during a cumulative period ending on December 31, 2006, applicant sustained industrial injury to the spine, upper extremities, lower extremities, psyche and internal system. It was also found that the "date of injury for applicant's cumulative trauma under Labor Code section 5412 is December 31, 2006," and that "The statute of limitations does not apply." All other issues were deferred. We rescinded the WCJ's decision on the grounds that the WCJ did not adequately specify "the reasons or grounds upon which the determination was made" as required by Labor Code section 5313 and *Hamilton v. Lockheed Corp.* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc). Our Order Granting Reconsideration and the accompanying Decision After Reconsideration were issued more than 60 days after applicant's Petition for Reconsideration was filed because the Commissioners did not have actual notice of the existence of the Petition until after the statutory period had expired. Our decision was issued within 60 days of actual notice. (See *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104 [57 Cal.Comp.Cases 493]; *State Farm Fire and Casualty v. Workers' Comp. Appeals Bd. (Felts)* (1981) 119 Cal.App.3d 193 [46 Cal.Comp.Cases 622].)

Applicant contends that we erred in issuing an order granting reconsideration outside the 60-day Labor Code section 5909 period, apparently equating the date the Petition was filed in the Electronic Adjudication Management System (EAMS) to actual notice by the Appeals Board Commissioners. Applicant also contends that we erred in rescinding the WCJ's decision. We have received an Answer from the defendant.

We will dismiss defendant's Petition for Reconsideration because it is not taken from a final order subject to reconsideration.

Labor Code section 5900(a) allows reconsideration only of a "final order, decision, or award." (Emphasis added.) (See also Labor Code, §§ 5901-5903.) As the California Court of Appeal, Fifth Appellate District explained:

A "final order" for purposes of section 5900 includes any order which settles, for purposes of the compensation proceeding, an issue critical to the claim for benefits, whether or not it resolves all the issues in the proceeding or represents a decision on the right to benefits. [Citations.]

[I]nterim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not "final" for purposes of section 5900. [Citations.]

(*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075 [65 Cal.Comp.Cases 650].)

An order by the Appeals Board rescinding a WCJ's decision and returning the matter to the WCJ for further proceedings and decision is an interim order, and thus not a final order subject to reconsideration. (*American Can Co. v. Workers' Comp. Appeals Bd. (Anthony)* (1983) 48 Cal.Comp.Cases 146, 147-148 [writ den.]) Our Decision after Reconsideration did not settle any issue critical to the applicant's case. Rather, we allowed the parties to present evidence on all outstanding issues for future decision by a WCJ. We will therefore dismiss applicant's Petition for Reconsideration. Any aggrieved party may, of course, seek reconsideration after a WCJ has rendered a final order or decision, raising all contentions deemed appropriate and justified.

Even if we were to treat the applicant's petition as one for removal, we would deny for the reasons set forth in our opinion of February 25, 2022. In any case, in order to grant removal, there must be a showing of "significant prejudice" or "irreparable harm." "The petitioner must also demonstrate that reconsideration will not be an adequate remedy after the issuance of a final order." (Cal. Code Regs, tit. 8, § 10955, subd. (a).) As noted above, in this case, there has been no showing

of significant prejudice or irreparable harm, since the petitioner is free to raise her contentions in the further proceedings before the WCJ, and may file a future petition for reconsideration if she is aggrieved after the WCJ issues a final order.

We will therefore dismiss the applicant's petition for reconsideration.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Order Granting Petition for Reconsideration and Decision After Reconsideration of February 25, 2022 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 6, 2022

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

**CHARLES EDWARD CLARK
D'ANDRE LAW LLP
MARIE GUTIERREZ**

DW/oo

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