

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

DAVID EDWARDS, *Applicant*

vs.

SAN DIEGO PADRES; ARROWOOD INDEMNITY COMPANY, *Defendants*

**Adjudication Number: ADJ9442121
San Diego District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Applicant has filed a Petition for Removal with regard to a Findings and Order of February 24, 2022, wherein it was found that, "Applicant is found to be permanent and stationary on June 1, 1984," but otherwise deferred all outstanding issues in the case pending further development of the medical record. In this matter, applicant alleges that, while employed as a professional baseball player during a cumulative period ending on October 1, 1982, he sustained industrial injury to his head, neck, back, shoulders, elbows, wrists, hands, fingers, hips, knees, ankles, feet, toes and in the forms of neurological and sleep disorders.

Applicant contends that the WCJ erred in not ruling upon the admissibility of applicant qualified medical evaluator orthopedist Michael J. Einbund, M.D.'s supplemental report of April 8, 2020, and in deferring all issues pending further development of the record. It appears that applicant desires to have the case decided on the current record (including the April 8, 2020 supplemental report). We have not received an answer, and the WCJ has filed a Report and Recommendation on Petition for Removal.¹

¹ In the Report, the WCJ raises an issue regarding the timeliness of the Petition. The Petition, which as noted above is captioned Petition for Removal, was timely filed on March 21, 2022. The proof of service accompanying the Petition references service of a Petition for Reconsideration, despite the fact that the Petition is captioned as one for Removal. The following day, a corrected Proof of Service was filed referencing service of a Petition for Removal. As noted in this Opinion, since the WCJ's decision is a "hybrid" of final and non-final orders, applicant's Petition is properly a Petition for Reconsideration, regardless of the caption. In any case, in assessing timeliness, and whether we have jurisdiction to rule on a Petition, we look at the filing of the Petition itself, not the proof of service. Here, the Petition was timely filed.

As explained below, treating the applicant's Petition as one for reconsideration, we will deny the Petition. However, as also explained below, we are concerned about the progress on this case in which the applicant lives out of state and suffers from late-stage renal disease, and we exhort the parties and the WCJ to expedite discovery and decision.

Preliminarily, we note that a decision issued by the WCAB may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions. Although the Findings and Order contains a finding that is final (applicant's permanent and stationary date), applicant's Petition only challenges the non-final orders deferring all other issues. An order deferring issues for future determination is not a final order and is thus subject to the removal standard rather than the reconsideration standard. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658 [81 Cal.Comp.Cases 1122].)

The removal standard requires "significant prejudice" or "irreparable harm." (Cal. Code Regs, tit. 8, § 10955, subd. (a).) Given applicant's medical condition, and the fact that he is domiciled outside of California, any undue delays in this case do meet the removal standard. Nevertheless, we will deny applicant's Petition because applicant appears to be incorrect in his contention that admission into evidence of Dr. Einbund's April 8, 2020 report would allow the WCJ to "make a definitive ruling" (Petition at p. 2) or that apportionment is the only issue that requires further evidence. In her Opinion on Decision, the WCJ listed several perceived deficiencies that she believed required further evidence. (See Opinion on Decision at pp. 18-20.) While the applicant acted reasonably in procuring the April 8, 2020 report, since it was unclear whether the discovery had been reopened by the WCJ's January 13, 2020 letter outlining deficiencies in the record, the April 8, 2020 report does not appear to address all of the concerns outlined in the Opinion on Decision.

Although we deny the applicant's Petition, we exhort the WCJ and the parties to expeditiously complete discovery and set this matter for trial. Although we make no findings and orders on the issue, we note that the WCJ suggestion that applicant be reevaluated by Dr. Einbund because he "has yet to evaluate the applicant after he underwent lumbar fusion to applicant's L4-

L5 such that it is clear that his reporting is stale” (Opinion on Decision at p. 19) appears to be in conflict with the parties’ stipulation and the WCJ’s order that applicant’s condition has been permanent and stationary since 1984. As the applicant aptly notes in his Petition, the California Constitution mandates that our workers’ compensation system “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character...” (Cal Const, Art. XIV § 4.) In order to comply with this constitutional mandate, after a prompt, reasonable period is allowed for discovery, this case should be brought to decision, holding the parties to their respective burdens of proof.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Order of February 24, 2022 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 20, 2022

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

**DAVID EDWARDS
GLENN, STUCKEY & PARTNERS
PEARLMAN, BROWN & WAX**

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