

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

**GARY ALLEN CROCKER (Deceased), DEPARTMENT OF INDUSTRIAL  
RELATIONS, DEATH WITHOUT DEPENDENTS UNIT, *Applicant***

**vs.**

**MARIPOSA PORTABLE SANITATION; STATE COMPENSATION  
INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ14097686  
Los Angeles District Office**

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

The Department of Industrial Relations/Death Without Dependents Unit (DWD) seeks reconsideration of “ORDER RESCINDING 1/28/2021 ORDER APPROVING COMPROMISE & RELEASE, AND SUSPENDING ACTION ON COMPROMISE & RELEASE AND NOTICE OF HEARING” (Order) issued by the workers’ compensation administrative law judge (WCJ) on February 25, 2021. We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers’ compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and based upon the WCJ’s analysis of the merits of the petitioner’s arguments in the WCJ’s report, we will dismiss the petition to the extent it seeks reconsideration, treat the petition as one seeking removal, and deny removal.

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 WCJ's February 25, 2021 Order is an intermediate procedural order. The order does not determine any substantive right or liability and does not determine a threshold issue. Accordingly, it is not a "final" decision and the petition will be dismissed to the extent it seeks reconsideration.

We will also deny removal. 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).) Here, based upon the WCJ's analysis of the merits of the petitioner's arguments, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

This matter was set for a status conference on March 29, 2021, a date which has now past. Upon this matter's return, it should be reset on the conference calendar.

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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



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

**May 6, 2021**

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

**GARY ALLEN CROCKER (DECEASED)  
STATE COMPENSATION INSURANCE FUND  
OFFICE OF THE DIRECTOR - LEGAL UNIT**

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