

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

**KAMLESH BANGA, *Applicant***

**vs.**

**STATE COMPENSATION INSURANCE FUND;  
legally uninsured, administered by ACCLAMATION  
INSURANCE MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ11018993  
Oakland District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

We have considered the allegations of the Petition for Reconsideration. 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 vacate our grant of reconsideration, dismiss the petition to the extent it seeks reconsideration, treat the petition as a Petition for 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 May 5, 2021 Minute Order taking this matter off calendar is an intermediate procedural order. The decision 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 also deny the petition as one seeking 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.

Finally, we admonish applicant for attaching exhibits to the petition that were never admitted into evidence in violation of Appeals Board Rule 10945. (Cal. Code Regs., tit. 8, former § 10842(c), now § 10945(c)(2) (eff. Jan. 1, 2020).) Future compliance with the Appeals Board’s rules is expected.

For the foregoing reasons,

**IT IS ORDERED** as the Decision after Reconsideration of the Workers’ Compensation Appeals Board that our July 16, 2021 Opinion and Order Granting Petition for Reconsideration is **VACATED**.

**IT IS FURTHER ORDERED** that applicant’s Petition for Reconsideration of the May 5, 2021 Minute Order is **DISMISSED**.

**IT IS FURTHER ORDERED** that applicant's Petition for Removal of the May 5, 2021 Minute Order is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**August 24, 2021**

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

**KAMLESH BANGA  
MULLEN & FILIPPI**

**PAG/abs**

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