

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

**CHRISTOPHER DOLAN, *Applicant***

**vs.**

**DESERT SANDS UNIFIED SCHOOL DISTRICT;  
Permissibly Self-Insured; Administered by  
KEENAN & ASSOCIATES, *Defendants***

**Adjudication Number: ADJ17947769  
Riverside District Office**

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

We have considered the allegations of the Petition for Reconsideration/Removal<sup>1</sup> 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 petitioner's arguments in the WCJ's report, we will dismiss the petition to the extent it seeks reconsideration and deny it to the extent it seeks 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.*

---

<sup>1</sup> We note that petitioner has filed a document dated September 8, 2023 labeled "Response to Report and Recommendation." We will treat the filing, as supplemental pleadings. Pursuant to our authority, we accept applicant's supplemental pleading. (Cal. Code Regs., tit. 8 § 10964) We advise applicant that "[a] party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading." (Cal. Code Regs., tit. 8 § 10964) We expect applicant to comply with this requirement in the future.

*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 Order setting the matter for a status conference and deferring the issue of applicant's deposition notice solely resolves an intermediate procedural or evidentiary issue or issues. 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 will also deny the petition to the extent it seeks 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, § 10955(a); 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, § 10955(a).) We are not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

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/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



**PATRICIA A. GARCIA, DEPUTY COMMISSIONER**  
**CONCURRING NOT SIGNING**

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

**October 27, 2023**

**CHRISTOPHER DOLAN  
ENGLISH, LLOYD & ARMENTA  
MICHAEL SULLIVAN & ASSOCIATES**

**LN/pm**

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