

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

DIANE CLAY, *Applicant*

vs.

COUNTY OF LOS ANGELES, Permissibly Self-Insured; TRISTAR, *Defendants*

**Adjudication Number: ADJ11166250
Pomona District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR RECONSIDERATION**

Applicant in pro per seeks reconsideration of the petitions for change of venue filed on or about September 6, 2022 and November 29, 2022, without reference to any decision or order of the workers' compensation administrative law judge (WCJ).¹

Applicant argues that the petitions for change of venue filed on September 6, 2022 and November 29, 2022 give rise to reconsideration of the issues raised in a separate petition for change of venue filed on February 5, 2024.

We did not receive an Answer.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied and that the matter remain at the trial level for further development of the record consistent with our October 25, 2021 Opinion and Orders Dismissing Petition for Reconsideration; Granting Petition for Removal and Decision After Removal.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record and as discussed below, we will dismiss the Petition.

FACTUAL BACKGROUND

In the Report, the WCJ states:

Applicant, Diane Clay, while employed during the period October 15, 2017 to January 5, 2018, as an intermediate typist clerk,

¹ Commissioner Lowe, who was previously a member of this panel, no longer serves on the Workers' Compensation Appeals Board. Another panelist has been substituted in her place.

occupational group number 111, at Los Angeles, California, by the Office of District Attorney, County of Los Angeles, claims to have sustained injury arising out of and in the course of employment to the left leg, left knee and thigh, and left foot.

Applicant filed a Petition for Reconsideration dated February 2, 2024.

...

Applicant attached a handwritten addendum to the Petition for Reconsideration. In those notes applicant referred to prior requests to change venue in this case (September 6, 2022 and November 29, 2022) and the pending Petition for Reconsideration being the third request for change of venue.

This case has not been submitted for decision at trial and there is no specific final or interim order as to venue or any other issue addressed in the document filed as a Petition for Reconsideration. Applicant identifies as the issue for reconsideration the prior two petitions to change venue (September 6, 2022 and November 29, 2022) and the present Petition for Reconsideration as her third petition to change venue.

The Law Office of Solimon Rodgers on February 12, 2024 filed an objection to the applicant's current pending Petition for Reconsideration. That objection filed by Solimon Rodgers sets forth a detailed chronology relevant to these proceedings.

For the third time applicant has filed a petition to change venue. This case is set for trial February 29, 2024 on a very limited and specific issue, that is whether the prior dismissal of Solimon Rodgers as attorney of record for applicant shall be reinstated and applicant shall proceed in this case in pro per, or if the applicant is to be represented herein by the Law Office of Solimon Rodgers. The Opinion and Orders Dismissing Petition for Reconsideration Granting Petition for Removal and Decision after Removal issued October 25, 2021 ordered this case returned for further proceedings consistent with that decision. The Appeals Board noted the absence of a pleadings record showing the substitution or dismissal of Solimon Rodgers as applicant's attorney of record. The Appeals Board returned those issues to the trial level to develop the record to fully adjudicate those issues. This case has been set multiple dates for trial to proceed accordingly and develop the record and adjudicate that issue as ordered by the Appeals Board.

The issue of venue has previously been deferred pending adjudication of the above stated foundational issue.

...

The Court has explained to the applicant on multiple occasions the foundational issue sent back by the Appeals Board for trial must be adjudicated before moving forward on the issue of venue. That point is also made in the objection filed February 12, 2024 by Solimon Rodgers.

Applicant's issues regarding venue have been deferred without prejudice. The Court must develop the record and make a decision on that record consistent with the direction of the Appeals Board.

...

It is respectfully recommended that the Petition for Reconsideration be denied as there is no final or interim order from which applicant may seek reconsideration.

This case should remain at the trial level for further development of the record consistent with the prior Order of the Appeals Board. (Report, pp. 1-4.)

DISCUSSION

A petition for reconsideration is the mechanism by which a party may challenge a final order, decision, or award. (Lab. Code § 5900.)² 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, 260 Cal. Rptr. 76; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [163 Cal. Rptr. 750, 45 Cal.Comp.Cases 410, 413]; 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 [97 Cal. Rptr. 2d 418, 65 Cal.Comp.Cases 650, 650-651, 655-656].) The Court of Appeal has given examples of threshold issues to include "whether the injury arises out of and in the course of employment, the territorial jurisdiction of the appeals board, the existence of an employment relationship or statute of limitations issues." (*Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662, 210 Cal. Rptr. 3d 101 (citations omitted.) "Such issues, if finally determined, may avoid the necessity of further litigation." (*Id.*) (internal quotation marks and citations omitted.

By contrast, removal may be requested to challenge interim and non-final orders issued by a WCJ. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [38 Cal.

² Unless otherwise stated, all further statutory references are to the Labor Code.

Rptr. 3d 922, 71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleeman v. Workers' Comp. Appeals Bd.* (2005) 127 Cal. App. 4th 274, 281, fn. 2 [25 Cal. Rptr. 3d 448, 70 Cal.Comp.Cases 133, 136, fn. 2].) 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).)

Here, as stated in the Report, there is no final order and no interim order as to venue from which applicant is aggrieved or may sustain prejudice or irreparable harm because adjudication of venue has been deferred pending determination of whether Solimon Rodgers represents applicant. (Report, pp. 2-3.) It follows that the Petition is premature. Accordingly, we will dismiss it.

Having determined to dismiss the Petition because adjudication of the issue of venue has been deferred pending determination of whether Solimon Rodgers represents applicant, we note that Solimon Rodgers has objected to applicant's February 5, 2023 petition for change of venue.

In this regard, we observe that Business and Professions Code section 6068 generally requires an attorney, after severing a relationship with a former client, to refrain from doing anything that would injuriously affect the former client in any matter in which the attorney formerly represented the client or from using against the former client knowledge or information acquired by virtue of previous relationship. (See *Jacuzzi v. Jacuzzi Bros., Inc.* (1963), 218 Cal. App. 2d 24, 32.)

It is thus our view that adjudication of whether Solimon Rodgers represents applicant may give rise to the issue of whether a conflict of interest exists between applicant and Solimon Rodgers resulting from their contrary positions as to venue; and, to avert any potential or actual conflict of interest, we recommend that the WCJ determine the issue of whether Solimon Rodgers represents applicant and the issue of venue at the same hearing, if practicable.

Accordingly, we will dismiss the Petition.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 5, 2024

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

**DIANE CLAY
SOLIMON RODGERS
ROBINSON DILANDO**

SRO/cs

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