

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

ERICK SALAZAR, *Applicant*

vs.

**KT AUTO TRANSPORT; insured by NORGUARD INSURANCE
COMPANY, administered by GUARD INSURANCE COMPANIES, *Defendants***

**Adjudication Number: ADJ12703817
Pomona District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks removal of the Findings and Orders (F&O), issued by the workers' compensation administrative law judge (WCJ) on March 10, 2026, wherein the WCJ found in pertinent part that applicant, while employed as a driver for defendant on September 30, 2019, claims to have sustained injury arising out of and occurring in the course of employment to his eye, mouth, and neck. The WCJ ordered that: 1) defendant serve cost petitioner NAP Interpreting with the explanations of review for all Spanish interpreters "paid in the rendering of the same or similar services in the same geographic region as in this case"; 2) defendant serve cost petitioner with a current copy of the Benefits Printout in this case; 3) parties are to develop the record as to "what specific non-privileged or non-work product 'guidelines' of defendant are being sought for purposes of determining interpreter market rates"; 4) defendant is ordered to make the adjuster or other person most knowledgeable available for deposition regarding the determination of interpreter market rates.

Defendant contends that the WCJ's discovery orders shift the burden of proof to defendant to "prepare" cost petitioner's case and that discovery should remain closed.

We received an Answer from cost petitioner.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report. 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 and for the reasons stated below, we will treat defendant's Petition for Removal as one for reconsideration and deny reconsideration.

BACKGROUND

In the Report, the WCJ states:

The parties proceeded to trial on 2/17/26 regarding several discovery disputes.

These included the issue of 1) Whether cost petitioner is entitled to discovery regarding the benefits printout and explanations of review for all interpreter payments on this case, including those not conducted by NAP interpreting, for purposes of market rate?, 2) Whether Guard Insurance's internal bill review/market rate guidelines for interpreter rates, excluding work product and attorney client privilege, are discoverable?, and 3) Whether the cost petitioner is entitled to the name of the person most knowledgeable regarding Guard Insurance's explanations of review and policy regarding interpreter fees?

Per the Finding and Orders issued on 3/10/26, this WCJ determined that Guard Insurance is to serve NAP interpreting, the explanations of review for all Spanish interpreters paid in the rendering of same or similar services in the same geographic region in this case, that Guard Insurance is to serve NAP interpreting a current copy of the Benefits Printout in this case, that the parties are to develop the record as to what specific non-privileged or non-work product "guidelines" of Guard Insurance are being sought for purposes of determining interpreter market rates, and that Guard Insurance is to make available for deposition the adjuster in this case or other person most knowledge regarding the determination of interpreter market rates.

While Defendant's petition discusses an overview of the various discovery orders, their primary contention seems to rest with the order that Guard Insurance make available for deposition the adjuster in this case or other person most knowledge regarding the determination of interpreter market rates.

(Report, 4/6/2026, pp. 1-2.)

Additionally, the Minutes of Hearing and Summary of Evidence (MOH/SOE) state in the Stipulations and Issues that, "The parties do not dispute that a certified interpreter rendered reasonable [*sic*] necessary services, only as to the rate of those services." (MOH/SOE, 2:13-2:14, 2/17/2026.)

DISCUSSION

I.

Former Labor Code section 5909¹ provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (§ 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on April 6, 2026, and 60 days from the date of transmission is Friday, June 5, 2026. This decision is issued by or on June 5, 2026, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on April 6, 2026, and the case was

¹ All further references are to the Labor Code, unless otherwise stated.

transmitted to the Appeals Board on April 6, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 6, 2026.

II.

Preliminarily, we observe that if a decision includes resolution of a “threshold” issue, then it is a “final” decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board 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.

Here, the F&O included a finding that applicant claimed to have sustained injury arising out of and occurring in the course of employment (AOE/COE) to his eye, mouth and neck while employed by defendant on September 30, 2019. (F&O, Finding of Fact no. 1.) The finding of employment and the date of injury are threshold findings fundamental to the claim for benefits. Accordingly, the WCJ’s F&O is a final order subject to reconsideration rather than removal.

However, defendant’s Petition does not challenge the findings of employment or date of injury, but instead challenges the WCJ’s Orders that defendant serve cost petitioner with explanations of review and a benefits printout; that the parties develop the record as to what “guidelines” of defendant are sought for purposes of determining interpreter market rates; and that

defendant make a witness available for deposition regarding interpreter market rates. These Orders are interlocutory decisions related to discovery and are subject to the removal standard rather than reconsideration pursuant to the discussion above. (See *Gaona, supra.*)

We therefore treat defendant's petition as one for reconsideration, but apply the standard for removal as the only issues raised in the petition involve non-final orders relating to discovery.

III.

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 significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10843(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, § 10843(a).)

Here, for the reasons stated in the Opinion on Decision and the Report, defendant failed to establish any substantial prejudice or irreparable harm resulting from the WCJ's orders regarding discovery. The sole dispute is the proper rate of payment, and cost petitioner is attempting to obtain information from defendant to establish the market rate. The WCJ ordered defendant to produce documentation to establish its market rate for its translation services and to produce a witness for deposition regarding the market rate for the geographic region. Thus, we see no basis upon which to overturn the WCJ's discovery orders in this matter.

Defendant contends that the discovery orders to produce documentation and a witness for deposition will mean that cost petitioner will prevail in this matter, and in other cases where defendant disputes the value of this cost petitioner's services. We consider this argument to be without merit and bordering on frivolous because cost petitioner is entitled to this relevant information in order to establish its market rate for its translation services in this geographic region.

The Appeals Board is authorized to impose sanctions, costs and attorney's fees under section 5813, against a person who engages in "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813.) Sanctions under section 5813 are designed to punish litigation abuses and to provide the court with a tool for curbing improper legal tactics and controlling their calendars. (*Duncan v. Workers' Comp. Appeals Bd.* (2008) 166

Cal.App.4th 294, 302.) WCAB Rule 10421, subdivision (b), authorizes sanctions for a party who has committed “[b]ad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay including actions or tactics that result from willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers’ Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit.” (Cal. Code Regs., tit. 8, § 10421(b).)

We admonish defendant’s non-attorney representative Ted Durden and AM LIEN SOLUTIONS and defendant KT Auto Transport and defendant’s insurance company NorGuard Insurance Company, administered by Guard Insurance Companies, that when they raise such arguments claiming that they should not have to provide information that it is clearly relevant and discoverable, their conduct appears to be frivolous and solely for the purposes of delay. In the future, if defendant and/or its representative engages in such conduct, they may be subject to the sanctions discussed above, and defendant’s non-attorney representative may be subject to proceedings under section 4907.

Here, for the reasons in the Report of the WCJ, and as discussed, we conclude that substantial prejudice or irreparable harm will not result if removal is denied and/or reconsideration will be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner. Accordingly, we deny the Petition as one seeking reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Removal of the Joint Findings of Fact and Orders issued on March 10, 2026, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 5, 2026

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

**ALBERT MACKENZIE
AM LIEN SOLUTIONS
GEORGE CORSON
GUARD INSURANCE
NAP INTERPRETING
KT AUTO TRANSPORT**

DLM/oo

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