

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

**EFRAIN DOMINGUEZ DIAZ, *Applicant***

**vs.**

**WKS RESTAURANT CORPORATION; SEDGWICK, *Defendants***

**Adjudication Number: ADJ13508412  
Marina Del Rey District Office**

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

We have considered the allegations of the Petition for Reconsideration or Petition for Removal filed on November 23, 2022 and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto.<sup>1</sup> 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, 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. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].)

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<sup>1</sup> Commissioner Sweeney and Commissioner Snellings, who were on the panel that issued a prior decision in this matter are no longer available to serve on this panel. Other panelists were appointed in their place.

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 November 8, 2022, Order Rescinding Order is not a final order. Accordingly, the petition will be dismissed to the extent it seeks reconsideration.

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 encourage the parties and the WCJ to review the guidance we provided in our July 19, 2022 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration and the holding of *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473 (Appeals Board en banc) before submitting this matter again. In *Hamilton*, we stated that:

The Labor Code and the Board's rules set forth what must be included in a proper trial record. It is the responsibility of the parties and the WCJ to ensure that the record of the proceedings contains at a minimum, the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.

....

The evidence submitted by the parties must be formally admitted and must be included in the record to enable the parties to comprehend the basis for the

decision. Furthermore, a proper record enables any reviewing tribunal, be it the Board on reconsideration or a court on further appeal, to understand the basis for the decision.

....

The WCJ must prepare the minutes of hearing and a summary of evidence at the conclusion of each hearing. These must include all interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence and the disposition of the matter. []

....

In summary, the Labor Code and the Board's rules contain explicit instructions concerning the contents of the record of a case. It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.

*(Hamilton, supra, 66 Cal.Comp.Cases at pp. 475 – 477, citation omitted.)*

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 WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

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

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



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

**December 29, 2022**

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

**EFRAIN DOMINGUEZ DIAZ  
WACHTEL LAW  
KARGOZAR & ASSOCIATES**

**PAG/mc**

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