

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

KEITH POINTES, *Applicant*

vs.

**PERRYMAN PAINTING; AMTRUST NORTH AMERICA
on behalf of SECURITY NATIONAL INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ9519511
Sacramento District Office**

**OPINION AND ORDER
DISMISSING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the Notice of Intention (NOI) to issue an order granting applicant's attorney's petition to be relieved as attorney of record, issued by the workers' compensation administrative law judge (WCJ) on July 31, 2023.

Applicant contends that he does not consent to his attorney being relieved as counsel.

We have not received an answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied or, in the alternative, deemed an objection to the Notice of Intention.

We have considered the allegations in the Petition and the contents of the Report with respect thereto.

Based on our review of the record, and for the reasons discussed below, we will dismiss the Petition as premature, return this matter to the WCJ for consideration of the Petition as an objection to the Notice of Intention.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to multiple body parts, while employed by defendant as a painter on October 22, 2013.

On January 11, 2017, the parties submitted a stipulation with request for award for applicant's neck, back, foot, and lower extremities. Relevant here, the parties stipulated that there was a need for medical treatment to cure or relieve from the effects of applicant's injuries.

On February 8, 2017, the WCJ approved the stipulation with request for award and a Stipulation and Award issued.

On September 29, 2017, applicant filed a declaration of readiness (DOR) on the issue of future medical treatment, stating as follows:

Despite letter fax and email to defense and insurance. Parties have not sent authorization to Dr. Jeffrey L. Young, MD. Dr. Young, is on MPN [Medical Provider Network]. board assistance is necessary. A bona fide dispute exists.

(September 29, 2017 declaration of readiness, p. 7, all-caps in the original.)

On October 18, 2017, the matter was ordered taken off calendar and the minutes state that "defendants have authorized medical treatment with Dr. Jeffrey Young, within the MPN." (Minutes, October 18, 2017.)

On November 23, 2022, applicant filed a DOR requesting authorization to treat outside the MPN, stating as follows:

Mr. Keith Points needs a new doctor. His injury is dated 10/22/2013 applicant contacted the names on the list, they will not be a primary treating doctor with an injury of 2013. He is requesting to be outside the MPN list. Parties are unable to agree. A bona fide dispute exists.

(November 23, 2022 declaration of readiness, p. 7 (all-caps in the original.)

On May 2, 2023, applicant filed a DOR on the issue of PTP authorization, stating as follows:

Defendant's MPN is not valid as it doesn't have a minimum of 3 treating doctors within 30 miles. Applicant's counsel designated PTP Dr. Joves on 2/6/2023. To date, defendant hasn't issued authorization to Dr. Joves. Applicant's attorney has been contacting defendant on several occasions since and no responses have been received. Board assistance is needed.

(May 2, 2023 declaration of readiness, p. 7, all-caps in the original.)

On June 1, 2023, the matter was ordered taken off calendar, the minutes state as follows:

Defendant agrees to allow applicant to treat outside the MPN with Dr. R. Jovas Spine & Nerve Diagnostic Center, 1528 Eureka Road, STE 103, Roseville, CA 95661. Parties are requesting matter be taken off Calendar.

(Minutes, June 1, 2023, p. 1.)

On July 30, 2023, applicant's attorney filed a petition to be relieved as counsel.

On July 31, 2023, the WCJ issued a notice of intention to issue order granting petition to be relieved as attorney of record, which states as follows:

Applicant's attorney's July 30, 2023, Petition to be Relieved as Attorney of Record (Petition) has been reviewed.

NOTICE IS HEREBY GIVEN that is the intention of this court to grant the Petition after the expiration of ten (10) days, absent the filing of a written objecting showing good cause to the contrary and issue the following order:

FOLLOWING A NOTICE OF INTENTION WITH NO OBJECTION:

GOOD CAUSE APPEARING:

The Law Office of Orr & Duong, Inc., is hereby relieved as attorneys of record for Applicant. The Law Office of Orr & Duong, Inc. shall, within fourteen (14) days, comply with the ethical obligations under California Rules of Professional Conduct, Section 1.16(e)(1) and make arrangements to have Applicant's file delivered to Applicant.

If there is no objection, after the time period set forth herein--taking into account the statutory requirements regarding service--has elapsed, then the moving party shall submit a new proposed order, limited to the language referenced above, granting the petition. If any objection is filed, then the moving party shall file a declaration of readiness to proceed to a Mandatory Settlement Conference on the issue.

(July 31, 2023 notice of intention, p. 1.)

On August 3, 2023, applicant filed a Petition for reconsideration, providing the following details:

Hello, my name is Keith Pointes. My case number is ADJ9519511. I'm writing this letter to keep my new attorney Thao Duong. Thao Duong said she was sending me a letter to switch over from my Attorney William R. Orr, who retired. I did not know William R. Orr had retired until I received a letter from Thao Duong when Thao Duong informed me that she was the daughter of my Attorney William R. Orr

and she was taking on his clients. I haven't had much contact with Thao Duong aside from her getting me a new treating physician. I've been without a doctor for almost a year. I was seeing Dr. Jeffery Young but I quit seeing Dr. Young because he couldn't get addresses on my prescriptions right. Dr. Young went from seeing me every month to once a week and he still couldn't get Dr. Paquette's address correct. Dr. Paquette would not see me again without the correct documentation. I have a new doctor now at Spine and Nerve Diagnostic Center in Folsom. The letter I received from Thao Duong, which I made a copy of, states that Thao Duong is my former attorney. Thao Duong is not my former attorney, William R. Orr is my former attorney. I emailed Thao Duong to let her know I wouldn't be signing the letter I had received because I need an attorney. Without an attorney you may as well feed me to the wolves as my case will be 10 years old on October 22rd, 2023. I have had doctor after doctor, as well as my old attorney William R. Orr, advise me not to get fusions because they don't have a high success rate. I have had doctors, QM E's, and the surgeon Dr. Paquette, tell me that they wouldn't do the fusions at this point in my life. We've been trying to receive a compromise and release for years, so I'm able to get an alternative treatment, with no success. Without an attorney everything will get denied from the insurance company Amtrust. The letter Thao Duong sent me was very sneaky. If I had signed and returned it I would have no attorney. I need help, not to be put in a lonely situation with no attorney and no help. I've been in college taking online courses to get my degree. However I need my neck, back, and knee fixed. Since my accident, my knee gives out, I have broke my right ankle and it now has plates and screws and I have also received a trigger finger on my left hand. I have gotten surgery on my left hand trigger finger and now it's deformed permanently. In 2015 I believe I saw a judge at Truxel Courthouse in Sacramento. The judge said at that time "Get this settled so Keith Pointes can go back to work.". I have worked since I was 13 years old and working is all I want to get back to doing. So for Thao Duong to drop me as a client is making my stress levels go through the roof. I am not a lawyer, I need one. I have no vehicle to get me around at this time and no money for rides because of this action by Thao Duong. This is proving to not only be physically but also mentally and emotionally almost impossible to get all of this filed. I'm confused as to why this is even happening as if I haven't been through enough already. So to whoever is getting this please help my situation. Lastly, I feel as if there has been a predetermination seeing how I was Thao Duong's father's client prior to her taking my case. To the fact that my case has been ongoing for 10 years, there is no value in my case unless I'm compromised and released. Which is not only unethical but also not fair since I have only made contact with Thao Duong a few times.

(Petition for reconsideration, p. 3.)

DISCUSSION

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v.*

Workers' Comp. Appeals Bd. (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing includes, but is not limited to the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at 157-158 citing *Kaiser Co. v. Industrial Acci. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

We note that a petition for reconsideration may only be taken from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) Threshold issues include injury AOE/COE, 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].) Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered “final” orders. (*Maranian, supra*, at 1075; *Rymer, supra*, at 1180; *Kramer, supra*, at 45.) Interlocutory decisions, also informally called non-final orders, include pre-trial orders regarding evidence, discovery, trial setting, venue, or similar issues.

Here, the notice of intent issued by the WCJ on July 31, 2023 is neither a final order nor a non-final order. Rather, it is notice that unless the WCJ receives an objection within 10 days, he will issue an order granting applicant's attorney's petition to be relieved as attorney of record. Because reconsideration may only be taken from a “final” order, decision, or award, and the July 31, 2023 Notice of Intention is not a final order, a petition for reconsideration is not appropriate. However, applicant's Petition is essentially an objection to his attorney's petition to be relieved as counsel. As such, we recommend that the WCJ treat applicant's Petition as an objection to the Notice of Intention.

Accordingly, we dismiss the Petition and return the matter to the WCJ for further proceedings consistent with this opinion. Upon return of this matter to the trial level, we recommend that the WCJ set a hearing to allow the parties to frame the issues and stipulations, submit exhibits as evidence, call witnesses, if necessary, lodge any objections, make legal arguments, and create a record upon which a decision can be made by the WCJ.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration filed on August 3, 2023 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

JOSEPH V. CAPURRO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 6, 2023

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

**KEITH POINTES
LAW OFFICE OF ORR & DUONG
BRADFORD & BARTHEL**

JB/cs

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