

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

PEDRO REYES, *Applicant*

vs.

**GARDEN FRESH RESTAURANT CORP. dba SOUPLANTATION;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants***

**Adjudication Numbers: ADJ10451326; ADJ10750348
Anaheim District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION
AND GRANTING REMOVAL
ON MOTION OF THE
APPEALS BOARD**

On January 5, 2024, lien claimant, AV Management, filed a Petition for Reconsideration or in the Alternative Petition for Removal contending, in essence, that the September 28, 2023 Minute Order issued by the workers' compensation administrative law judge (WCJ), which set this matter for trial was not properly served. We have considered the allegations of the Petitions 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 for the reasons stated below, we will dismiss the petition to the extent that it seeks reconsideration and we will grant removal on motion of the Workers' Compensation Appeals Board (Appeals Board) pursuant to Labor Code section 5310.

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].) 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 September 28, 2023 Minute Order setting the matter for trial is not a final order. Accordingly, the petition will be dismissed to the extent it seeks reconsideration.

The Appeals Board is authorized under Labor Code section 5310 to remove to itself, as it deems necessary in any workers’ compensation matter, “the proceedings in any claim.” This power of removal is discretionary and is generally employed only as an extraordinary remedy. (Cal. Code Regs., tit. 8, § 10843, subd. (a); *Castro v. Workers’ Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 1460 (writ den.); *Swedlow, Inc. v. Workers’ Comp. Appeals Bd. (Smith)* (1985) 48 Cal.Comp.Cases 476 (writ den.).)

This is not a final decision on the merits of removal, and we will order that issuance of the final decision after removal is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that **REMOVAL** of this case to the Appeals Board is **GRANTED** on the motion of the Appeals Board.

IT IS FURTHER ORDERED that a decision after removal is **DEFERRED** pending further review of the merits of the Petition for Removal and further consideration of the entire record in light of the applicable statutory and decisional law.

IT IS FURTHER ORDERED that pending the issuance of a Decision after Removal in the above case, all further correspondence, objections, motions, requests and communications relating to the petition(s) shall be filed only with the Office of the Commissioners of the Workers' Compensation Appeals Board at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102), or its e-mail address (WCABgrantforstudy@dir.ca.gov). It is within the discretion of the Workers' Compensation Appeals Board to determine whether any document submitted for filing is accepted for filing (Cal. Code Regs., tit. 8, § 10615(c) [eff. January 1, 2022]).

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 8, 2024

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

**PEDRO REYES
INJURED WORKERS LAW
AV MANAGEMENT COLLECTION
GARRETT LAW GROUP, PC
DIMACULANGAN ASSOCIATES**

EDL/mc

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