

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DAVID BROWN, *Applicant*

vs.

**INLAND ERECTORS, INC.; EVEREST NATIONAL INSURANCE COMPANY
administered by AMERICAN CLAIMS MANAGEMENT, *Defendants***

**Adjudication Number: ADJ8464137
Van Nuys District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration or in the Alternative, Petition for Removal 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 based on the recommendation of the WCJ, and for the reasons stated below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level so that the trial currently scheduled on March 23, 2022 can proceed. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

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 January 3, 2022 Minute Interim Order is a final order that determines a substantive right or liability of those involved in the case, i.e., it orders defendants to pay for home health care. The fact that the WCJ intended the order to cover a temporary period of time does not change the fact that it determined rights and liability between the parties. In other words, if a WCJ is ordering a party to pay any amount of money for any period of time, it is a finding that determines benefits and liability. Accordingly, it is a "final" decision making reconsideration the proper remedy.

There is no evidentiary record in this matter. As such, the amount of factual assertions made in the petition and report is inappropriate. All awards, orders and decisions of the Appeals Board must be supported by substantial evidence in the record. (Lab. Code § 5952(d); *Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280 [39 Cal.Comp.Cases 310].) That record must permit us to conduct meaningful review of the issues raised. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473 (Appeals Board en banc).)

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. (Cal. Code Regs., tit. 8, §10566.)

* * *

Medical reports and other admitted documentary evidence must be clearly listed in the recorded minutes of the conference hearing or trial. Such admitted evidence should be clearly labeled with exhibit numbers conforming to the list of admitted evidence.

The filing of a document does not signify its receipt in evidence, and only documents that have been received in evidence or are listed in Board rule 10750 shall be included in the record of proceedings on the case. (Cal. Code Regs., tit. 8, §10600.)

* * *

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 v. Lockheed Corporation, supra, 66 Cal.Comp.Cases at pp. 475 - 477; see also Cal. Code Regs., tit. 8, §§ 10787, 10670, 10803.)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the January 3, 2022 Minute Interim Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the January 3, 2022 Minute Interim Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 11, 2022

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

**DAVID BROWN
LAW OFFICE OF MARLA J. WOLFE
ALBERT AND MACKENZIE
TESTAN LAW**

PAG/pc

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