

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

BERLEAN LEEDY, *Applicant*

vs.

ESKATON PROPERTIES, INC.; ATHENS ADMINISTRATORS, *Defendants*

**Adjudication Numbers: ADJ10270511, ADJ10458415
Sacramento District Office**

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

On January 27, 2023, applicant, in pro per, filed a “Objection to Order Compelling Attendance at Medical Exam & Proceeding with Mandatory Settlement Conference & Readiness to Proceed, & MOTION FOR RECONSIDERATION.” Applicant appears to be challenging the December 9, 2022 Order Compelling Attendance at Medical Examination issued by the workers’ compensation administrative law judge (WCJ) and the January 23, 2023 Minutes of Hearing. Applicant also filed supplemental pleading on February 23, 2023. Pursuant to our authority, we reject applicant’s supplemental pleading. (Cal. Code Regs., tit. 8, § 10964.)

We have considered the allegations of the petition 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 dismiss the petition to the extent it seeks reconsideration, treat the petition as a Petition for Removal, and dismiss the Petition for 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].) 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 December 9, 2022 Order Compelling Attendance at Medical Examination and the January 23, 2023 Minute Order setting this matter for a status conference are not final orders. Accordingly, the petition will be dismissed to the extent it seeks reconsideration.

Moreover, there are 25 days allowed within which to file a petition for removal from a “non-final” decision that has been served by mail upon an address in California. (Cal. Code Regs., tit. 8, § 10955(a); § 10605(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) To be timely, however, a petition for removal must be *filed* with (i.e., received by) the WCAB within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10940(a); 10615(b).)

The petition in this matter was filed on January 27, 2023. This was more than 25 days after the service of the WCJ’s December 9, 2022 Order Compelling Attendance at Medical Examination. Therefore, it was untimely and will be dismissed.

Lastly, to the extent the petition challenges the January 23, 2023 Minute Order, we dismiss removal because it contains no orders from which applicant may be aggrieved.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 3, 2023

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

**BERLEAN LEEDY
D'ANDRE LAW LLP**

PAG/ara

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