

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

**ANTHONY MCCUAN, *Applicant***

**vs.**

**COUNTY OF KERN,  
Permissibly Self-Insured, *Defendants***

**Adjudication Number: ADJ13280065  
Bakersfield District Office**

**OPINION AND ORDER  
DENYING PETITION  
FOR RECONSIDERATION**

Defendant seeks reconsideration of the December 8, 2023, Findings of Fact, Order and Opinion on Decision (F&O) issued by the workers' compensation administrative law judge (WCJ) on December 8, 2023. By the F&O, the WCJ found in relevant part, that while employed by defendant as a detention deputy from February 24, 2001 through September 11, 2019, applicant sustained injury to his "nervous system" and "unspecified chest pain" and claimed injury to the digestive system, excretory system, circulatory system, back, bilateral hips, and right shoulder and that further development of the record was appropriate by way of further medical-legal reporting.

Defendant contends that the WCJ should not have ordered the Medical Unit to issue additional qualified medical evaluator (QME) panels in Orthopedic Surgery and Internal Medicine; that QME Stephanie Stolinsky, PhD,'s opinions constitute substantial medical evidence so that further development of the record is not necessary; and that it was not necessary for the QME to review orthopedic and internal medicine treatment records.

The WCJ issued a Report and Recommendation on defendant's Petition for Reconsideration (Report) recommending that the Petition be dismissed or denied on the merits. Applicant's attorney filed an Answer.

We have considered the allegations of defendant's Petition for Reconsideration, applicant's Answer, and the contents of the Report with respect thereto. 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 deny the Petition.

## DISCUSSION

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, 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].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes a finding regarding threshold issue. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains a finding that is final, the petitioner is only challenging an interlocutory finding/order in the decision. Therefore, we will apply the removal standard to our review. (See *Gaona, supra.*)

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 significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); 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, § 10955(a).) Here, for the reasons stated in the WCJ's report, 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.

Therefore, we will deny the Petition as one seeking reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration/Removal is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**March 4, 2024**

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

**ANTHONY MCCUAN  
LAW OFFICE OF MARK DERZON  
OFFICE OF COUNTY COUNSEL**

**DLM/oo**

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