

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

MARTIN CASILLAS, *Applicant*

vs.

**JOSE TALAVERA AND EUSEBIO VALLES SANCHEZ JR., INDIVIDUALS, DBA THE
STUCCO GUYS; LAS LOMAS INVESTMENTS LLC; BABAK MOHAMMADI, AN
INDIVIDUAL; FOREMOST INSURANCE COMPANY as administered by
BROADSPIRE, *Defendants***

**Adjudication Number: ADJ12391409
Van Nuys District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Defendant Las Lomas Investments, LLC, Babak Mohammadi filed a "Petition for Reconsideration of Determination of UEBTF Decision." In that Petition, defendant appears to contest a determination by the Director of Industrial Relations that it was prima facie illegally uninsured at the time of applicant's claimed injury.

We received Answers from defendant Foremost Insurance Company, the Director, and applicant.

The workers' compensation administrative law judge (WCJ) issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition and the Answers 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 defendant's arguments in the WCJ's Report, and for the reasons discussed below, we will dismiss the Petition for Reconsideration.

Labor Code section 5900(a) states "[a]ny person aggrieved directly or indirectly by any final order, decision, or award... may petition the appeals board for reconsideration..." and 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.

Labor Code section 3715(d) provides that if an employer is aggrieved by a finding by the Director that it was prima facie illegally uninsured, it may appeal that finding by filing a petition at the Appeals Board. Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ’s decision and the WCJ shall “. . . make and file findings upon all facts involved in the controversy[.]” (Lab. Code, § 5313; *Hamilton, supra*, at p. 476; *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621-622.)

Here, the WCJ issued an order continuing the trial to April 4, 2023; he did not issue any other orders, including any orders regarding applicant’s injury and/or employment. Thus, the WCJ’s order solely resolves an intermediate procedural issue and did not determine any substantive right or liability and did not determine a threshold issue. To the extent that defendant disputes that the matter should proceed to trial, the order continuing the trial is not a “final” decision, and the petition will be dismissed to the extent that it seeks reconsideration of that order.

Moreover, defendant's petition appealing the finding that it was prima facie illegally uninsured must be considered in the first instance at the trial level so that evidence may be admitted, and a record created.

Accordingly, we dismiss the Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration by defendant Las Lomas Investments LLC, Babak Mohammadi is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 6, 2023

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

**MARTIN CASILLAS
LAW OFFICES OF LOUIS BERMEO
LAW OFFICES OF JACOB BORENSTEIN
OFFICE OF THE DIRECTOR – LEGAL UNIT
KEGEL, TOBIN & TRUCE**

AS/ara

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