

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3 **Misc. No. 254**

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6 **IN RE: DANIEL ESCAMILLA,**
7 *Respondent.*

8 **OPINION AND ORDER**
9 **DISMISSING PETITION FOR**
10 **RECONSIDERATION**
11 **(EN BANC)**

12 On November 7, 2011, Daniel Escamilla, in propria persona, filed a petition for reconsideration
13 of the September 21, 2011, "Notice of Hearing Regarding Suspension or Removal of Privilege of Daniel
14 Escamilla to Appear in Any Proceeding as a Representative of Any Party Before the Appeals Board or
15 Any Workers' Compensation Administrative Law Judge (En Banc)" (NOH), wherein we gave notice that
16 we "may suspend or remove" Mr. Escamilla's privilege to appear in any proceeding as a representative
17 of any party before the Appeals Board or a workers' compensation administrative law judge (WCJ), and
18 that a hearing on this issue was scheduled for October 28, 2011.

19 Mr. Escamilla contends that the "evidence" does not justify the "findings of fact," that the
20 "Findings of Fact" do not support the "Order," and that by its "Order" the Appeals Board acted without
21 or in excess of its powers. Specifically, he contends the following: 1) the Appeals Board does not have
22 personal jurisdiction, subject matter jurisdiction, or authority to decide this matter; 2) Labor Code section
23 4907¹ purports to grant the Appeals Board authority beyond its constitutional enabling provision; 3) the
24 procedure being followed by the Appeals Board violates petitioner's constitutional rights to due process
25 and equal protection; 4) the Appeals Board's exercise of its authority under section 4907 is not
26 reasonable or necessary given its power to punish for contempt; 5) discipline of any person "practicing
27 law before any court of this state, including hearing representatives practicing law before the WCAB" is

¹ All further statutory references are to the Labor Code, unless otherwise indicated.

1 within the sole province of the Supreme Court; 6) even if it has the authority to revoke petitioner's
2 privilege to appear before it, the Appeals Board is acting beyond its jurisdiction by attempting to
3 preclude petitioner from negotiating and settling claims on behalf of a client; 7) the five-year statute of
4 limitations precludes the Appeals Board from punishing petitioner for alleged improper actions in 2003
5 and 2006; 8) the suspension/removal proceedings violate the double jeopardy clause of the Fifth
6 Amendment of the U.S. Constitution; 9) the Appeals Board's action amounts to prior restraint and an
7 unconstitutional suppression of petitioner's First Amendment rights; 10) section 4907 is
8 unconstitutionally vague and denies due process as applied; and 11) the NOH makes "findings" that are
9 not supported by the evidence with regard to petitioner's purported acknowledgement that he is bound by
10 the Rules of Professional Conduct.

11 We have considered the Petition for Reconsideration and the Reply filed by John Shields,
12 prosecuting attorney for the WCAB, and we have reviewed the record in this matter.

13 For the reasons discussed below, we will dismiss the Petition for Reconsideration.

14 Mr. Escamilla acknowledges in his petition that reconsideration may be had only of a final order,
15 decision, or award. (Lab. Code, §§ 5900, 5903.) A "final" order has been defined as one "which
16 determines any substantive right or liability of those involved in the case." (*Maranian v. Workers'*
17 *Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068 [65 Cal.Comp.Cases 650]; *Safeway Stores, Inc. v.*
18 *Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528 [45 Cal.Comp.Cases 410]; *Kaiser*
19 *Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3rd 39 [43
20 Cal.Comp.Cases 661].) An order that does not dispose of the substantive rights and liabilities of those
21 involved in a case is generally not a final order. Interlocutory procedural orders are not final orders
22 within the meaning of sections 5900 and 5903.

23 In this matter, no order whatsoever has issued, whether final or interlocutory. The action
24 challenged by Mr. Escamilla was simply a notice that the Appeals Board "may" suspend or remove his
25 privilege of appearing as a representative before the Appeals Board and a notice of a hearing on this
26 issue. We made no findings and issued no orders. There is no order, decision, or award to reconsider.
27 Accordingly, we will dismiss Mr. Escamilla's Petition for Reconsideration.

1 Moreover, even if we had issued and served a final order, decision, or award on September 21,
2 2011, we do not have jurisdiction to consider Mr. Escamilla’s Petition for Reconsideration filed on
3 November 7, 2011.

4 Section 5903 allows any aggrieved person 20 days after service of a final order, decision, or
5 award to file a petition for reconsideration. The time for filing the petition is extended five calendar days
6 when service of the order is made by mail on a party, lien claimant, attorney, or other agent of record
7 with a physical address within California. (Cal. Code Regs., tit. 8, § 10507; see also Code Civ. Proc., §
8 1013.) A petition is deemed “filed” when it is received. (Cal. Code Regs., tit. 8, §§ 10230(a), 10845(a).)
9 The period in which to file a petition for reconsideration is mandatory and jurisdictional and cannot be
10 extended. (Lab. Code, § 5900(a); *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v. Workers’*
11 *Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal. Comp. Cases 1008, 1011].)

12 The NOH in this case was served by mail on September 21, 2011. Mr. Escamilla’s Petition for
13 Reconsideration was filed on November 7, 2011, more than 20 days, plus five for mailing, after service
14 of the September 21, 2011 NOH. If a final order had issued in this matter, the last day on which a timely
15 petition for reconsideration could have been filed was October 17, 2011.² When the time to file a
16 petition for reconsideration from this hypothetical final order expired, we would have lost jurisdiction to
17 hear challenges to the order. Accordingly, dismissal of Mr. Escamilla’s petition is required both because
18 there was no final order and also because the petition was untimely.

19 We may not consider Mr. Escamilla’s petition as a petition for reconsideration, but we will accept
20 it as a response to our NOH. As such, we will consider his contentions if and when we take action as
21 contemplated in our NOH.

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27 ² The 25th day fell on October 16, 2011, which was a Sunday. Therefore, had a petition for reconsideration been otherwise proper, filing would have been timely if accomplished on Monday, October 17, 2011. (Code Civ. Proc., §§ 10, 12a; Gov. Code, §§ 6700, 6707; Cal. Code Regs., tit. 8, § 10508.)

1 For the foregoing reasons,

2 **IT IS ORDERED** that Daniel Escamilla's Petition for Reconsideration of the September 21,
3 2011 Notice of Hearing Regarding Suspension or Removal of Privilege of Daniel Escamilla to Appear in
4 Any Proceeding as a Representative of Any Party Before the Appeals Board or Any Workers'
5 Compensation Administrative Law Judge (En Banc) is **DISMISSED**.

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7 **WORKERS' COMPENSATION APPEALS BOARD**

8 */s/ Ronnie G. Caplane*

9 **RONNIE G. CAPLANE, Chairwoman**

10
11 */s/ Frank M. Brass*

12 **FRANK M. BRASS, Commissioner**

13 */s/ Joseph M. Miller*

14 **JOSEPH M. MILLER, Commissioner**

15 */s/ Alfonso J. Moresi*

16 **ALFONSO J. MORESI, Commissioner**

17 */s/ Deidra E. Lowe*

18 **DEIDRA E. LOWE, Commissioner**

19
20 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

21 **01/04/2012**

22 ***SERVICE BY MAIL EFFECTED ON ABOVE DATE ON THE FOLLOWING PARTY:***

23
24 **DANIEL ESCAMILLA**
25 **JOHN SHIELDS, Staff Attorney**

26 **CB/bea**