

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

KIM FREIBERGER, *Applicant*

vs.

**GOODWILL INDUSTRIES SF SAN MATEO MARIN, permissibly self-insured
adjusted by ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ12786119
Oakland District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

We have considered the allegations of defendant's Petition for Reconsideration, applicant's answer and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, the petition seeks reconsideration of a non-final order and will be dismissed.

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 decision does not determine any substantive right or liability and does not determine a threshold issue since the Order setting aside the Order Approving Compromise and Release is not a final determination on this dispute. Accordingly, it is not a "final" decision and the petition for reconsideration will be dismissed.

The WCJ may conduct further proceedings upon return of this matter to the trial level pursuant to the Appeals Board's continuing jurisdiction over its orders, decisions, and awards. (Lab. Code, § 5803.) Defendant therefore retains the right to request further proceedings regarding the Order setting aside the Order Approving the Compromise and Release and the WCJ may approve the settlement agreement again after the parties have been provided with notice and an opportunity to be heard. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805] [all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing].) After the WCJ issues a decision based on an evidentiary record, either party may then timely seek reconsideration of that decision. (See *Hamilton v. Lockheed Corp. (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc) [decisions of the Appeals Board must be based on admitted evidence in the record]; Lab. Code, § 5313.)

Accordingly, we will dismiss defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Order issued by the WCJ on March 1, 2021 is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 24, 2021

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

**EMPLOYMENT DEVELOPMENT DEPARTMENT
KIM FREIBERGER
LAUGHLIN FALBO LEVY & MORESI
SF BAY AREA LAW**

AI/pc

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