

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

**WILLIAM WEIDENBACH, *Applicant***

**vs.**

**HEMECRAFTERS SPAS & BBQ; PIE INSURANCE, administered by CORVEL,  
*Defendants***

**Adjudication Number: ADJ13758768  
Fresno District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Applicant has filed a Petition for Removal or in the Alternative Reconsideration regarding the Findings of Fact, Award dated November 12, 2020 and served November 15, 2021.<sup>1</sup> We will treat applicant's petition as one seeking reconsideration for the reasons stated below. We have considered the allegations of the Petition for Reconsideration 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 based on the recommendation of the WCJ that the record be wiped clean, we will grant reconsideration, rescind the November 15, 2021 decision, and return this matter to the trial level to be set for a mandatory settlement conference. At that time, the parties may attempt to resolve their dispute or the WCJ and the parties may reframe the stipulations and the issues to be tried and the evidence to be presented.

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

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<sup>1</sup> The November 12, 2020 date of the WCJ's decision is clearly a clerical error. Regardless, the operative date of the decision is the date it issued on November 15, 2021.

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 adopted the stipulation regarding the threshold issue of employment as fact. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the November 15, 2021 Findings of Fact, Award is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the November 15, 2021 Findings of Fact, Award is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**JANUARY 31, 2022**

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

**WILLIAM WEIDENBACH  
DAN EPPERLY & ASSOCIATES  
DAVID JANE & ASSOCIATES**

**PAG/pc**

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

CS