

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

AGUSTIN ROMERO, *Applicant*

vs.

**VALLEY GYM CORPORATION; REDWOOD FIRE & CASUALTY
c/o BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ12837754
Anaheim District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

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. In his Report, the WCJ states:

“Petitioner’s lien was tried on April 4, 2023 and this judge issued her Findings and Order on May [11], 2023 finding that Applicant did not sustain injury arising out of or occurring in the course of his employment and that the lien of Bell Community Medical Group was denied. Lien Claimant’s timely Petition for Reconsideration followed. . . . [¶] lien claimant’s medical reporting was not found to constitute substantial medical evidence of an injury (whether industrial or not) and was incapable of meeting lien claimant’s burden of proof.” (Report, at pp. 1, 3.)

Based upon our initial review, it appears that the evidence in this case does not justify the Findings of Fact as required by Labor Code section 5903, in that the opinion of treating physician Michael Bazal, M.D., appears to constitute substantial medical evidence consistent with *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 612 (Appeals Board en banc), 70 Cal.Comp.Cases 1506 (writ den.).

Therefore, taking into account the statutory time constraints for acting on the petition, and for the reasons stated above, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is

necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate. When a final decision issues, any aggrieved party may timely seek reconsideration. (Lab. Code, §§ 5900, 5903.)

This is an interlocutory order granting reconsideration and not a final decision that determines any substantive right or liability on the merits of any of the issues pending on reconsideration or that determines a threshold issue. 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.

A petition for a writ of review generally may be sought only from a final order, decision, or award of the Board. (Lab. Code, §§ 5900, 5901, and 5950; *Gumilla v. Industrial Acci. Com.* (1921) 187 Cal. 638, 639-640 (*Gumilla*); *Hikida v. Workers’ Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1249, 1255 (*Hikida*); *Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1074 (*Maranian*); *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180 (*Rymer*); *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd.* (1980) 104 Cal.App.3d 528, 534–535 (*Pointer*); *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd.* (1978) 82 Cal.App.3d 39, 45 (*Kramer*).)

For the foregoing reasons,

IT IS ORDERED that Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that pending the issuance of a Decision after Reconsideration in the above case, all further correspondence, objections, motions, requests and communications *relating to the petition* shall be filed only with the Office of the Commissioners of the Workers' Compensation Appeals Board at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102), or its e-mail address (WCABgrantforstudy@dir.ca.gov). It is within the discretion of the Workers' Compensation Appeals Board to determine whether any document submitted for filing is accepted for filing (Cal. Code Regs., tit. 8, § 10615(c) [eff. January 1, 2022]).

IT IS FURTHER ORDERED that all trial level documents not related to the petition are not subject to this order **EXCEPT** that given WCAB Rule 10961 (Cal. Code Regs., tit. 8, § 10961), when the parties file a stipulations with request for award or a compromise and release agreement in this case, *all* parties shall simultaneously notify the Workers' Compensation Appeals Board of the filing at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102), or its e-mail address (WCABgrantforstudy@dir.ca.gov).

IT IS FURTHER ORDERED that if the party filing the petition decides to withdraw the petition for any reason, the party shall immediately notify the Workers' Compensation Appeals Board of the withdrawal at either its street address (455 Golden Gate Avenue, 9th Floor, San Francisco, CA 94102), or its e-mail address (WCABgrantforstudy@dir.ca.gov).

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 4, 2023

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

**BELL COMMUNITY MEDICAL GROUP
MEDICAL COST REVIEW
SIEGEL, MORENO & STETTLER**

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