WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

RONALD HUMPHREY, ***Applicant***

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, ***Defendants***

Adjudication Number: ADJ7016841
Oakland District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION

Subsequent Injuries Benefits Trust Fund (SIBTF) seeks reconsideration of our September 8, 2023 Opinion and Order Granting Petition for Reconsideration, wherein we granted applicant Ronald Humphrey's Petition for Reconsideration, rescinded the workers' compensation administrative law judge's (WCJ) June 13, 2023 finding that applicant's claim for SIBTF benefits was untimely, and returned the matter to the trial level for further proceedings.

SIBTF contends that we erred in interpreting the case law regarding the applicable limitation period for SIBTF claims, specifically that we erred in concluding that "only a specific finding of permanent disability can provide an applicant with the requisite knowledge of a potential [SIBTF] claim" as specified in *Subsequent Injuries Fund v. Workmens' Comp. Appeals Bd.* (*Talcott*) (1970) 2 Cal.3d 56, 65 [35 Cal.Comp.Cases 80]. SIBTF insists that an order approving Compromise and Release is a Board's finding on the issue of permanent disability. SIBTF further contends that our September 8, 2023 Opinion, in essence, rids of a limitations period in matters where the underlying case against the employer is resolved by compromise and release.

We have received an answer from applicant.

We have considered the Petition for Reconsideration, the Answer, and we have reviewed the record in this matter. For the reasons discussed below, we dismiss SIBTF's petition for reconsideration.[1]

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 (1) "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, 413]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661, 665]); or (2) 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, 650-651, 655-656], emphasis added.) Interlocutory procedural or evidentiary decisions entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian*, *supra*, 81 Cal.App.4th at p. 1075; *Rymer*, *supra*, 211 Cal.App.3d at p. 1180; *Kramer*, *supra*, 82 Cal.App.3d at p. 45.) Here, our September 8, 2023 rescinded the WCJ's June 13, 2023 finding that applicant's claim for SIBTF benefits was untimely, and returned the matter to the trial level for further proceedings. We did not issue new findings or orders from which reconsideration may be taken. As such, SIBTF's petition is premature.

Nevertheless, we note that our September 8, 2023 Opinion simply concluded that a compromise and release is not a finding on the issue of permanent disability. We made no findings as to what constitutes "the board's findings on the issue of permanent disability that the Fund has probable liability," as specified in the seminal case of *Talcott, supra,* 2 Cal.3d at p. 65.

Accordingly, we dismiss SIBTF's petition for reconsideration.

[1] Commissioner Dodd, who was on the original panel, was not available to participate. A Deputy Commissioner was appointed in her place.

For the foregoing reasons,

IT IS ORDERED that Subsequent Injuries Benefits Trust Fund's Petition for Reconsideration of the Appeals Board's September 8, 2023 Opinion and Order Granting Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 4, 2023

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

RONALD HUMPHREY
MANGOSING LAW GROUP
OD LEGAL – OAKLAND

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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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