

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

**TONDERAI MUZOTA, *Applicant***

**vs.**

**AMAZON.COM, INC.; ZURICH AMERICAN INSURANCE COMPANY,  
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ16395611  
San Diego District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Removal 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 upon the WCJ's analysis of the merits of the petitioner's arguments in the WCJ's report, we will deny the Petition as one seeking reconsideration.

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 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 includes a finding regarding threshold issues, including the existence of an employment relationship and that the injury arose out of and in the course of employment. (6/9/23 Finding & Order (F&O), Finding of Fact 1.) Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains a finding that is final, the petitioner is only challenging an interlocutory finding/order in the decision. Therefore, we will apply the removal standard to our review. (See *Gaona, supra.*)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra.*) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).) Here, based upon the WCJ's analysis of the merits of the petitioner's arguments, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

Additionally, applicant seeks sanctions, attorney's fees, and costs against defendant. (Answer, pp. 7-10.) We will not consider applicant's request because it should be considered by the WCJ in the first instance. Section 5813 authorizes the WCJ to impose sanctions, attorney's fees, and costs for "bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Lab. Code, § 5813(a).) The order of sanctions can be made "after written application by the party seeking sanctions or upon the appeal board's own motion." (Lab. Code, § 5813(b).) In order for the WCJ to impose sanctions and costs, the alleged offending party or attorney must be given notice and an opportunity to be heard. (Cal. Code Regs., tit. 8, § 10421(a); see also Cal. Code Regs., tit. 8, § 10832(a)(3).) Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt

or delay the proceedings of the Workers' Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit. (Cal. Code Regs., tit. 8, § 10421(b).) Accordingly, the WCJ should consider applicant's petition for sanctions in the first instance.

Finally, we note that the Petition was timely filed as the 20-day deadline for filing is extended 10 calendar days from the date of service if the place of address and the place of mailing of the party, attorney, or other agent of record being served is outside of California but within the United States. (Lab. Code, § 5903; Cal. Code Regs., tit. 8, § 10605.) The F&O issued and was served on June 9, 2023; the Petition was filed on July 6, 2023, and included service on out of state recipients in Kentucky. (Petition, pp. 23-24.) Therefore, the Petition was timely filed within 30 days. (Lab. Code, § 5903; Cal. Code Regs., tit. 8, § 10605.)

Therefore, we will deny the Petition as one seeking reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



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

**September 5, 2023**

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

**TONDERAI MUZOTA  
LAW OFFICE OF THOMAS M. DEBENEDETTO  
ACUMEN LAW, LLP**

**JMR/ara**

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