

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

ABEL HIDALGO, *Applicant*

vs.

**ROMAN CATHOLIC ARCHBISHOP, permissibly self-insured,
administered by SEDGWICK, *Defendants***

Adjudication Number: ADJ13332737

Los Angeles District Office

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION
AND GRANTING REMOVAL
ON MOTION OF THE
APPEALS BOARD**

On March 20, 2024, applicant's attorney filed a Petition for Reconsideration or in the alternative Petition for Removal from an order denying continuance issued on March 6, 2024 by the workers' compensation administrative law judge (WCJ). The Petition was signed by Lance Garrett and verified by Susan Garrett. Applicant contends that trial was set prematurely because applicant had not yet completed discovery.

We have not received an Answer from defendant.

We have considered the allegations of the Petitions 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 for the reasons stated below and for the reasons stated by the WCJ in the Report, we will dismiss the petition to the extent that it seeks reconsideration of the March 6, 2024 minute order setting this matter for trial, and we will grant removal on motion of the Workers' Compensation Appeals Board (Appeals Board) pursuant to Labor Code section 5310.

FACTS

On June 20, 2020, Susan Garrett filed an application for adjudication alleging that applicant sustained a cumulative injury to the neck, arms, hands, fingers, shoulders, back, knees, and in the form of headaches and high blood pressure. (Application for Adjudication, ADJ13332737, June 20, 2020).

After years of discovery and multiple hearings, the parties took the matter off calendar advising that a settlement was pending. (Minutes of Hearing, October 25, 2023.)

On January 24, 2024, defendant filed a Declaration of Readiness to Proceed (DOR), seeking a trial on the merits as applicant had failed to return signed settlement documents. Applicant did not object to the DOR.

At the hearing on March 6, 2024, the WCJ set the matter for trial over applicants objection, noting that applicant failed to object to the DOR. (Minutes of Hearing, March 6, 2024.) Trial was set for March 20, 2024. (*Ibid.*)

On the morning of trial, applicant filed a petition for reconsideration. The minutes of hearing reflect the following:

NO APPEARANCE BY COUNSEL FOR APPLICANT OR APPLICANT. NO NOTICE TO DEFENDANT OF APPLICANT ATTORNEY'S INTENTION NOT TO APPEAR. PETITION FOR RECONSIDERATION/REMOVAL FILED 8:00 AM TODAY PER EAMS

(Minutes of Hearing, March 20, 2024.)

DISCUSSION

As stated in a recent en banc decision:

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, 260 Cal. Rptr. 76; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal. App. 3d 528, 534–535 [163 Cal. Rptr. 750, 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 [97 Cal. Rptr. 2d 418, 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, [*26] **trial setting**, venue, or similar issues.

The above language has been used in dozens, if not hundreds of panel decisions issued by the Appeals Board, including the August 28, 2023 Opinion served upon Garrett Law Group in *Alfredo Ledezma* (ADJ15382349; ADJ15382351). (See, e.g., *Navroth v. Mervyn's Stores*, 2023 Cal. Wrk. Comp. P.D. LEXIS 318, *4; *Mendoza v. Rapid Manufacturing*, 2023 Cal. Wrk. Comp. P.D. LEXIS 240, *2; *Ramirez v. Vons, PSI*, 2022 Cal. Wrk. Comp. P.D. LEXIS 316, *5.)⁷ The Appeals Board has consistently issued opinions stating that orders affecting trial setting are not final orders subject to reconsideration. In sum, **an order denying a request for continuance is not a final order** because it does not resolve a threshold issue in a case. Thus, a party who disagrees with an order denying a continuance should only seek removal in response to that order, not reconsideration.

(*Ledezma et al. v. Kareem Cart Commissary and Mfg. et al.*, 2024 Cal. Wrk. Comp. LEXIS 12, *25-26 (Appeals Board en banc).)

For the reasons discussed in *Ledzema*, it was not appropriate for applicant to seek reconsideration. Accordingly, the petition for reconsideration will be dismissed.

The Appeals Board is authorized under Labor Code section 5310 to remove to itself, as it deems necessary in any workers' compensation matter, “the proceedings in any claim.” This power of removal is discretionary and is generally employed only as an extraordinary remedy. (Cal. Code Regs., tit. 8, § 10843, subd. (a); *Castro v. Workers' Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 1460 (writ den.); *Swedlow, Inc. v. Workers' Comp. Appeals Bd. (Smith)* (1985) 48 Cal.Comp.Cases 476 (writ den.).)

This is not a final decision on the merits of removal, and we will order that issuance of the final decision after removal is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that **REMOVAL** of this case to the Appeals Board is **GRANTED** on the motion of the Appeals Board.

IT IS FURTHER ORDERED that a decision after removal is **DEFERRED** pending further review of the merits of the Petition for Removal and further consideration of the entire record in light of the applicable statutory and decisional law.

IT IS FURTHER ORDERED that pending the issuance of a Decision after Removal in the above case, all further correspondence, objections, motions, requests and communications relating to the petition(s) 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]).

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 20, 2024

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

**ABEL HIDALGO,
GARRETT LAW GROUP, PC
COLANTONI, COLLINS, MARREN, PHILLIPS & TULK, LLP**

EDL/mc

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