

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

**ALKASHIF MARSHALL, *Applicant***

**vs.**

**UBER TECHNOLOGIES, INC.;**  
**Insured by OLD REPUBLIC, administered by BROADSPIRE, *Defendants***

**Adjudication Number: ADJ10979852  
Los Angeles District Office**

**OPINION AND ORDERS  
DISMISSING PETITION FOR RECONSIDERATION,  
GRANTING PETITION FOR REMOVAL  
AND DECISION AFTER REMOVAL**

On October 2, 2024, the workers' compensation administrative law judge (WCJ) issued an Order Granting Petition to be Relieved (Order Relieving Counsel) wherein the WCJ granted applicant's attorney's Petition to be Relieved as Attorney of Record in this matter, and ordered applicant to proceed in pro per.

In the Petition for Reconsideration, applicant contends that the WCJ erred when he ordered that applicant's counsel would be relieved.

We did not receive an Answer from defendant.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that reconsideration be denied.

We have reviewed the record, applicant's Petition, and the contents of the WCJ's Report with respect thereto. For the reasons discussed below, we will dismiss applicant's Petition for Reconsideration, grant the Petition as a Petition for Removal, rescind the Order Relieving Counsel and return this matter to the trial level for further proceedings consistent with this opinion.

**BACKGROUND**

In his Application for Adjudication (Application), applicant claimed that he received injuries to his head, neck, wrist, back, shoulder, leg, ankle, foot and chest as a result of an

automobile accident on December 6, 2016, while employed as a driver for Uber. (8/14/17 Application.) Defendant Uber's Answer contended that applicant is an independent contractor, not employed by Uber, and not covered by worker's compensation benefits. (9/25/17 Answer.)

Applicant's first attorney, Haleh Shekarchian, filed a Petition and Notice of Motion to be Relieved as Attorney of Record for Applicant, on November 5, 2020, citing a breakdown in the attorney-client relationship. Applicant filed a written response on December 2, 2020, objecting to this request. The WCJ issued a Notice of Intent (NIT) to Allow Applicant Attorney to Withdraw, on December 23, 2024, wherein the WCJ notified applicant that an order allowing applicant's attorney to withdraw will be issued within 15 days, unless applicant makes a written showing of good cause, demonstrating why the attorney should not be permitted to withdraw. On January 28, 2021, the WCJ issued a subsequent order, granting counsel's request to withdraw.

On May 24, 2023, applicant, representing himself, filed a Declaration of Readiness to Proceed (DOR), requesting that the matter be set for a Status Conference, and that the WCJ "reappoint my attorney for the hearings or sign me a public attorney..." (5/24/23 DOR, at p. 3.) At the July 31, 2023, Status Conference, applicant represented himself, and the matter was set for a Mandatory Settlement Conference (MSC) on November 13, 2023. (7/31/23 MOH.) Applicant then served a demand letter, requesting \$2.5 million, for loss of earnings, travel, medical bills and pain and suffering. (10/25/23 Letter.) Defendant filed a Petition to Compel, requesting that the WCJ order applicant to appear for a rescheduled deposition and order applicant to produce documents previously requested by defendant. (11/14/23 Petition to Compel.) At the November 13, 2023, MSC, applicant represented himself, and the matter it was set for a subsequent MSC on January 3, 2024, after the rescheduled December 19, 2023, deposition. (11/13/23 MOH.)

On December 13, 2023, a Notice of Representation and a Fee Disclosure Statement were filed by applicant's second attorney, Scott Warmuth. (12/13/23 Notice of Representation; 12/13/23 Fee Disclosure.) At the MSC on January 3, 2024, where neither applicant nor Scott Warmuth were present, the WCJ noted that applicant's deposition was now set for March 26, 2024, and granted defendant's request to take the matter off calendar. (1/3/24 MSC.)

On August 22, 2024, the Law Offices of Scott Warmuth filed a Petition to be Relieved as Counsel of Record for applicant, pursuant to California Rules of Professional Conduct, Rule 1.16, subdivision (b)(4). (8/22/24 Petition to be Relieved.) Counsel wrote that the basis for the Petition was, "it has been conveyed to applicant that our office is unable to further assist him." (*Ibid.*)

Applicant then filed a pro per Declaration of Readiness to Proceed (DOR), requesting a status conference, and asking the WCJ to keep the matter on calendar. (8/28/24 DOR.) Defendant objected, on the grounds that under Proposition 22, upheld by the California Supreme Court, “this matter is outside the jurisdiction of the Workers’ Compensation Appeals Board,” and suggested that applicant’s application should be withdrawn or dismissed. (9/12/24 Objection to DOR.)

At a Status Conference, heard on September 25, 2024, applicant and an attorney from the Law Offices of Scott Warmuth were present. (9/25/24 MOH.) Defendant requested that the matter be taken off calendar, for further discovery, and that request was granted, over applicant’s objection. (*Ibid.*) The MOH noted, “Petition to be relieved is pending.” (*Ibid.*) No testimony was heard, and no exhibits were entered into evidence regarding the Petition to be Relieved. (*Ibid.*) In addition, no Notice of Intention (NIT) was issued, nor was there a hearing at any time on counsel’s Petition to be Relieved.

On October 2, 2024, the WCJ issued an Order Granting Petition to be Relieved, which stated, in full,

The Court having received a Petition to be Relieved filed by Applicant’s counsel, LAW OFFICES OF SCOTT WARMUTH APC, in the above entitled matter, and no objection having been received, and pursuant to discussion at the hearing of 09/27/2024, and **GOOD CAUSE APPEARING,**

**IT IS ORDERED THAT** the Petition to Be Relieved as Attorney of Record is **GRANTED.**

Applicant ALKASHIF MARSHALL shall proceed in propria persona effective immediately upon service of this Order.

(10/2/24 Order Relieving Counsel.)

## **DISCUSSION**

### **I.**

Former Labor Code section 5909<sup>1</sup> provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

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<sup>1</sup> All statutory references hereinafter are to the Labor Code unless otherwise indicated.

- (b)
- (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
  - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on October 18, 2024, and 60 days from the date of transmission is December 17, 2024. This decision is issued by or on December 17, 2024, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on October 18, 2024, and the case was transmitted to the Appeals Board on October 18, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 18, 2024.

## II.

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 (*Rymer*); *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (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.

Here, the October 2, 2024, Order Relieving Counsel was a pre-trial, interlocutory order that did not determine any substantive right or liability and did not determine a threshold issue. Accordingly, it is not a “final” decision. We will, therefore, dismiss applicant's Petition for Reconsideration and treat applicant's Petition as a Petition for Removal.

### III.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd. (Cortez)* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd. (Kleemann)* (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 substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) The petitioner must also 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).)

Parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is “one of ‘the rudiments of fair play’ assured to every litigant...” (*Id.* at p. 158.) As stated by the Supreme Court of California in *Carstens v. Pillsbury* (1916) 172 Cal. 572, “the commission ... must find facts and declare and enforce rights and liabilities, - in short, it acts as a court, and it must

observe the mandate of the constitution of the United States that this cannot be done except after due process of law.” (*Id.* at p. 577.) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses, introduce and inspect exhibits, and to offer evidence in rebuttal. (See *Gangwish v. Workers’ Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

Section 5313 requires the WCJ to “make and file findings upon all facts involved in the controversy and [make and file] an award, order, or decision stating the determination as to the rights of the parties ... [and include] a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, § 5313.) The WCJ’s decision “must be based on admitted evidence in the record” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Bd. en banc)), and the decision must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers’ Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) In *Hamilton*, we held that the record of proceedings must contain, at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Hamilton, supra*, at p. 475.)

Accordingly, any decision granting an attorney’s Petition to be Relieved should be based upon an adequate record after providing the parties an opportunity to be heard, in the same manner as any other order touching on the parties’ due process rights. (Lab. Code § 5313; *Hamilton, supra*, at p. 476; *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Here, applicant seeks removal of an Order granting his attorney’s Petition to be Relieved. However, there has been no evidence or testimony under oath admitted into the record regarding the allegations in his Petition, i.e., there is no evidence upon which we could base a decision. Without an evidentiary record, we are unable to determine whether the WCJ’s decision is supported by substantial evidence, as required. (*Hamilton, supra*, at p. 476; Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280-281 [39 Cal.Comp.Cases 310].) Therefore, we return this matter to the trial level for the WCJ to conduct an evidentiary hearing and create a record upon which a decision can be made.

We note that here, one of the procedural options available to the WCJ was the issuance of a Notice of Intention (NIT). WCAB Rule 10832 describes the process by which a WCJ may issue an NIT, and provides a framework designed to afford the parties with their “fundamental rights to due process.” (*Rucker, supra*, at pp. 157-158.) WCAB Rule 10832 provides that following the filing of a petition, the WCJ may, “for any proper purpose,” provide notice of its intended action, and thereafter provide the parties with corresponding opportunity to respond to the notice. (Cal. Code Regs., tit. 8, § 10832.) The process of issuing an NIT thus provides both notice to the parties of the court’s intended course of action, and the opportunity for those parties to be heard. (See also *San Bernardino Community Hospital v. Workers’ Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986] [the essence of due process is notice and opportunity to be heard].) Issuing an NIT clearly sets out the next steps required of the parties and the WCJ and encourages the creation of a complete record which reflects the evidentiary and legal bases for the WCJ’s determination. (*Evans v. Workmen’s Comp. Appeals Bd., supra*, at p. 755.)

Here, the WCJ granted applicant’s attorney’s Petition to be Relieved without issuing an NIT, and without providing applicant with the opportunity to offer evidence in rebuttal or to otherwise object to his attorney’s request to be relieved. (9/25/24 MOH; 10/2/24 Order Relieving Counsel.) The WCJ therefore decided the matter in violation of applicant’s right to due process and a fair hearing, which caused applicant substantial prejudice and irreparable harm that reconsideration cannot cure.

Therefore, we will grant applicant’s Petition for Removal, rescind the October 2, 2024, Order Relieving Counsel, and return this matter to the trial level for the WCJ to provide each party with an opportunity to submit evidence and for the WCJ to prepare a record of the proceedings in accordance with section 5313 and *Hamilton, supra*. When the WCJ issues his decision, any person aggrieved thereby may seek reconsideration or removal.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration of the Order Relieving Counsel issued on October 2, 2024, is **DISMISSED**.

**IT IS FURTHER ORDERED** that the Petition for Removal of the Order Relieving Counsel issued on October 2, 2024, is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Removal of the Workers' Compensation Appeals Board, that the Order Relieving Counsel issued on October 2, 2024, is **RESCINDED** and this matter **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

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



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

**DECEMBER 17, 2024**

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

**ALKASHIF MARSHALL  
LAW OFFICES OF SCOTT WARMUTH  
LITTLER MENDELSON, PC**

**MB/ara**

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