

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

INGRID LINARES, *Applicant*

vs.

**MVP PAYROLL FINANCING LLC LCF RP STAFFING INC. (VENSURE)
PRIORITY WORKFORCE; UNITED WISCONSIN INSURANCE COMPANY,
administered by NEXT LEVEL ADMINISTRATORS,
*Defendants***

**Adjudication Number: ADJ15734313
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration (Petition) 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.

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 a threshold issue regarding employment. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

I.

Former Labor Code section 5909¹ 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, Labor Code 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.
- (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 Labor Code 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 August 28, 2024 and 60 days from the date of transmission is Sunday, October 27, 2024. The next business day that is 60 days from the date of transmission is Monday, October 28, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, October 28, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

¹ All statutory references are to the Labor Code unless otherwise stated.

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that: Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Labor Code 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. Labor Code 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 August 28, 2024, and the case was transmitted to the Appeals Board on August 28, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 28, 2024.

II.

Although the decision contains a finding that is final, the petitioner is only challenging interlocutory findings in the decision regarding further development of the record by obtaining a supplemental PQME report. 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 the petition is denied and/or that reconsideration will not be an adequate remedy.

Additionally, we note that defendant's general allegations in its Petition of applicant's untruthfulness contain no citation to evidence. We remind defendant that the Appeals Board Rules require: (1) that "[e]very petition for reconsideration ... shall fairly state all the material evidence

relative to the point or points at issue [and] [e]ach contention contained in a petition for reconsideration ... shall be separately stated and clearly set forth” (Cal. Code Regs., tit. 8, § 10945 and (2) that “a petition for reconsideration ... may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved.” (Cal. Code Regs., tit. 8, § 10972.)

At trial, the issue raised was whether applicant sustained injury arising out of and in the course of employment. In its Petition, defendant asserts that applicant was not truthful, and the WCJ made a finding in response, a finding that defendant does not dispute. If defendant seeks a determination that applicant’s injury did not arise out of and in course of his employment, then defendant must make explain in its Petition why that is so, with specific citations to evidence. Here, defendant did not. Defendant appears to contend that applicant’s conduct somehow bars further development of the record with medical evidence. As pointed out by the WCJ, decisions of the WCAB must be based on substantial medical evidence. Here, the WCJ determined that the record required further development, and we agree that his decision was appropriate.

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/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 28, 2024

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

**INGRID LINARES
BARKHORDARIAN LAW FIRM
COOPER BROWN LAW FIRM**

LN/md

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