

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

JAZMINE DELIFUS, *Applicant*

vs.

**COMMUNITY CARE AND REHABILITATION CENTER;
AIU INSURANCE COMPANY, administered by CORVEL, *Defendants***

**Adjudication Number: ADJ17705798
Riverside District Office**

**OPINION AND ORDERS
DISMISSING PETITION
FOR RECONSIDERATION
AND DENYING PETITION
FOR REMOVAL**

Applicant's attorney, John R. Ramirez (SBN 201939) and The Ramirez Firm, has filed a Petition for Reconsideration in the above captioned case, wherein, Mr. Ramirez objected to an Order taking the matter off calendar. Specifically, in the Petition, Mr. Ramirez alleges that he is entitled to the unpaid portion of attorney's fees under Labor Code¹ section 5710; Mr. Ramirez seeks to proceed to a trial on the issue of attorney's fees.

The WCJ filed a Report recommending that the Petition for Reconsideration be dismissed as the Order taking the matter off calendar was a non-final order. To the extent that the petition seeks removal, the WCJ recommended that the petition be denied as applicant failed to demonstrate irreparable harm or significant prejudice.

We have considered the allegations in the Petition for Reconsideration and the contents of the Report, and we have reviewed the record. Based upon our review of the record, we will dismiss applicant's Petition for Reconsideration as applicant seeks reconsideration of a non-final order. We will treat the Petition as seeking removal and deny removal as Mr. Ramirez failed to demonstrate irreparable harm, significant prejudice, or that reconsideration will not be an adequate remedy. (Cal. Code Regs., tit. 8, § 10955.)

¹ All future references are to the Labor Code unless noted.

FACTS

This case has not proceeded to an evidentiary hearing. Under our authority in section 5301, we take judicial notice of the Electronic Adjudication Management System (“EAMS”) adjudication file and for purpose of deciding applicant’s Petition, we have accepted the factual assertions in the Petition for Reconsideration as true.²

On June 7, 2024, applicant’s attorney filed a petition for attorney’s fee pursuant to section 5710. Applicant’s attorney represented that he personally represented applicant at deposition, and requested a fee award of one hour of preparation time and one hour of actual deposition time. (Petition for Benefits Pursuant to California Labor Code 5710 and Propose Order, p.1, June 7, 2024.) Applicant requested a fee issue at the hourly rate of \$425.00 per hour, or \$850.00 total.

On June 11, 2024, the workers’ compensation administrative law judge (WCJ) issued an order reducing the hourly rate to \$400.00 per hour and ordered defendant pay \$800.00 as a reasonable fee. The order was served upon applicant via designated service and contained a self-destruct clause advising that a timely objection within 15 days would void the order. Accordingly, the dispute in this matter is over \$50.00.

On June 12, 2024, applicant filed an objection letter along with a declaration of readiness to proceed to a mandatory settlement conference on the issue of 5710 fees.

The matter proceeded to hearing on August 14, 2024. The WCJ ordered the matter taken off calendar over applicant’s attorney’s objection and deferred the 5710 issue. (Minutes of Hearing, August 14, 2024.) A proof of service was filed by defendant on August 16, 2024, which indicated service of the August 14, 2024 minutes; however, the proof of service is misdated, stating that the August 2024 minutes were served on June 17, 2024, which is impossible.

On September 24, 2024, applicant’s attorney filed an untimely petition for reconsideration from the order taking the matter off calendar. However, and because no proper proof of service of the August 2024 minutes of hearing has been filed, we will treat the petition as timely.

² WCAB Rule 10515 (Cal. Code Regs., tit. 8, § 10515) states that: “Demurrers, petitions for judgment on the pleadings and petitions for summary judgment are not permitted.” We wish to make clear that under our power in section 5301, we accept Mr. Ramirez’s allegations solely to explain why Mr. Ramirez’s Petition is without merit.

DISCUSSION

I.

Preliminarily, we note that former section 5909 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.
- (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.

(§ 5909.)

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 September 30, 2024, and 60 days from the date of transmission is Friday, November 29, 2024, which is a state holiday and thus by operation of law, the date this decision is due is Monday, December 2, 2024. (Cal. Code Regs., tit. 8, § 10600(b).) This decision is issued by or on Monday, December 2, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on September 30, 2024, and the case was transmitted to the Appeals Board on September 30, 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 September 20, 2024.

II.

As we previously stated in our En Banc decision in *Ledezma v. Kareem Cart Commissary and Mfg.*, and further emphasized in our Significant Panel Decision of *Reed v. County of San Bernardino* (2024), ADJ17850714, 89 Cal.Comp.Cases ___, 2024 Cal.Wrk.Comp. LEXIS 69:

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, **trial setting**, venue, or similar issues.

(*Ledezma v. Kareem Cart Commissary and Mfg.*, (2024) 89 Cal. Comp. Cases 462, 475 (En Banc, emphasis in original).)

Not only did we make clear in *Ledezma* that *orders regarding trial setting are not final orders*, but we also made clear that *seeking reconsideration of non-final orders is sanctionable*. (See generally, *id.*; see also, *Ledezma v. Kareem Cart Commissary and Mfg.*, (2024) 89 Cal. Comp. Cases 549 (En Banc) [“ORDER IMPOSING SANCTIONS AND COSTS”].)

Here, Mr. Ramirez improperly filed a Petition for Reconsideration in response to a non-final order. However, while the attempt to seek reconsideration was without merit, it does not appear that the Petition was filed for an improper purpose such as halting proceedings at the trial level. That is, Mr. Ramirez’s objective was to proceed to trial as quickly as possible, and all parties have the right to seek such relief as appropriate. Thus, for the purpose of this decision, we will assume that the filing of a petition for reconsideration rather than one for removal was merely a careless error. Accordingly, we do not take up the issue of sanctions *at this time*.

Instead, we continue to admonish applicant’s attorney John R. Ramirez (SBN 201939) and The Ramirez Firm that any future petition challenging a non-final order such as an order taking the matter off calendar must be filed as a petition for removal and that this conduct may be subject to sanctions under section 5813 and WCAB Rule 10841 (Cal. Code Regs., tit. 8, § 10421).

Mr. Ramirez has filed a petition for reconsideration from orders taking the matter off calendar in at least one other pending case. (See *Amezcuca v. Milgard Windows Manufacturing, Inc.*, ADJ19104112, et. al.) We are admonishing Mr. Ramirez for the **fourth and final** time here. To be clear, Mr. Ramirez’s conduct in this and other cases is sanctionable. We have thus far restrained from issuing a notice of intent to impose sanctions and chosen instead to admonish Mr. Ramirez to review the petitions that he has filed and to take appropriate action to correct his mistakes. If Mr. Ramirez does not wish to take action in response to this admonishment, the issue of sanctions may be raised.

III.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers’ Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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, § 10843(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, § 10843(a).)

Whether to bifurcate an issue for trial is within the discretion of the WCJ, who may order bifurcation upon a showing of good cause.

(a) The parties shall submit for decision all matters properly in issue at a *single trial* and produce at the trial all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense. However, a workers' compensation judge may order that the issues in a case be bifurcated and tried separately upon a showing of good cause.

(Cal. Code Regs., tit. 8, § 10787(a) (Emphasis added).)

As bifurcation is within the discretion of the trial judge, upon removal, a party must show that the trial judge abused their discretion. This requires a showing that the WCJ exercised their discretion “. . . in an arbitrary, capricious, or patently absurd manner that results in a manifest miscarriage of justice.” (*People v. Lancaster*, (2007) 41 Cal. 4th 50, 71; *People v. Goldsmith*, (2014) 59 Cal. 4th, 258, 266.)

Here, Mr. Ramirez seeks a trial over the amount of \$50.00. We agree with the WCJ that under these circumstances, judicial economy would best be served by trying such a dispute along with the case-in-chief as part of a single trial. Indeed, as WCAB 10787(a) makes abundantly clear, parties must submit all matters at issue at *a single trial*. (Cal. Code Regs., tit. 8, § 10787(a).)³ Allowing this matter to proceed to a trial and potentially, reconsideration, could cause significant delay of a decision on benefits in this matter, which would not further the Appeals Board's constitutional mandate to accomplish substantial justice expeditiously. Here, Mr. Ramirez failed to demonstrate that the Order taking the matter off calendar caused irreparable harm, significant prejudice, or that reconsideration will not be an adequate remedy. (Cal. Code Regs., tit. 8, § 10955.)

³ We again emphasize that WCAB Rule 10515 (Cal. Code Regs., tit. 8, § 10515) prohibits demurrers, petitions for judgment on the pleadings, and petitions for summary judgment. This means that when an issue is submitted to a WCJ for decision, a record must be created and evidence must be admitted pursuant to WCAB Rule 10787 (c) (Cal. Code Regs., tit. 8, § 10787 (c)) to support the WCJ's decision. (See (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc) [decisions of the Appeals Board “must be based on admitted evidence in the record”].)

Accordingly, we dismiss applicant's Petition for Reconsideration as applicant seeks reconsideration of a non-final order taking this matter off calendar. We treat the petition as one seeking removal and deny removal.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the September 4, 2024 Order taking the matter off calendar is **DISMISSED**.

IT IS FURTHER ORDERED that applicant's Petition for Removal of the September 4, 2024 Order taking the matter off calendar is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING, NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 2, 2024

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

**JAZMINE DELIFUS
THE RAMIREZ FIRM
LEWIS BRISBOIS BISGAARD & SMITH 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*