

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

**JORGE TERRERO SALINAS, *Applicant***

**vs.**

**PERFORMANCE CONTRACTING INC.:  
insured by ARCH INDEMNITY INSURANCE COMPANY administered by  
GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ15624999  
Stockton District Office**

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

Defendant seeks removal and/or reconsideration in response to the Order issued by the workers' compensation administrative law judge's (WCJ's) on February 8, 2024, denying defendant's motion for an order taking off calendar, continuing the mandatory settlement conference (MSC), and closing discovery.

We received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition For Removal (Report) recommending that the Petition for Removal be ordered dismissed and denied.

We received a request for permission to file a supplemental pleading and a supplemental pleading from defendant, which we accept and consider. (Cal. Code Regs., tit. 8, § 10964.) In its supplemental pleading and subsequent response to the WCJ, defendant acknowledges that it mistakenly filed in the alternative and admits that the petition was properly one for removal.

We have considered the allegations of the Petition for Reconsideration and/or Removal, applicant's Answer, and the contents of the Report, and have reviewed the record in this matter. For the reasons discussed below, we will dismiss defendant's petition to the extent that it seeks reconsideration and deny it as a Petition for Removal.

## FACTS

Applicant sustained a specific injury arising out of and in the course of employment (AOE/COE) to his left shoulder while employed by defendant on October 25, 2021, as an insulation worker.

On February 7, 2024, applicant, applicant's attorney, and defendant's attorney appeared at the MSC. The WCJ continued the matter to March 20, 2024. The Other/Comments section states:

"Parties are to complete the Pre-Trial Conference Statement which shall be emailed to the WCJ at 8:30a.m. on the day of the hearing of 3/20/2024. Discovery is closed as of the MSC held on 2/07/2024. Defendant's motion for OTOC is denied due to failure to file a DOR objection, timely and prior to the MSC held on 2/07/2024." (Minutes of Hearing, 2/8/2024.)

## DISCUSSION

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; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (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 WCJ's decision solely resolves an intermediate procedural or evidentiary issue or issues. The decision does not determine any substantive right or liability and does not determine a threshold issue. Accordingly, it is not a "final" decision and the petition will be dismissed to the extent it seeks reconsideration.

We will also deny the petition to the extent it seeks removal. 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 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*.) 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, defendant is contesting that the February 7, 2024, MSC was not taken off calendar and that the WCJ closed discovery. We are not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner.

Thus, we dismiss the Petition as one for reconsideration, and deny it as one for removal.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

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

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



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

**April 19, 2024**

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

**JORGE TERRERO SALINAS  
CARTY LAW OFFICE  
SAMUELSEN, GONZALEZ, VALENZUELA & BROWN**

**DLM/oo**

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