

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

LUCIA ORTIZ CAMPOS, *Applicant*

vs.

**THEKEY MANAGEMENT LLC, insured by SAFETY NATIONAL
CASUALTY CORPORATION, administered by GALLAGHER BASSETT
SERVICES, INC., *Defendants***

**Adjudication Number: ADJ19352869
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Applicant seeks removal in response to the Findings and Order issued by the workers' compensation administrative law judge (WCJ) on September 4, 2024, wherein the WCJ found in pertinent part that Qualified Medical Evaluator (QME) panel number 7705175 is valid.

Applicant contends that panel number 7705175 should be invalidated because defendant served the notice regarding delay of workers' compensation benefits (delay notice) on applicant and not on her attorney; and that applicant is entitled to examine defendant's insurance adjustor at trial.

We received an answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that we deny removal.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto.

Based on our review of the record, for the reasons discussed in the WCJ's Report, and for the reasons stated below, we will treat applicant's Petition as one for reconsideration and we will deny reconsideration.

I.

Former Labor Code section¹ 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.

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 30, 2024, and 60 days from the date of transmission is Sunday, December 29, 2024. The next business day that is 60 days from the date of transmission is Monday, December 30, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, December 30, 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

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.

act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on October 30, 2024, and the case was transmitted to the Appeals Board on October 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 October 30, 2024.

II.

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 Bd. en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment (AOE/COE), 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 orders.

Here, the Findings and Order included a finding that applicant sustained injury arising out of and in the course of employment (AOE/COE) to her left shoulder, back, and left index finger. Injury AOE/COE is a threshold issue fundamental to the claim for benefits. Accordingly, the WCJ’s decision is a final order subject to reconsideration rather than removal. Although the F&O contains a finding that is final, applicant only challenges the WCJ’s finding that QME panel

number 7705175 is valid. This is an interlocutory finding subject to the removal standard rather than reconsideration pursuant to the discussion above. (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 substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); *Cortez, supra*; *Kleemann, supra.*) Additionally, 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, the WCJ's Order finding that panel number 7705175 is valid does not exceed the wide discretion afforded the WCJ to determine an appropriate remedy. (See *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803, 1815 (Appeals Bd. en banc).) While we agree that the WCAB Rules require that a party's attorney be served with all documents, the lack of service on applicant's attorney can be reasonably explained by the timing of service of his notice of representation on June 3, and the service of the delay notice on June 4, 2024. Service of the delay notice was proper on applicant on June 4, 2024, and it is undisputed that the delay notice was received by applicant. In particular, there is nothing in the Labor Code to suggest that the validly served notice somehow became invalid because defendant had not yet received applicant's attorney's notice of representation. Thus, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy. Therefore, we deny applicant's Petition.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 30, 2024

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

**LUCIA ORTIZ CAMPOS
LAW OFFICE OF NADEEM MAKADA
COLEMAN CHAVEZ & ASSOCIATES
EDD**

JB/pm

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