

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

PEDRO CHAVEZ *Applicant*

vs.

WANDA GROUP, INC.;
EMPLOYERS PREFERRED INSURANCE COMPANY, administered by EMPLOYERS
INSURANCE GROUP, *Defendants*

Adjudication Number: ADJ12389829
Santa Ana District Office

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Apparently in response to the Notice of Intention (NIT) to dismiss applicant's case issued by the workers' compensation administrative law judge (WCJ) on December 19, 2023, applicant filed a Petition For Reconsideration asserting, that he be given an opportunity to pursue his case.

We did not receive an Answer from defendant. We received a Report and Recommendation (Report) from the WCJ, wherein he recommends that the Petition for Reconsideration be denied or dismissed and returned to the trial level for further proceedings.

We have considered the allegations of applicant's Petition for Reconsideration and the contents of the Report. Based on our review of the Petition, and as discussed below, we will dismiss the Petition for Reconsideration so that the WCJ may consider it as applicant's objection to the NIT in the first instance.

BACKGROUND

Applicant claimed to have sustained a cumulative injury from June 3, 2018 to April 15, 2019, to his back including back muscles, spine and spinal cord, shoulders including scapula and

clavicle, knee (patella), nervous system-stress, and nervous system-psychiatric/psych while employed as a cook by defendant.¹

On December 13, 2023, defendant filed and served a petition to dismiss an inactive case based on applicant's failure to prosecute his claim pursuant to WCAB Rule 10550(d) (Cal. Code Regs., tit. 8, § 10550(d)).

On December 19, 2023 the WCJ issued a Notice of Intention To Dismiss Case (NIT) dated December 19, 2023 which states,

“IT APPEARING THAT defendants [*sic*] Wanda Group, Inc. and Employers Insurance Group have filed their Petition seeking an Order of this court dismissing the above-captioned case pursuant to California Code of Regulations section 10550; and,

GOOD CAUSE APPEARING,

NOTICE IS HEREBY GIVEN that an Order Dismissing the above-entitled case, without prejudice, shall issue twenty (20) days from the date of service hereof, unless good cause to the contrary is shown in writing within said time. **HOWEVER, IT SHALL BE THE RESPONSIBILITY OF PETITIONER, NO SOONER THAN THE 30TH DAY FOLLOWING DATE OF SERVICE OF THIS NOTICE OF INTENTION, TO: 1) FILE AND SERVE A DECLARATION UNDER PENALTY OF PERJURY SETTING FORTH WHETHER THEY HAVE RECEIVED OR ARE AWARE OF ANY OPPOSITION TO THIS NOTICE OF INTENTION HAVING BEEN MADE, FILED OR SERVED; AND, 2) PROOF OF SERVICE OF THIS NOTICE OF INTENTION; AND, 3) A PROPOSED FINAL ORDER OF DISMISSAL OF CASE WITHOUT PREJUDICE”** (Notice of Intention To Dismiss Case, 12/19/2023.)

On January 2, 2024, applicant's attorney filed a Petition for Reconsideration.

DISCUSSION

A petition for reconsideration may properly be taken only from a “*final*” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903, emphasis added.) 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*

¹ On May 3, 2021, applicant's attorney filed an amended application with applicant's new address.

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.

The WCJ may issue a notice of intention (NIT) for any proper purpose. (Cal. Code Regs., tit. 8, § 10832 (a).) A proper purpose includes, but is not limited to, (1) Allowing, disallowing or dismissing a lien; (2) Granting, denying or dismissing a petition; (3) Sanctioning a party; (4) Submitting the matter on the record; or (5) Dismissing an application. (*Id.*) Pursuant to WCAB Rule 10832 (c), if an objection is filed within the time provided, the Workers' Compensation Appeals Board, in its discretion may: (1) Sustain the objection; (2) Issue an order consistent with the notice of intention together with an opinion on decision; or set the matter for hearing. (Cal. Code Regs., tit. 8, § 10832 (c).)

Here, on December 19, 2023, the WCJ issued a NIT in response to defendant's petition to dismiss. Thereafter, applicant's attorney filed the petition for reconsideration. However, no final order has issued, so that reconsideration was premature. Thus, the WCJ should consider the Petition as a timely filed objection to the NIT in the first instance.

Accordingly, we dismiss applicant's petition for reconsideration and return the matter to the WCJ for further proceedings. Upon return of this matter to the trial level, we recommend that the WCJ treat applicant's petition as an objection to the NIT, and as appropriate, set a hearing so that applicant can provide evidence in support of his arguments and create a record upon which a decision can be made by the WCJ. After the WCJ issues a decision, any aggrieved person may then timely seek reconsideration of that decision.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 4, 2024

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

**PEDRO CHAVEZ
LAW OFFICE OF JAMES HARMON
MICHAEL SULLIVAN AND ASSOCIATES**

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*