

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

**VERONICA RINCON, *Applicant***

**vs.**

**THE PERMANENTE MEDICAL GROUP, INC. Permissibly Self Insured;  
administered by ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Numbers: ADJ11612609; ADJ12184014  
San Jose District Office**

**OPINION AND ORDER  
DENYING PETITION  
FOR RECONSIDERATION**

Applicant, in pro per, seeks reconsideration of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on December 22, 2023. By the F&O, the WCJ found that applicant while employed on May 31, 2017 (ADJ12184014) and during the period from May 31, 2016 through May 31, 2017 (ADJ11612609) sustained an injury arising out of and arising in the course of employment to the bilateral wrists via carpal tunnel and cubital tunnel syndromes in case number ADJ11612609, and claims to have sustained an injury arising out of and in the course of employment to the psyche, left shoulder and neck as to both claims; and that applicant had to attend a re-evaluation with agreed medical evaluator (AME) Ronald Fujimoto, D.O.

Applicant contends that she should not have to attend the re-evaluation with Dr. Fujimoto, because he makes her feel unsafe and hurt her physically and mentally.

We have not received an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that the petition be denied.

We have considered the allegations of applicant's Petition for Reconsideration and the contents of the WCJ's Report. Based on our review of the record, and for the reasons stated below, we will deny it as one seeking reconsideration.

## DISCUSSION

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. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd. (Maranian)* (2000) 81 Cal.App.4th 1068, 1075 [65 Cal.Comp.Cases 650].)

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 F&O includes a finding regarding a threshold issue, although the decision contains a finding that is final, here the petitioner only challenges an interlocutory finding/order in the decision. That is, applicant’s Petition challenges the WCJ’s decision to order or compel applicant to attend a re-evaluation with AME Dr. Fujimoto. 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, for the reasons stated in the WCJ's report, 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.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

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



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

**March 5, 2024**

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

**VERONICA RINCON  
WITKOP LAW  
ROBERT BLEDSOE**

**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*