

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

**CHARLENE ADAMS, *Applicant***

**vs.**

**ST. FRANCIS MEMORIAL HOSPITAL, permissibly self-insured,  
adjusted by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ13108823  
Oakland District Office**

**OPINION AND ORDER  
DISMISSING PETITION  
FOR RECONSIDERATION**

Defendant seeks reconsideration of our Order and Order Granting Reconsideration (Opinion and Order) and our Decision After Reconsideration, issued on March 10, 2025, wherein we rescinded a workers' compensation administrative law judge's (WCJ) Findings and Order (F&O) of November 26, 2024, and returned this matter to the trial level for further proceedings.

Defendant contends, in essence, that the Appeals Board erred in returning the matter for further development of the record. Defendant also appears to suggest that rescinding an order is tantamount to making a finding of fact, and contends that the Appeals Board erred in so doing.

We received an Answer from applicant.

We have considered the allegations in the Petition and the Answer.

Based on our review of the record, the petition seeks reconsideration of a non-final order and will be dismissed.

**I.**

Preliminarily, we note that former Labor Code section<sup>1</sup> 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:

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<sup>1</sup> All statutory references are to the Labor Code unless otherwise stated.

(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 April 8, 2025, and 60 days from the date of transmission is Saturday, June 7, 2025. The next business day that is 60 days from the date of transmission is Monday, June 9, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday, June 9, 2025, 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 shall be notice of transmission.

Here, the Petition seeks reconsideration of our prior decision and therefore no report and recommendation was required to be filed by a WCJ. We find no other notice to the parties of the transmission of the case to the Appeals Board in EAMS. Thus, we conclude that the parties were not provided with the notice of transmission required by section 5909(b)(1). While this failure to

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<sup>2</sup> 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.

provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on April 8, 2025.

## II.

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 Appeals Board’s Opinion and Order does not determine any substantive right or liability and does not determine a threshold issue. On the contrary, the Appeals Board’s Opinion and Order **rescinded** the Findings and Order issued by the WCJ. Accordingly, it is not a “final” decision and defendant’s petition for reconsideration will be dismissed.

We note that the recent en banc<sup>3</sup> decision issued by the Appeals Board in *Ledezma v. Kareem Cart Commissary and Mfg.* (2024) 89 Cal.Comp.Cases 549 (Appeals Bd. en banc), affirmed that filing petitions for reconsideration on interlocutory orders may be considered “frivolous and filed for the purposes of delay in violation of section 5813 and WCAB Rule 10421.” (*Id.*, at 555.) “The petition for removal is the method to seek review of interlocutory orders, those orders that do not rise to the level of final determinations. Examples include, but are not limited

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<sup>3</sup> En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, § 10325(a); *City of Long Beach v. Workers’ Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

to, discovery orders, orders granting or denying continuances, requests for a trial judge to recuse himself or herself, and any other action that does not finally adjudicate the substantive rights or liabilities of the aggrieved party.” (*Id.*)

Accordingly, we dismiss defendant’s Petition for Reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that defendant’s Petition for Reconsideration is **DISMISSED**.

**WORKERS’ COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



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

**JUNE 9, 2025**

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

**CHARLENE ADAMS  
BOXER GERSON  
TOBIN LUCKS**

***JB/pm***

I certify that I affixed the official seal of  
the Workers’ Compensation Appeals  
Board to this original decision on this date.  
CS