

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

**ESTHER LEMUS SALDANA (decedent);
FELIPE SALDANA RODRIGUEZ and
FELIPE SALDANA (dependents), *Applicants***

vs.

**TAO TAI HOMES CORPORATION;
INSURANCE COMPANY OF THE WEST, *Defendants***

**Adjudication Number: ADJ12910087¹
Oakland District Office**

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

Defendant seeks reconsideration of the Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration (Decision) issued by the Workers' Compensation Appeals Board (Appeals Board) on September 2, 2025, wherein the Appeals Board granted applicant's Petition for Reconsideration; rescinded the Findings of Fact (Findings) issued on May 14, 2025 by a workers' compensation administrative law judge (WCJ); and, returned this matter to the trial level for further proceedings consistent with the Decision.

Defendant contends that there was no substantial evidence of a cumulative injury found in the *inter vivos* claim filed by decedent and therefore, the death case application for adjudication filed by dependents is barred by Labor Code² section 5406, subdivision (b) (section 5406(b)) because it was filed more than 240 weeks from the accepted and specific date of injury of February 4, 2019.

Applicant did not file an answer to the Petition for Reconsideration. The WCJ filed a brief Report and Recommendation on Petition for Reconsideration (Report) but did not address the merits of the petition as it challenges a decision of the Appeals Board.

¹ ADJ12910087 is the adjudication number that was assigned to decedent's *inter vivos* application for adjudication of claim. The Application for Adjudication of Claim (Death Case) filed on January 2, 2024 by dependents Felipe Saldana Rodriguez and Felipe Saldana (dependents or applicants), has yet to be assigned a separate adjudication number, but this decision is issued in *both* cases.

² All further references are to the Labor Code unless otherwise noted.

We have reviewed the record in this case, and the allegations of the Petition for Reconsideration. We dismiss the Petition for Reconsideration as the Decision was a non-final order. We treat defendant's petition as a Petition for Removal and for the reasons set forth below, we deny Removal.

I.

Former Labor Code section 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, Labor Code 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 Labor Code 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 13, 2025, and 60 days from the date of transmission is December 12, 2025. This decision is issued by or on December 12, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on September 26, 2025, and the case was transmitted to the Appeals Board on October 13, 2025. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under Labor Code section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on October 13, 2025.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office.³ Thus, we conclude that the parties were not provided with accurate notice of transmission as required by Labor Code section 5909(b)(1). While this failure to 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 October 13, 2025.

II.

A petition for reconsideration is only properly taken from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) “An order, decision, or award of the WCAB or workers' compensation judge is final for purposes of a petition for reconsideration where it determines any substantive right or liability of those involved in the case.” (*Rymer v. Hagler* (1989) 211 Cal. App. 3d 1171, 1180; see *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal. App. 3d 528, 534–535 [45 Cal.Comp.Cases 410].) In other words, an order is final when it determines a “threshold” issue 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. (*Maranian, supra*, 81 Cal.App.4th at p. 1075; *Rymer, supra*, 211 Cal.App.3d at p. 1180.)

The Decision rescinded the WCJ's Findings and returned this matter to the trial level for further proceedings. An order returning the case to the trial level for further hearing is a procedural

³ We note that the WCJ erroneously stated that this matter was transmitted to the Appeals Board simultaneously with the service of the Report. (Report, p. 2.)

order that does not finally determine any issue, whether related to the substantive rights or liabilities of the parties or to a threshold issue, and is therefore not a final order subject to review. (*Gumilla v. Industrial Acci. Com.* (1921) 187 Cal. 638, 639-640; *Hikida v. Workers' Comp. Comp. Appeals Bd.* (2000) 12 Cal. App. 5th 1249, 1255 [82 Cal.Comp.Cases 679]; see *Pointer, supra*, 104 Cal.App.3d at p. 534.) In other words, defendant is premature in its request for reconsideration of whether the death claim application filed by dependents is barred by section 5406(b).

Accordingly, we dismiss the Petition for Reconsideration because the Decision is not a final order.

III.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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, § 10843(a); see also *Cortez, supra*; *Kleemann, supra*.) In addition, 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, § 10843(a).)

In this matter, defendant appears to argue that if the cause of an injured workers' death is not somehow developed and proven prior to the filing of a death claim application, then the dependents who file the death claim are somehow legally precluded from developing the record as to the cause of decedent's *death* once the application is filed. (Petition for Reconsideration, p. 4.) For obvious reasons of law and logic, we disagree. We reiterate that an *inter vivos* claim and a death claim are separate "transactions," i.e., ***different injuries*** under section 5303. (See *Glavich v. Industrial Acci. Com.* (1941) 44 Cal.App.2d 517, 521-523 [6 Cal.Comp.Cases 123]; Decision, p. 7.)

Consequently, the cause of the injury claimed in the *inter vivos* case may or may not be the cause of the decedent's death. As stated in the Decision, "[t]he only evidence addressing decedent's cause of death is the death certificate, which we conclude is not substantial medical evidence as to the cause of decedent's death. (Def. Exh. A, Death Certificate.))" (Decision., p. 6.)

The other medical evidence in the record was produced in decedent's *inter vivos* case prior to her death and raises more questions than certainty regarding the cause of her impairment. (See eg., Def. Exh. J, Deposition of Panel Qualified Medical Evaluator in the *inter vivos* case, Victor Kerenyi, D.C., taken June 21, 2021, pp. 13-15, 17-18, 34, 38-39, 41-42, 43-45, 56, 61-62, 65-69 [QME found decedent credible; found decedent medically ineligible to engage in gainful employment; but, was unable to articulate the cause of decedent's increased impairment over time].)

(*Ibid.*)

Therefore, we were compelled to rescind the Findings and return this matter to the trial level for further proceedings. Given that *a death claim application is a new claim of injury involving different applicants*, no prejudice or harm can result from allowing the death claim to proceed including the development of the record in that claim as to the cause of decedent's death, which again, may or may not have been caused by the same injury alleged, accepted, and/or established in decedent's *inter vivos* case. (See Decision, p. 7 [direction to the parties to obtain a separate adjudication file and number for the death case].) Indeed, to prevent the death claim from proceeding as the separate claim that it is would be an obvious violation of due process for all parties.

Next, we reassure defendant that due to the lack of evidence in the death claim action, the Decision could not have *and did not* make any finding of fact as to whether dependents' death claim application is or is not barred by section 5406(b). (Decision, p. 7 ["Although we are unable to reach the issue of whether the death case Application was filed within 240 weeks of the "date of injury" under section 5406(b)..."].) We note that the Decision clarified the decision in *Berkebile v. Workers' Comp. Appeals Bd.* (1983) 144 Cal.App.3d 940 [48 Cal.Comp.Cases 438], for the benefit of the WCJ. (*Ibid.*) However, we could not have *and did not* apply the legal standards associated with a determination of whether a death claim application was timely filed under section 5406(b) in this case. (*Ibid.*)

Therefore, no prejudice or harm could have resulted from the Decision as to the issue of whether the death claim application is barred by section 5406(b), *or* how the applicable legal jurisprudence will be applied to the evidence if and/or once developed in the death claim.

Accordingly, we dismiss the Petition for Reconsideration as the Decision is not a final order subject to reconsideration and treat the petition as a Petition for Removal. We deny removal because defendant states no prejudice or harm, and certainly no substantial prejudice or irreparable

harm resulting from the rescission of the Decision or the return of these matters to the trial level for further proceedings as explained by the Decision and consistent with the Decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration issued by the Workers' Compensation Appeals Board on September 2, 2025, is **DISMISSED**.

IT IS FURTHER ORDERED that defendant's Petition for Removal of Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration issued by the Workers' Compensation Appeals Board on September 2, 2025 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 4, 2025

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

**FELIPE SALDANA RODRIGUEZ
FELIPE SALDANA
LAW OFFICES OF KNOPP & PISTIOLAS
D'ANDRE LAW, LLP**

AJF/mc

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