

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ANDREA CASTANEDA, *Applicant*

vs.

**GOOD SAMARITAN SHELTER; PRO CENTURY INSURANCE COMPANY,
administered by, ILLINOIS MIDWEST INSURANCE AGENCY, LLC, *Defendants***

**Adjudication Number: ADJ20437328
Santa Barbara District Office**

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

Defendant seeks reconsideration or in the alternative removal of the “Opinion and Orders Granting Petition for Reconsideration and Decision After Reconsideration” (Decision) issued on November 10, 2025, by the Workers’ Compensation Appeals Board.¹ In our Decision, we granted applicant’s Petition for Reconsideration and rescinded the Findings and Orders (F&O) issued on August 29, 2025, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant was not entitled to a remote psychiatric evaluation pursuant to Administrative Director Rule 46.3 (Cal. Code Regs., tit. 8, § 46.3) and ordered a replacement panel qualified medical evaluator (QME). In our Decision, we explained that the parties created no record other than the stipulation that the QME would only conduct appointments remotely, so that we could not decide the issue of whether good cause existed to replace him. We returned the matter to the trial level for further proceedings.

Defendant contends that further development of the record is not necessary.

We have not received an answer from applicant.

¹ Defendant filed its petition with the DWC District Office. In the future, defendant must follow WCAB Rule 10940(a) when seeking reconsideration of decisions of the Appeals Board. (Cal. Code Regs., tit. 8, § 10940(a).) In addition to filing the petition in the Electronic Adjudication Management System (EAMS), such petitions shall also be filed directly with the office of the Appeals Board.

We have considered the allegations of the Petition for Reconsideration and Removal. Based on the reasoning stated in our November 10, 2025 Decision, we will dismiss the Petition for Reconsideration as it seeks reconsideration of a non-final order. We will deny the Petition for Removal as defendant has not established substantial prejudice or irreparable harm.

DISCUSSION

I.

Former Labor Code² 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, 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.

(§ 5909.)

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 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 December 1, 2025, and 60 days from the date of transmission is Friday, January 30, 2026. This decision is issued by or on January 30, 2026, 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. Here, since the Petition seeks review of our decision, the WCJ did not

² All future references are to the Labor Code unless noted.

prepare a Report and Recommendation, and no other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with the notice of transmission 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 December 1, 2025.

II.

As stated in our en banc decision:

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, 260 Cal. Rptr. 76; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal. App. 3d 528, 534–535 [163 Cal. Rptr. 750, 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 [97 Cal. Rptr. 2d 418, 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.

(*Ledezma v. Kareem Cart Commissary and Mfg.*, (2024) 89 Cal. Comp. Cases 462, 475 (En Banc).)

Here, the Decision of the Appeals Board was to develop the record further. No final order issued, and thus, to the extent that defendant seeks reconsideration, the Petition is dismissed.

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, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) A petitioner must also 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).) Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10761.)

Here, and for the reasons discussed in our November 10, 2025 Decision, defendant has not established substantial prejudice or irreparable harm as a result of our direction to create a record pursuant to our constitutional mandate to provide due process. It is axiomatic that all participants must conduct a basic inquiry into the facts of their case and establish a formal record from which a decision can be made.

Accordingly, we dismiss the Petition for Reconsideration as it seeks reconsideration of a non-final order. We deny the Petition for Removal as defendant has not established substantial prejudice or irreparable harm.

For the foregoing reasons,

IT IS ORDERED that defendant’s Petition for Reconsideration of the Opinion and Orders Granting Petition for Reconsideration and Decision After Reconsideration issued on November 10, 2025, by the Workers’ Compensation Appeals Board is **DISMISSED**.

IT IS FURTHER ORDERED that defendant's Petition for Removal of the Opinion and Orders Granting Petition for Reconsideration and Decision After Reconsideration issued on November 10, 2025, by the Workers' Compensation Appeals Board is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 15, 2026

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

**ANDREA CASTANEDA
GHITTERMAN, GHITTERMAN & FELD
MULLEN & FILIPPI
OD LEGAL**

EDL/mt

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