

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

CHRISTIAN LEIJA, *Applicant*

vs.

**POLARIS INDUSTRIES; OLD REPUBLIC INSURANCE COMPANY,
administered by CORVEL CORPORATION, *Defendants***

**Adjudication Numbers: ADJ12941950; ADJ15580972
Long Beach District Office**

**OPINION AND ORDERS
DISMISSING PETITION FOR RECONSIDERATION
GRANTING PETITION FOR REMOVAL
AND DECISION AFTER REMOVAL**

Defendant seeks reconsideration of the Order Vacating Order Dismissing Case (Order) issued on June 3, 2026 by the workers' compensation administrative law judge (WCJ). Upon review of applicant's Petition for Reconsideration, filed on May 22, 2026, WCJ Zoellner from the Long Beach district office found good cause to vacate the Order Dismissing Case. The WCJ indicated the Order Dismissing Case was issued in error as the case is venued in Anaheim. The WCJ advised the parties to file for a hearing in Anaheim.

Defendant, in essence, requests that the Order Dismissing Case be reinstated.

We have not received an Answer from the applicant.

The Presiding WCJ (PWCJ) from the Anaheim district office issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that to the extent defendant's Petition for Reconsideration (Petition) requests reconsideration of WCJ Zoellner's Order, the Petition be dismissed as there is no final order and to the extent the Petition is deemed a request for removal, the Petition be denied as premature pending a hearing and creation of a record to enable determination of the disputed issue.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record and for the reasons discussed below, we will dismiss defendant's Petition as one for reconsideration, grant the Petition as one for removal, order that venue in case

number ADJ15580972 is transferred to the Long Beach district office, that case numbers ADJ15580972 and ADJ12941950 are consolidated, and that WCJ Zoellner is assigned to all proceedings in case numbers ADJ15580972 and ADJ12941950. We rescind the Order and substitute a new Order that vacates the Order Dismissing Case in ADJ15580972, except that we remove the reference to venue in the Anaheim district office.

DISCUSSION

I.

Preliminarily, former Labor section 5909.¹ 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.

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 under the Events tab 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 June 12, 2026, and 60 days from the date of transmission is August 11, 2026. This decision was issued by or on August 11, 2026, so that we have timely acted on the petition as required by section 5909(a).

¹ All section references are to the Labor Code, unless otherwise indicated.

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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on June 12, 2026, and the case was transmitted to the Appeals Board on June 12, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on June 12, 2026.

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, defendant seeks reconsideration of the WCJ’s Order to vacate a prior order dismissing the case. The WCJ’s decision to vacate an order dismissing a case solely resolves an intermediate procedural or evidentiary issue or issues. The decision does not determine any

substantive right or liability and does not determine a threshold issue. Accordingly, it is not a “final” decision and we will, therefore, dismiss defendant’s Petition for Reconsideration and treat the Petition as a Petition for Removal.

III.

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, applicant initially filed an Application for Adjudication of Claim (Application) for a back injury sustained on February 3, 2017, while employed by defendant, Kelly Services. This case was assigned case number ADJ12941950 and venued in Long Beach. Thereafter, defense counsel for Kelly Services filed an Application for a cumulative injury against the subsequent employer, Polaris Industries, which was assigned case number ADJ15580972 and venued in Anaheim. Nonetheless, although the two cases were filed in different venues, multiple conferences in both cases were conducted at the Long Beach district office by WCJ Zoellner.

We further observe that Workers’ Compensation Appeals Board (WCAB) Rule 10396(a) provides:

- (a) Consolidation of two or more related cases, involving either the same injured employee or multiple injured employees, rests in the sound discretion of the Workers' Compensation Appeals Board. In exercising that discretion, the Workers' Compensation Appeals Board shall take into consideration any relevant factors, including but not limited to the following:
 - (1) Whether there are common issues of fact or law;
 - (2) The complexity of the issues involved;
 - (3) The potential prejudice to any party, including but not limited to whether granting consolidation would significantly delay the trial of any of the cases involved;
 - (4) The avoidance of duplicate or inconsistent orders; and
 - (5) The efficient utilization of judicial resources.

Consolidation may be ordered for limited purposes or for all purposes.

(Cal. Code Regs., tit. 8, § 10396(a).)

Subsection (b) further provides that consolidation of two or more cases may be ordered by the Appeals Board either on its own motion or based upon a petition filed by one of the parties. (Cal. Code Regs., tit. 8, § 10396(b).)

Here, two cases have been filed with respect to applicant involving potential liability by the same defendant, and alleging injury to the same body part, the back. As there are common issues of fact, to avoid duplicate or inconsistent orders, and for efficient utilization of judicial resources, we conclude that it is necessary to consolidate the two cases on our own motion.

Section 5700 requires that where a hearing is adjourned it, “shall be continued to be heard by and shall be concluded and the decision made by the workers’ compensation judge who previously heard it.” (Lab. Code, § 5700.) WCAB Rule 10346(c), as enabled by section 5700 provides, “To the extent practicable and fair, supplemental proceedings shall be assigned to the workers’ compensation judge who heard the original proceedings.” (Cal. Code Regs., tit. 8, § 10346 (c).)²

It is a principle of statutory construction that the word “shall,” as used in the Labor Code, ordinarily connotes a mandatory duty. (Lab. Code, § 15 [“‘[s]hall’ is mandatory and ‘may’ is permissive”]; see also, *Jones v. Tracy School Dist.* (1980) 27 Cal.3d 99, 109; *Morris v. County of Marin* (1977) 18 Cal.3d 901, 907.) Applying this principle to section 5700, the same WCJ must continue to be assigned to hear any subsequent matters related to issues previously heard by them.

Applying the legal principles above, we conclude that in addition to consolidating the two cases, both cases must be venued in Long Beach so that WCJ Zoellner shall continue to hear the matters. Otherwise, significant prejudice or irreparable harm will result, and defendant will not have an adequate remedy upon reconsideration. Thus, we grant the Petition as one for removal.

Accordingly, we dismiss defendant’s Petition as one for reconsideration, grant the Petition as one for removal, order that venue in case number ADJ15580972 is transferred to the Long Beach district office, that case numbers ADJ15580972 and ADJ12941950 are consolidated, and that WCJ Zoellner is assigned to all proceedings in case numbers ADJ15580972 and ADJ12941950. We rescind the Order and substitute a new Order that vacates the Order Dismissing

² Subdivision (d) states that: “Any conflict that may arise between presiding workers’ compensation judges of different district offices respecting assignment of a case, venue or priority of hearing where there is conflict in calendar settings will be resolved by a deputy commissioner of the Appeals Board.” (Cal. Code Regs., tit. 8, § 10346(d).)

Case in ADJ15580972, except that we remove the reference to venue in the Anaheim district office.

For the foregoing reasons,

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

IT IS ORDERED that defendant's Petition for Removal is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that venue in Case Number ADJ15580972 is transferred to the Long Beach district office.

IT IS FURTHER ORDERED that Case Numbers ADJ15580972 and ADJ12941950 are **CONSOLIDATED**.

IT IS FURTHER ORDERED that Case Numbers ADJ15580972 and ADJ12941950 are assigned to WCJ Zoellner.

IT IS FURTHER ORDERED the Order Vacating Order Dismissing Case issued on June 3, 2026, is **RESCINDED**, and the following is **SUBSTITUTED** therefor:

ORDER

IT APPEARING THAT based on the Petition for Reconsideration filed by applicant on May 22, 2026, and

GOOD CAUSE APPEARING;

IT IS ORDERED THAT the Order Dismissing Case in ADJ15580972 is hereby **VACATED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 11, 2026

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

**CHRISTIAN LEIJA
LAW OFFICES OF NORMAN HOMEN
ALBERT AND MACKENZIE
LAW OFFICES OF PARKER IRWIN**

JL/abs

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