

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

ELIZABETH CURRY WHITE, *Applicant*

vs.

**BERKELEY UNIFIED SCHOOL DISTRICT;
INTERCARE, *Defendants***

**Adjudication Number: ADJ2513477 (OAK 0338923)
Oakland District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

On June 24, 2026, applicant, in pro per, filed a Petition for Reconsideration of the Order issued at hearing on June 22, 2026 by a presiding workers' compensation administrative law judge (PWCJ) wherein the PWCJ ordered that the case be taken off calendar.

Applicant argues in relevant part that her case be returned for a hearing for further proceedings.

The PWCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the petition be treated as a Petition for Removal from a nonfinal order taking this matter off calendar and be dismissed.

We did not receive an answer from defendant.

We have considered the allegations of the petition and the record in this matter. For the reasons discussed below, we dismiss reconsideration and deny removal.¹

¹ Commissioner Sweeney, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist was appointed in her place.

I.

Up through July 1, 2024, petitions for reconsideration were subject to former Labor Code² section 5909, which 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.)

During the period from July 2, 2024 through June 30, 2026, petitions for reconsideration were subject to former section 5909, which stated 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) (in effect from July 2, 2024 through June 30, 2026), 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 July 10, 2026, and 60 days from the date of transmission is September 8, 2026. This decision is issued by or on September 8, 2026, so that we have timely acted on the petition as required by section 5909(a) (in effect from July 2, 2024 through June 30, 2026).

Section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026) 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

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

5909(b)(2) (in effect from July 2, 2024 through June 30, 2026) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report by the PWCJ, the Report was served on July 10, 2026, and the case was transmitted to the Appeals Board on July 10, 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) (in effect from July 2, 2024 through June 30, 2026), because service of the Report in compliance with section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026) provided them with actual notice as to the commencement of the 60-day period on July 10, 2026.

II.

By way of background, applicant's claim for specific injury to her back on January 9, 2006 was settled by Compromise and Release with "open medical care" on December 14, 2007 and approved by a former WCJ on December 17, 2007. Applicant was represented by counsel at the time of the settlement.

At hearing on June 22, 2026, the PWCJ issued a Minute Order taking the matter off calendar. The Minute Order states: Applicant is entitled to FM [future medical] for back. This will not settle. (Minute Order of Mandatory Settlement Conference dated June 22, 2026.)

In the Report, the PWCJ states:

Ms. White filed a request for a hearing arguing that her case has never resolved, seeking medical care. A hearing occurred on April 12, 2026, at which hearing I determined that I needed to obtain Ms. White's records from the state record center to see if it ever resolved. I continued [the] hearing³ . . .

During the [June 22, 2026] hearing I advised Ms. White that her case was resolved with a compromise and release agreement with a right to future medical care but since currently she had no pending request for authorization for treatment outstanding the matter would be taken off calendar. Ms. White filed this petition for reconsideration from my decision to take the matter off calendar.

(Report, at pp. 1-2.)

On May 20, 2024, the former PWCJ issued an Order Declaring Applicant a Vexatious Litigant and Prefiling Order (Vexatious Litigant Order) pursuant to California Code of

³ The Report twice incorrectly states that the hearing was continued to June 30, 2026 when the hearing was continued to June 22, 2026.

Regulations, title 8, section 10430. (Cal. Code Regs., tit. 8, § 10430.)⁴ The Vexatious Litigant Order was not appealed and became final.

III.

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 PWCJ’s June 22, 2026 Minute Order taking this matter off calendar only resolves a non-final, intermediate procedural issue. The decision does not determine any substantive right or liability and does not determine a threshold issue. Accordingly, it is not a “final” decision. There are no other final decisions in this case from which applicant may properly seek reconsideration.

The PWCJ further states:

Since no final order issued at the June 22, 2026, hearing, Ms. White should have filed a petition for removal instead of a petition for reconsideration.

If this petition is treated as a petition for removal, it should be dismissed since there are no current pending issues to be heard that the district office has jurisdiction over. Ms. White presented no request for treatment, no utilization removal (sic) or an appeal from Independent Medical review.

⁴ Despite the June 22, 2026 Vexatious Litigant Order, the pre-filing procedures of Rule 10430 were not applied to the current proceedings.

(Report, at p. 2.)

Accordingly, we dismiss applicant's petition to the extent she seeks reconsideration.

Moreover, 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 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*.) 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, based upon the PWCIJ's analysis of the merits of the petitioner's arguments, 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. As stated by the PWCIJ, at hearing, applicant did not present any issue pertaining to the award of open medical treatment for her back: there was no request for treatment nor documentation of denial of treatment. Since the only action taking the case off calendar is not a final order, there cannot be any substantial prejudice or irreparable harm to applicant. If applicant has a justiciable issue, she should file a new declaration of readiness to proceed to a hearing (DOR).⁵ A DOR must indicate the issue(s) in dispute and, in this case, where the issue pertains to medical treatment, the DOR should be accompanied by all relevant medical reports and all letters from the insurance company about the issue(s) in dispute. However, having been declared a vexatious litigant, applicant is subject to the pre-filing procedures of Rule 10430.

Accordingly, even treating applicant's petition as one seeking removal, we deny removal.

⁵ We note that there are documents included with the petition including a DOR form signed by applicant and dated June 24, 2026, and this DOR describes "newly discovered information after minutes order issued" and communication with defendant representatives regarding an alleged refusal of medical care. It does not appear that the district office has processed or otherwise addressed the DOR dated June 24, 2026. When it does so, the procedures pursuant to Rule 10430 should be applied.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 8, 2026

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

**ELIZABETH CURRY WHITE
THE LAW OFFICES OF RICHARD K. GREEN, A.P.C.**

TD/cs

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