WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ERIC VOLK, *Applicant*

vs.

LITTLE COMPANY OF MARY HOSPITAL, permissibly self-insured, administered by CORVEL CORPORATION, *Defendants*

Adjudication Numbers: ADJ10035604; ADJ10036839
Long Beach District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION GRANTING PETITION FOR REMOVAL AND DECISION AFTER REMOVAL

Applicant seeks reconsideration of the Order taking the matter off calendar issued on July 16, 2026, by the workers' compensation administrative law judge (WCJ).

Applicant contends that the matter should not have been taken off calendar, citing Labor Code[1] section 5502 and WCAB Rule 10759 (Cal. Code Regs, tit. 8, § 10759). Applicant further contends that taking the matter off calendar rewards defendant's bad faith delays and non-cooperation.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will dismiss the Petition as one for reconsideration and grant the Petition as one for removal, and as our decision after removal, we will rescind the Order and return the matter to the WCJ for further proceedings consistent with this decision.

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

I.

Petitions for reconsideration filed on or after July 14, 2026, are subject to section 5909, which states 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 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 August 14, 2026, and 60 days from the date of transmission is October 13, 2026. This decision is issued by or on October 13, 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. 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, according to the proof of service for the Report, the Report was served on August 14, 2026, and the case was transmitted to the Appeals Board on August 14, 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 August 14, 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, the WCJ's July 16, 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, and the Petition will be dismissed to the extent it seeks reconsideration.

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 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).)

At trial on July 16, 2026, the WCJ observed that:

> [T]his matter had been continued from a trial setting on May 19, 2026, in which the Court ordered the parties to complete a joint Pre-trial Conference Statement consisting of stipulations, issues, and exhibit pages…. ¶ [P]rior to going on the record, the parties had informed the Court that there was no joint Pre-Trial Conference Statement that had been prepared because there were issues regarding the stipulations aspect….

(Minutes of Hearing, July 16, 2026, p. 2.)

Based on the above, the WCJ ordered in relevant part that:

> The Court will be taking the matter off calendar until a joint Pre-Trial Conference Statement is prepared and filed so the Court can create a record.

(*Id.* at p. 3.)

Applicant contends that the WCJ should not have taken the matter off calendar, citing section 5502 and WCAB Rule 10759. Applicant further contends that taking the matter off calendar rewards defendant's bad faith delays and non-cooperation.

Pursuant to section 5502(d)(3):

> If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

(Lab. Code, § 5502(d)(3).)

The purpose of this section is to guarantee a productive dialogue leading to either the expeditious resolution of the dispute or to thorough and accurate framing of the stipulations and issues for hearing. (*County of Sacramento v. Workers' Comp. Appeals Bd.* (*Estrada*) (1999) 68 Cal.App.4th 1429; [64 Cal.Comp.Cases 26]; *State Compensation Ins. Fund v. Workers' Comp. Appeals Bd.* (*Welcher*) (1995) 37 Cal.App.4th 675, 685 [60 Cal.Comp.Cases 717].)

Per WCAB Rule 10759: "The parties shall meet and confer prior to the mandatory settlement conference and, absent resolution of the dispute(s), the parties shall complete a joint Pre-Trial Conference Statement setting forth the issues and stipulations for trial, witnesses, and a list of exhibits by the close of the mandatory settlement conference." (Cal. Code Regs., tit. 8, § 10759(b).)

Notwithstanding the Rules of Practice and Procedure, as noted in a recent en banc opinion:

> The workers' compensation system "was intended to afford a simple and nontechnical path to relief." (*Elkins v. Derby* (1974) 12 Cal.3d 410, 419 [39 Cal.Comp.Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) . . . "[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee's entitlement to rehabilitation benefits." (*Martino v. Workers' Comp. Appeals Bd*. (2002) 103 Cal. App.4th 485, 490 [67 Cal.Comp.Cases 1273].)

(*Perez v. Chicago Dogs* (2025) 90 Cal. Comp. Cases 830, 838, (Appeals Bd. en banc).)

While the rule requiring the parties to complete a joint Pre-Trial Conference Statement is important and should be followed, we would note that the rule itself does not compel the remedy of taking the matter off calendar. It is the policy of workers' compensation to accomplish substantial justice expeditiously, and so we encourage the WCJ to consider alternative remedies in cases where application of WCAB Rule 10759(b) could lead to unnecessary delay. In this case, the record indicates that both applicant and defendant submitted separate Pre-Trial Conference Statements. (Minutes of Hearing, May 19, 2026.) Given the allegations of bad faith delays and non-cooperation, the WCJ should work with the parties to incorporate their two separate statements into a joint Pre-Trial Conference Statement.

We conclude that the applicant has demonstrated that substantial prejudice or irreparable harm will result if removal is not granted, and reconsideration will not be an adequate remedy if a final decision adverse to the applicant ultimately issues.

Accordingly, we dismiss the Petition for Reconsideration, grant the Petition for Removal and rescind the Order. We return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that applicant's Petition for Removal of the Order Taking the Matter Off Calendar issued on July 16, 2026, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Order Taking the Matter Off Calendar issued on July 16, 2026, by the WCJ is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 12, 2026

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

ERIC VOLK
BREDFELDT, ODUKOYA & HAN, LLP
EMPLOYMENT DEVELOPMENT DEPARTMENT

HH/*cs*

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