WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

GELACIO VELAZQUEZ SERRANO, ***Applicant***

vs.

MOONLIGHT PACKING CORP;
ALASKA NATIONAL INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ21674259
Fresno District Office

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

Applicant seeks reconsideration of the Order taking the matter off calendar issued on August 6, 2026, by the workers' compensation administrative law judge (WCJ).

Applicant contends that the matter should not have been taken off calendar, because delaying treatment until after the Qualified Medical Examination (QME) will result in significant prejudice and irreparable harm due to his ongoing symptoms.

We have reviewed defendant's Answer. 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, the Answer, 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 deny the Petition as one for removal.

I.

Petitions for reconsideration filed on or after July 14, 2026, are subject to Labor Code[1] 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 September 4, 2026, and 60 days from the date of transmission is November 3, 2026. This decision is issued by or on November 3, 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 September 4, 2026, and the case was transmitted to the Appeals Board on September 4, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we

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

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 September 4, 2026.

II.

Given that applicant filed a Petition for both reconsideration and removal, we find it relevant to discuss the distinction between a petition for reconsideration and a petition for removal. 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 August 6, 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).)

Here, as explained in the Report, the WCJ issued a Minute Order on August 6, 2026, taking the matter off calendar for completion of the QME set for October 13, 2026. Applicant contends that the WCJ should not have taken the matter off calendar, because delaying treatment until after the QME will result in significant prejudice and irreparable harm due to his ongoing need for treatment. We agree with the WCJ's determination that proceeding to trial before the evaluation by QME was premature, and we observe that applicant can seek to have the matter placed back on calendar. Thus, we are not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to petitioner. Accordingly, we deny the Petition for Removal.

We admonish applicant's counsel that attaching documents to a petition for reconsideration is not permitted. (Cal. Code Regs., tit. 8, § 10945.) Future compliance with the WCAB Rules is expected, and failure to do so may subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

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 August 6, 2026, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 3, 2026

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

GELACIO VELAZQUEZ SERRANO
HERNANDEZ LAW OFFICES
TOBIN LUCKS LLP

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