

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

HARINDRA PERUMABADUGE-WIJESINGHE, *Applicant*

vs.

**VIVINT SOLAR; NEW HAMPSHIRE INSURANCE COMPANY,
administered by GALLAGHER BASSETT/AIG, *Defendants***

**Adjudication Number: ADJ9806382
Oxnard District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant, in pro per, seeks reconsideration related to the workers' compensation administrative law judge's (WCJ) actions at the December 16, 2025 trial. As relevant here, the WCJ denied applicant's motion to allow testimony of panel qualified medical evaluator (PQME), Glenn Cohen, M.D., on the grounds that Dr. Cohen was not present in court and there was no indication he had been subpoenaed.

By the skeletal Petition filed by applicant, applicant alleged the evidence does not justify the findings of fact and the findings of fact do not support the order, decision, or award.

We did not receive an answer from defendant. In response to applicant's Petition, on January 8, 2026, the WCJ issued an Order Vacating Submission finding good cause. Despite issuing an Order Vacating Submission, the WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be dismissed.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated below, the Petition will be dismissed.

DISCUSSION

I.

Former Labor Code 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, Labor Code 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 Labor Code 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 January 8, 2026, and 60 days from the date of transmission is March 9, 2026. This decision is issued by or on March 9, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on January 8, 2026, and the case

was transmitted to the Appeals Board on January 8, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on January 8, 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 denial on the record of applicant’s motion at the December 16, 2025 trial, seeking testimony of PQME Dr. Cohen, 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 the petition for reconsideration will be dismissed.

In dismissing the Petition in the instant case, we remind the WCJ that WCAB Rule 10961 (Cal. Code Regs., tit. 8, § 10961) provides that jurisdiction remains with the district office for 15 days after the timely filing of a petition for reconsideration and sets forth three actions that a WCJ may take in response: (a) The WCJ may prepare a report and transfer jurisdiction to the Appeals

Board to address the merits of the petition (Cal. Code Regs., tit. 8, § 10961(a); see Cal. Code Regs., tit. 8, § 10962); (b) The WCJ may rescind the entire order, decision or award and initiate proceedings within 30 days (Cal. Code Regs., tit. 8, § 10961(b)); or (c) The WCJ may rescind the order, decision or award and issue an amended order, decision or award, and a new petition for reconsideration must be filed in response to the amended order, decision or award (Cal. Code Regs., tit. 8, § 10961(c)).

When a WCJ issues an order rescinding or amending pursuant to subdivision (b) or (c) within the 15-day period, the original order, decision or award no longer exists. The Appeals Board need not act upon the petition for reconsideration, and it is presumed to be moot. Thus, under those circumstances, it is not necessary to prepare a report or transfer jurisdiction to the Appeals Board to issue an order with respect to the petition.

In a case such as this, we reiterate that the option exists, within the time limits prescribed by WCAB Rule 10961, to allow a WCJ the opportunity to rescind the entire decision, order or award, and per WCAB Rule 10961(b), initiate further proceedings at the trial level should the same be the recommendation by the WCJ in the report. This course of action reduces overall delay and allows the matter to proceed without the need for Appeals Board action. The rights of any aggrieved parties would be protected because they may then seek reconsideration of any new or amended order, decision or award by the WCJ.

Here, the WCJ issued an Order Vacating Submission within the 15-day period, rendering the Petition moot, and a Report need not have been prepared, which would have resulted in jurisdiction remaining at the trial level. However, since jurisdiction has been transferred to the Appeals Board by submission of a Report, the Petition for Reconsideration will be dismissed.

Accordingly, we dismiss the Petition for Reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 9, 2026

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

**HARINDRA PERUMABADUGE-WIJESINGHE
TESTAN LAW**

DC/cs

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