

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

JOSE HERNANDEZ, *Applicant*

vs.

**HACIENDA GOLF CLUB; CIGA FOR HIH AMERICA INSURANCE IN
LIQUIDATION BY ITS SERVICING FACILITY, SEDGWICK;
STATE COMPENSATION INSURANCE FUND;
REPUBLIC INDEMNITY, *Defendants***

**Adjudication Numbers: ADJ2001929 (ANA 0356697); ADJ3207479 (ANA 0405823);
ADJ777199 (MON 0227788); ADJ3426310 (MON 0244512); ADJ736427 (ANA 0395970)
Santa Ana District Office**

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

Applicant has filed a petition for removal and reconsideration of the order of continuance issued by the workers' compensation administrative law judge's (WCJ) on October 9, 2025.

Applicant contends that the WCJ erred because the record should not be further developed, and an Independent Medical Examiner (IME) should not be ordered.

We received an Answer from defendant CIGA. The WCJ issued a Report and Recommendation on Petition for Removal and Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition for Removal and Reconsideration and Answer and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, we will dismiss the Petition to the extent it seeks reconsideration and deny it to the extent it seeks removal.

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 November 21, 2025, and 60 days from the date of transmission is January 20, 2026. This decision is issued by or on January 20, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on November 21, 2025, and the case was transmitted to the Appeals Board on November 21, 2025. 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 November 21, 2025.

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 decision 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 will be dismissed to the extent it seeks reconsideration.

We will also deny the Petition to the extent it seeks removal. 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 our review of the record and the WCJ’s analysis of the merits of petitioner’s arguments in the Report, 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.

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ’s decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10761.)

The WCJ continued this matter and set it for trial to address all issues including defendant CIGA’s Petition to Compel applicant to appear for an Independent Medical Examiner (IME) appointment. Applicant contends the issue of defendant CIGA’s Petition to Compel should not proceed to trial and ordering an IME is inappropriate. Applicant also contends defendant CIGA should be ordered to pay sanctions and attorney fees under Labor Code section 5813 for bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, and his constitutional rights have been violated. As noted by the WCJ in the Report, “These are triable issues. No determination has been made at this time.” (Report, November 21, 2025, p. 4, ¶ 2.)

Here, once the parties proceed to trial, they will have an opportunity to create a record, raise all relevant issues, and submit evidence. Specifically, as part of that process, the parties will have an opportunity to raise the issue of whether compelling applicant to appear for an IME appointment is appropriate and whether imposing sanctions and attorney fees is warranted. The trial WCJ can then consider the evidence and the legal arguments raised by the parties and determine how best to proceed.

We make no judgment at this time on the merits since without a formal record available to review, we have no ability to make this determination.

Accordingly, we dismiss the Petition as one for reconsideration and deny the Petition as one for removal.

For the foregoing reasons,

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

IT IS FURTHER ORDERED that the Petition for Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 20, 2026

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

**JOSE HERNANDEZ
LAW OFFICES OF DENNIS CAMENE, P.C.
STATE COMPENSATION INSURANCE FUND
DAVIDSON, CZULEGER, & BLALOCK, LLP
LAUGHLIN, FALBO, LEVY & MORESI**

DC/cs

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