

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

KRISTAN WILSON, *Applicant*

vs.

**HOLLINS MANAGEMENT GROUP, INC.; OLD REPUBLIC INSURANCE COMPANY,
administered by GALLAGHER BASSETT SERVICES, *Defendants***

**Adjudication Number: ADJ17142839
San Bernardino District Office**

**OPINION AND ORDERS
DISMISSING PETITION
FOR RECONSIDERATION
GRANTING PETITION
FOR REMOVAL
AND DECISION
AFTER REMOVAL**

Applicant seeks reconsideration of the “Findings of Fact and Order Denying Petition for Protective Order” (F&O) issued on February 11, 2026, by the workers’ compensation administrative law judge (WCJ). The WCJ denied applicant’s request for a protective order to exclude an employer representative at applicant’s deposition.

We have received an Answer and an Amended Answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we dismiss the petition for reconsideration as the F&O is not a final order and deny the petition to the extent that it seeks removal.

We have considered the allegations of the Petition for Reconsideration, the Answers, and the contents of the WCJ’s Report. Based on our review of the record we will dismiss the Petition to the extent that applicant seeks reconsideration as the F&O was not a final order. We will grant the Petition as one seeking removal and as our Decision After Removal, we will rescind the February 11, 2026 F&O and modify the October 21, 2025 Decision After Removal to order that this matter is to proceed off calendar.

DISCUSSION

I.

Former Labor Code section 5909¹ 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, 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.

(§ 5909.)

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 February 27, 2026, and 60 days from the date of transmission is Tuesday, April 28, 2026. This decision is issued by or on April 28, 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 and Recommendation shall be notice of transmission.

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

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on February 27, 2026, and the case was transmitted to the Appeals Board on February 27, 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 February 27, 2026.

II.

As stated in our en banc decision:

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, 260 Cal. Rptr. 76; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal. App. 3d 528, 534–535 [163 Cal. Rptr. 750, 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 [97 Cal. Rptr. 2d 418, 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.

(*Ledezma v. Kareem Cart Commissary and Mfg.*, (2024) 89 Cal. Comp. Cases 462, 475 (En Banc).)

Here, the orders issued by the WCJ, in essence, denied the request for a protective order. The order is not a final order as it is a discovery order addressing the conduct of a deposition, and thus, to the extent that applicant seeks reconsideration, the Petition for Reconsideration is dismissed, and we will treat the Petition as seeking 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).)

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.)

Here, this matter was previously before the Appeals Board on a petition for disqualification. On October 21, 2025, the Appeals Board issued an Opinion and Order Denying Disqualification and Granting Removal and Decision after Removal (Decision after Removal) in which we returned the matter to the trial level for further proceedings on applicant's petition for a protective order. Thereafter, the matter proceeded to trial without any medical evidence directly addressing the allegations contained in the petition for protective order. Applicant raised this issue at trial and expressly requested the ability to obtain medical evidence supporting their petition. The WCJ's F&O contains no findings of fact addressing the issue of applicant's request for discovery.

It is not entirely clear in the record how this matter was set for trial. It appears from a review of the court's record that the December 2, 2025 trial may have been set on the court's own motion the day after the October 21, 2025 Decision After Removal issued because of the WCJ's misunderstanding as to our order. We cannot find any declaration of readiness from either party advising the court that discovery was complete and that the parties were prepared to proceed to trial on the issue. Furthermore, the court's record does not reflect that this matter was set for mandatory settlement conference. Instead, it appears that the WCJ set this matter directly onto the trial calendar. It further appears that the parties first completed the pre-trial conference statement *on the same day as the trial*, which, as discussed in our prior Decision After Removal is error.

(Cal. Code Regs., tit. 8, § 10759 [“[T]he 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.**”].)²

In the Report, the WCJ notes that applicant first raised the lack of medical evidence on the day of trial and suggests that the issue should have been raised earlier. However, that is the first time that applicant could have raised the issue. When a WCJ bypasses procedures and sets a matter directly onto the trial calendar without joint agreement of the parties, without completing a mandatory settlement conference, and without completing a pre-trial conference statement, the WCJ cannot then fault a party for raising an issue on the day of trial. The Appeals Board has adopted standardized Rules of Practice and Procedure, in part, to prevent this type of error from occurring. The WCJ’s failure to follow the Rules of Practice and Procedure in this case resulted in denying applicant’s due process right to discovery, and thus removal is appropriate.

Upon return to the district office, the parties should first meet and confer and attempt to develop a mutually agreed upon discovery plan for how the deposition of applicant may proceed.³ Absent an agreement, the parties may proceed with an AME/QME examination to address any disputed issues in this case, including whether applicant’s request for a protective order is reasonably and medically necessary. Once the parties have completed discovery on the issue, or after a reasonable time to complete discovery has elapsed, either party may file a declaration of readiness to proceed and request the matter be reset for trial. The matter may then proceed to a mandatory settlement conference, where the parties may complete a pre-trial conference statement listing all issues and exhibits and the WCJ may review the pre-trial conference statement and sign the document, after which the matter may be set on the trial calendar.

Upon further review of the file, we note that in the October 21, 2025 Decision After Removal we issued the following order:

IT IS FURTHER ORDERED as the Decision After Removal of the Workers’ Compensation Appeals Board that the Minutes of Hearing issued on July 7, 2025, by the WCJ are **RESCINDED**.

² To the extent that the October 21, 2025 Decision After Removal stated that the matter should proceed to a hearing on applicant’s petition for a protective order, the decision did not invite any bypass of the ordinary process for setting a matter for hearing. The Decision was clear that the failure to properly conduct a mandatory settlement conference where the parties complete a pre-trial conference statement is error.

³ For example, if the physical presence of the employer representative is an issue, perhaps the parties may consider allowing the representative to appear remotely.

WCAB Rule 10833 states that:

Interlocutory or interim orders, including but not limited to orders of dismissal of improper or unnecessary parties, may be entered upon the minutes of hearing and will become the order of the Workers' Compensation Appeal Board upon the filing thereof.

(Cal. Code Regs., tit. 8, § 10833.)

WCAB Rules 10759 and 10787 (Cal. Code Regs., tit. 8, §§ 10759, 10787) further explain the WCJ's responsibility to ensure that the minutes are complete and accurate. The minutes of hearing are an official function of the court; they memorialize the proceedings and are a permanent part of the history of the case. And, upon request, they must be provided to the public and to any appellate body. If the intention is to correct or otherwise alter the minutes, notice and an opportunity to be heard must be given to the parties that specifically identifies the intended changes. Our intention was to rescind the Order continuing the trial to August 19, 2025, and not to strike the official record of the hearing. We will grant removal on our own motion and substitute an order that this matter is to proceed off calendar.

Accordingly, we dismiss applicant's petition for reconsideration, grant removal, and as our Decision After Removal, we rescind the February 11, 2026 F&O and modify the October 21, 2025 Decision After Removal to order that this matter is to proceed off calendar.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact and Order Denying Petition for Protective Order issued on February 11, 2026, is **DISMISSED**.

IT IS FURTHER ORDERED that applicant's Petition for Removal of the Findings of Fact and Order Denying Petition for Protective Order issued on February 11, 2026, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Findings of Fact and Order Denying Petition for Protective Order issued on February 11, 2026, is **RESCINDED**.

IT IS FURTHER ORDERED that on motion of the Workers' Compensation Appeals Board, removal of the October 21, 2025 Opinion and Order Denying Petition for Disqualification Granting Petition for Removal and Decision After Removal is **GRANTED**.

IT IS FURTHER ORDERED that as the Decision After Removal of the Workers' Compensation Appeals Board, the October 21, 2025 Orders as set forth in the Opinion and Order

Denying Petition for Disqualification Granting Petition for Removal and Decision After Removal are **RESCINDED** with the following **MODIFICATION SUBSTITUTED** therefor:

IT IS ORDERED that applicant's Petition for Disqualification of the WCJ filed on July 25, 2025, is **DENIED**.

IT IS ORDERED that applicant's Petition for Removal from the Order Granting Continuance contained on the Minutes of Hearing issued on July 7, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Order Granting Continuance contained on the Minutes of Hearing issued on July 7, 2025, by the WCJ is **RESCINDED** with the following **SUBSTITUTED** therefor: "It is ordered that this matter proceed off calendar."

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for further development of the record.

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

APRIL 28, 2026

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

**KRISTAN WILSON
SOLIMON RODGERS, P.C.
ALBERT AND MACKENZIE, LLP**

EDL/mt

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