WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

LOUISE ANDERSON, *Applicant*

vs.

OAKLAND UNIFIED SCHOOL DISTRICT, permissibly self-insured, administered by TRISTAR, *Defendants*

Adjudication Numbers: ADJ17497658; ADJ19866127
Oakland District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks removal of the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on July 2, 2026. The WCJ found, in relevant part, that from March 14, 2022 to March 14, 2023, while employed by defendant as an elementary school teacher, applicant claims to have sustained injury arising out of and occurring in the course of employment (AOE/COE) to her psyche. The WCJ further found that since applicant has shown good cause to replace Brian Jacks, M.D., as the panel qualified medical evaluator (QME), he would order the Medical Unit to issue a replacement QME panel in psychiatry.

Defendant, in essence, requests that Findings of Fact Number 4 and the Order granting applicant's petition to replace the panel QME be rescinded. Alternatively, defendant requests the matter be returned to the trial level with instructions to determine whether the April 13, 2026 letter by Dr. Vigilanti constitutes substantial evidence. Defendant requests a stay be issued for any order directing the Medical Unit to issue a replacement panel pending resolution of the Petition for Removal (Petition).

We have received an Answer from applicant.

The WCJ filed a Report and Recommendation on Petition for Removal (Report), recommending that the Petition be dismissed for failing to show substantial prejudice and/or irreparable harm and that reconsideration from a final award will not provide a sufficient remedy or that it be denied on the merits.

We have considered the allegations of defendant's Petition and the Answer, and the contents of the WCJ's Report. Based on our review of the record and based upon the WCJ's analysis of the merits of the petitioner's arguments in the Report, we will treat the Petition as one for reconsideration and deny it as one seeking reconsideration.

DISCUSSION

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909[1], 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 cases were transmitted to the Appeals Board on July 31, 2026, and 60 days from the date of transmission is September 29, 2026. This decision is issued by or on September 29, 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

[1] All section references are to the Labor Code, unless otherwise indicated.

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 July 31, 2026, and the cases were transmitted to the Appeals Board on July 31, 2026. Service of the Report and transmission of the cases 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 July 31, 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. (*Maranian*, *supra*, 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.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd.*

(*Gaona*) (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues.

A decision issued by the Appeals Board may address a hybrid of both threshold and interlocutory issues. If a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the decision resolves a threshold issue. However, if the petitioner challenging a hybrid decision only disputes the WCJ's determination regarding interlocutory issues, then the Appeals Board will evaluate the issues raised by the petition under the removal standard applicable to non-final decisions.

Here, the WCJ's decision includes findings regarding a threshold issue as to the existence of an employment relationship between applicant and defendant. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

Although the decision contains findings that are final, the defendant challenges the WCJ's finding that applicant has shown by the preponderance of the evidence good cause to replace Brian Jacks, M.D., as the QME. This is an interlocutory finding/order subject to the removal standard rather than reconsideration pursuant to the discussion above. (See *Gaona, supra*.)

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 significant 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 and the WCJ's analysis of the merits of defendant's arguments in the Report, we are not persuaded that significant 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 defendant.

Accordingly, we will deny the Petition as one seeking reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration/Removal of the WCJ's decision issued on July 2, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 23, 2026

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

LOUISE ANDERSON
LAW OFFICES OF DAVID HART
LAW OFFICES OF BYRON T. SMITH
SINGERMAN LAW

JL/abs

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