

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARTI HABEKOST, *Applicant*

vs.

**CPCS ACQUISTION COMPANY dba CP COMMERCIAL SPECIALISTS, insured by
HARTFORD CASUALTY INSURANCE COMPANY; AUTOMOBILE CLUB OF
SOUTHERN CALIFORNIA, insured by LIBERTY MUTUAL; and AMERICAN
GENERAL LIFE & ACCIDENT, insured by NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURG, PA., *Defendants***

**Adjudication Number: ADJ1696428 (MON 0316625), ADJ2736882 (MON 0347945),
ADJ4583618 (MON 0357330), ADJ886694 (MON 0357331)**
Marina del Ray District Office

**OPINION AND ORDERS
DISMISSING PETITIONS FOR
RECONSIDERATION
AND DENYING PETITIONS FOR
REMOVAL**

We have considered the allegations of applicant's Petition for Reconsideration or in the Alternative Removal, and defendant Automobile Club of Southern California insured by Liberty Mutual's Petition for Removal or in the Alternative Petition for Reconsideration. Both petitions seek review of the Joint Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on October 21, 2025. We have also considered the contents of the report of the WCJ with respect thereto. Based on our review of the record and based upon the WCJ's analysis of the merits of petitioners' arguments in the WCJ's report, we will deny removal.

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.

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

(Former 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.

(Lab. Code, § 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 cases were transmitted to the Appeals Board on November 18, 2025, and 60 days from the date of transmission is Saturday, January 17, 2026. This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600.) As January 18, 2026, is a Sunday, and the following Monday is Martin Luther King Jr. Day, a state holiday, the time is extended to the next business day, or to Tuesday, January 19, 2026. This decision issued by or on January 19, 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.

According to the electronically completed proof of service, the Report was served on November 18, 2025, and the cases were transmitted to the Appeals Board on November 18, 2025. 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 November 18, 2025.

II.

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].) If the petitioner challenging a decision is disputing 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.

The WCJ’s F&O only addresses an interlocutory issue: development of the record. The F&O does not address threshold issues. The petitioners are only challenging an interlocutory finding and order and, therefore, we will apply the removal standard to our review. (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 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 the WCJ’s analysis of the merits of both petitioners’ arguments, 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.

We note the WCJ makes further recommendations in the report, however, such recommendations exceed the scope of the current F&O and may be more properly addressed in the first instance by the WCJ in further proceedings.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DISMISSED** and the Petition for Removal is **DENIED**.

IT IS FURTHER ORDERED that defendant Automobile Club of Southern California insured by Liberty Mutual's Petition for Reconsideration is **DISMISSED** and the Petition for Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, 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.

**MARTI HABEKOST
GOLDSCHMID, SILVER & SPINDEL
SAMUELSEN, GONZALEZ, VALENZUELA & BROWN
KIRK AND MYERS
LAW OFFICES OF LYDIA NEWCOMB**

PS/oo

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