

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

MICHAEL BAKER, *Applicant*

vs.

**CLASSIC PARTY RENTAL (INSPERITY); ACE AMERICAN INSURANCE
COMPANY, ADMINISTERED BY SEDGWICK CLAIMS MANAGEMENT SERVICES,
INC., *Defendants***

**Adjudication Numbers: ADJ10954617; ADJ16206534; ADJ16210220
Long Beach District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Applicant in pro per, filed a Petition for Reconsideration apparently in opposition to the “Joint Notice of Intention (NIT) To Compel Regular Physician Exam, Suspend Proceedings, and Bar Benefits” issued by the workers’ compensation administrative law judge (WCJ) on December 19, 2025.

Applicant contends that he can establish good cause showing that he should not be forced to attend the rescheduled examination with Dr. Craemer on March 3, 2026.

We have not received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

Apparently, in response to the WCJ’s Report, applicant filed a second Petition for Reconsideration on February 23, 2026, in order to correct the January 20, 2026 Petition which he asserts should have been titled “Objection.” We treat the February 23, 2026 Petition as an amendment of the first Petition.

We have considered the allegations in the Petitions and the contents of the Report. Based on our review of the record and for the reasons discussed below, we will dismiss applicant’s Petitions as he is not aggrieved.

BACKGROUND

We will briefly review the relevant facts.

Applicant, while employed by defendant as a driver on or about July 26, 2016, sustained injury to his left upper extremities (amputation of the left little finger and left wrist injury) arising out of and in the course of employment.

On March 28, 2025, the WCJ issued Joint Orders appointing Dr. Craemer as a regular physician pursuant to Labor Code section 5701¹. As relevant herein, in the Opinion, the WCJ stated:

What should be noted, as was noted in the previous hearings, is that the Applicant has been found Permanent and Stationary by his Primary Treating Physician (hereinafter PTP). Applicant disagrees with the findings of the PTP, but does not wish to resolve his case. If there is a disagreement with the PTP, the parties are mandated to go through the PQME process. Applicant has repeatedly refused this process. As this process is being refused, the undersigned will utilize a Regular Physician to resolve the underlying medical issues. The Objection fails to state Good Cause to oppose the NOI. The undersigned will therefore issue an Order consistent with the NOI.

As relevant herein, the WCJ Ordered the following:

3) Defendant shall prepare a medical index of the entire medical record to date, the DWC-1 forms and Applications for both dates of injury, and said index shall include a copy of this Notice and any resultant Order. This medical index shall be served on the Applicant at least twenty (20) days before the scheduled examination. Applicant shall have ten (10) days to supplement the medical index with any medical reports. Once that time has passed, the medical index shall be final and Defendant shall provide said medical reporting and index to Dr. Craemer.

(Joint Opinion on Decision and Joint Orders, 3/28/2025, pp.1 and 2.)

On April 25, 2025, applicant filed a Petition for Reconsideration.

On June 30, 2025, we issued a decision dismissing applicant's Petition for Reconsideration and denying applicant's Petition for Removal.

On December 5, 2025, defendant's attorney filed and served a Motion to Compel Attendance at Medical Evaluation.

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

On December 17, 2025, a status conference was held. Applicant in pro per, defendant's attorney Kurtis Ebbing and Information & Assistance Officer Rosie Diaz all appeared via Court Call. The matter was taken off calendar, and the Other/comments state:

WCJ discussed nonappearance at 5701 examination. Applicant stated not all records were available for exam, but DA confirmed having sent Applicant 11,000 claim file and 5701 a 700 page index/attestation. WCJ inquired if Applicant would attend March 2026 examination and applicant stated that he would not; that there were more issues to be sorted out. WCJ concluded hearing and stated an NOI would issue to compel/suspend/bar.

(Minutes of Hearing, 12/17/2025.)

On December 19, 2025, the WCJ issued the NIT.

DISCUSSION

I.

Former 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, 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 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 22, 2026, and 60 days from the date of transmission is March 23, 2026. This decision is issued by or on March 23, 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.

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 26, 2026, and the case was transmitted to the Appeals Board on January 22, 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 January 22, 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.

Pursuant to section 5900(a):

Any person *aggrieved directly or indirectly* by any final order, decision, or award made and filed by the appeals board or a workers' compensation judge under any provision contained in this division, may petition the appeals board for reconsideration in respect to any matters determined or covered by the final order, decision, or award, and specified in the petition for reconsideration.

Here, the WCJ issued an NIT, which is not a final order or decision, thus a Petition for Reconsideration is not appropriate. Moreover, there is no order at issue, so applicant is not aggrieved. Any objection to the NIT should have been filed at the district office level for the WCJ to adjudicate, and applicant's Petitions should be treated as an objection to the NIT.

Therefore, we dismiss applicant's Petitions.

III.

(a) For purposes of this rule, "vexatious litigant" means:

(1) A party who, while acting in propria persona in proceedings before the Workers' Compensation Appeals Board, repeatedly relitigates, or attempts to relitigate, an issue of law or fact that has been finally determined² against that party by the Workers' Compensation Appeals Board or by an appellate court;

(2) A party who, while acting in propria persona in proceedings before the Workers' Compensation Appeals Board, repeatedly files unmeritorious motions, pleadings or other papers, repeatedly conducts or attempts to conduct unnecessary discovery, or repeatedly engages in other tactics that are in bad faith, are frivolous or are solely intended to cause harassment or unnecessary delay; or

(3) A party who has previously been declared to be a vexatious litigant by any state or federal court of record in any action or proceeding based upon the same or substantially similar facts, transaction(s) or occurrence(s) that are the subject, in whole or in substantial part, of the party's workers' compensation case.

(b) Upon the petition of a party, or upon the motion of any workers' compensation judge or the Appeals Board, a presiding workers' compensation judge of any district office having venue or the Appeals Board may declare a party to be a vexatious litigant.

² For purposes of this rule, the phrase "finally determined" shall mean:

- (i) That all appeals have been exhausted or the time for seeking appellate review has expired; and
- (ii) The time for reopening under Labor Code sections 5410 or 5803 and 5804 has passed or, although the time for reopening under those sections has not passed, there is no good faith and non-frivolous basis for reopening.

(WCAB Rule 10430.)

In his January 22, 2026 Report, the WCJ made a motion to declare applicant a vexatious litigant pursuant to WCAB Rule 10430. In support of his motion, the WCJ cites his January 28, 2022 Report, wherein he requested that the Appeals Board review the file and take appropriate action under WCAB Rule 10430 because of applicant's "...repetitive filings and arguments." Additionally, the WCJ referenced the Appeals Board's admonishment to applicant in our Opinion and Decision of June 12, 2024. The WCJ states in his January 22, 2026 Report that applicant has continued the above mentioned behavior and "failed to meaningfully participate or cooperate in discovery in this matter." Also, the WCJ points out that the Petition for Reconsideration here was filed "when there is no underlying order" and that "This filing has strained the limited time and resources of the District Office."

We previously warned applicant regarding designation as a vexatious litigant.

Upon return of this matter to the trial level, the WCJ's motion to declare applicant a vexatious litigant should be referred to the Presiding WCJ for further proceedings.

For the foregoing reasons,

IT IS ORDERED that applicant's January 20, 2026 and February 23, 2026 Petitions for Reconsideration of the NIT issued on December 19, 2025 are **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 23, 2026

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

**MICHAEL BAKER
ME LAW
OFFICE OF THE DIRECTOR-LEGAL UNIT (LOS ANGELES)
SEDGWICK**

DLM/oo

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