WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

REMEDIOS DIAZ, *Applicant*

vs.

CORP OF KATE MANTILINI; CYPRESS INSURANCE COMPANY, dba BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants*

Adjudication Numbers: ADJ1050102; ADJ4344533
Oxnard District Office

OPINION AND ORDERS DISMISSING PETITION FOR RECONSIDERATION AND DENYING PETITION FOR REMOVAL

Defendant seeks reconsideration, or in the alternative removal, of the Order Rescinding Joint Order Dismissing Lien Claims of Dr. Gofnung for Non-Appearance (Order Rescinding) issued by the workers' compensation administrative law judge (WCJ) on July 9, 2026. Upon review of lien claimant's Petition for Reconsideration, filed on July 1, 2026, the WCJ found good cause to rescind the Joint Order Dismissing Lien Claim of Dr. Gofnung (Order Dismissing Lien Claim). The WCJ indicated a record regarding the Order Dismissing Lien Claim must be made pursuant to *Hamilton*.

Defendant requests, in essence, that the Order Rescinding Lien Claim be vacated and the Order Dismissing Lien Claim issued on March 5, 2015 be reinstated.

We have not received an Answer from lien claimant.

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

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record and for the reasons discussed below, we will dismiss the Petition for

Reconsideration as it seeks reconsideration of a non-final order. We will deny the Petition for Removal as defendant has not established substantial prejudice or irreparable harm.

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 August 12, 2026 and 60 days from the date of transmission is Sunday, October 11, 2026. The next business day that is 60 days from the date of transmission is Monday, October 12, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, October 12, 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

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

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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.

Here, according to the proof of service for the Report, the Report was served on August 12, 2026, and the cases were transmitted to the Appeals Board on August 12, 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 August 12, 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.

Here, defendant seeks reconsideration of the WCJ's Order to rescind a prior order dismissing the lien claim of Eric Gofnung, D.C. The WCJ's decision to rescind an order dismissing a lien claim 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 for reconsideration will be dismissed.

III.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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*.) A petitioner must also 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, based on our review of the record as well as for the reasons stated in the WCJ's 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. The Order Rescinding does not create substantial prejudice or irreparable harm as the defendant will be allowed to present a case at trial. It is axiomatic that all participants conduct a basic inquiry into the facts of their case and establish a formal record from which a decision can be made. Thus, we deny the Petition to the extent it seeks removal.

Accordingly, we dismiss the Petition for Reconsideration as it seeks reconsideration of a non-final order. We deny the Petition for Removal as defendant has not established substantial prejudice or irreparable harm.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Order Rescinding Joint Order Dismissing Lien Claims of Dr. Gofnung issued on July 9, 2026 by the WCJ is **DISMISSED.**

IT IS FURTHER ORDERED that defendant's Petition for Removal of the Order Rescinding Joint Order Dismissing Lien Claims of Dr. Gofnung issued on July 9, 2026 by the WCJ is **DENIED.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 8, 2026

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

ERIC E. GOFNUNG CHIROPRACTIC CORP.
COLLECTIVE RESOURCES
ROSENBERG YUDIN LLP
STATE COMPENSATION INSURANCE FUND

JL/abs

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