WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

SHELA BARKER, *Applicant*

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendant*

Adjudication Numbers: ADJ11229752, ADJ12277397, ADJ8497367
Sacramento District Office

OPINION AND ORDER
DENYING PETITION FOR REMOVAL/RECONSIDERATION

Applicant Shela Barker seeks removal, or in the alternative reconsideration, of the July 2, 2026 Minutes of Hearing order, wherein the workers' compensation administrative law judge (WCJ) excused the Subsequent Injuries Benefits Trust Fund (SIBTF) from future hearings, while the case against applicant's employer proceeds first.

Applicant contends that by taking the SIBTF case off calendar until a determination was made on the claim against the employer results in extreme prejudice and irreparable harm because applicant will now be subject to the new SIBTF rules signed into law on July 13, 2026, as she will not be eligible for the safe harbor provisions found in the new Labor Code, section 4758.[1]

We did not receive an answer from SIBTF. The WCJ prepared an Amended Report and Recommendation on Petition for Removal (Report), recommending that the Petition be denied.

We have considered the Petition for Removal, the contents of the Report, and we have reviewed the record in this matter. Based on the Report, which we adopt and incorporate, and for the reasons discussed below, we deny removal.

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

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

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.

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, the July 2, 2026 decision to take SIBTF issues off calendar while the case against the employer continues is not a threshold issue as SIBTF is not dismissed from the case, just taken off calendar to let the case against the employer move forward first. Issues against SIBTF are saved for a later date. As such, the July 2, 2026 decision is an interlocutory order and we treat this petition as a petition for removal.

Although we understand applicant's predicament in being now subjected to the new law that came into effect in July 2026, we agree with the WCJ that applicant's April 30, 2026 Declaration of Readiness does not fall under the safe harbor provision of section 4758(a)(3) as the declaration of readiness did not indicate that applicant's SIBTF claim was ready to proceed to trial. Accordingly, we deny removal.

For the foregoing reasons,

IT IS ORDERED that applicant Shela Barker's Petition for Removal/Reconsideration of the July 2, 2026 Minutes of Hearing order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 24, 2026

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

SHELA BARKER
EASON & TAMBORNINI, ALC
DIR, OFFICE OF THE DIRECTOR-LEGAL
STATE COMPENSATION INSURANCE FUND

LSM/*ara*

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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AMENDED REPORT AND RECOMMENDATION
ON PETITION FOR REMOVAL
To Include All Case Numbers

1. Order issued: July 2, 2026

2. Identity of Petitioner: Applicant

3. Verification: The petition is verified

4. Timeliness: The petition is timely

5. Date Petition for Removal filed: July 16, 2026

6. Petitioner alleges: that applicant was irreparably harmed by the WCJ's order taking the SIBTF issues off calendar.

Applicant alleges three industrial injuries each involving an alleged psychiatric injury. Applicant filed a Declaration to Proceed on April 30, 2026 listing "settlement" as the only issue. The DOR lists the following as the good faith efforts that were made to resolve the dispute:

> Demand was made for global resolution of workers compensation claims in February 2026. (sic) There is currently a SIF case too that is dependent on the determination in the work comp case on whether psyche is industrial or pre-existing. Board intervention needed.

There was no objection to the DOR.

The case proceeded to MSC on July 2, 2026. Counsels for applicant, defense, and SIBTF were present. SIBTF objected to proceeding to trial arguing that they were unable to accurately defend the claim without first knowing the outcome of the case in chief on the subsequent industrial injury. SCIF did not object to the cases in chief moving forward to trial. The hearing was therefore continued so that SCIF and applicant attorney could complete a Pre Trial Conference Statement and the issues regarding the case in chief could be set for trial; SIBTF issues were taken off calendar. Applicant filed the Petition for Removal in response to taking the SIBTF issues off calendar.

Applicant argues that they will suffer irreparable harm because by taking the matter off calendar the SIBTF claim will now fall under the new legislation that was signed into law on July 13, 2026. The SIBTF reforms change the criteria for eligibility for SIBTF benefits as well as what types of discovery/medical-legal reporting may be admissible. However, Labor Code Section 4758 carves out which claims are subject to the new reforms. Specifically the pertinent part states:

(a) This section applies to a claim for SIBTF benefits that meets any of the following criteria:

…

(3)(A) On or prior to June 1, 2026, a declaration of readiness to proceed requesting a mandatory settlement conference was filed with the Workers' Compensation Appeals Board district office *indicating that the SIBTF claim was ready to proceed to trial*.

(B) Notwithstanding subparagraph (A), this section does not apply to a declaration of readiness to proceed requesting a mandatory settlement conference filed with the Workers' Compensation Appeals Board district office on or prior to June 1, 2026 that was continued or taken off calendar because the claim was not ready to proceed to trial.

…

(c) Sections 4750, 4754.1, 4754.2, 4753 and 4757, as amended by the act that added this section, shall not apply to claims described in subdivision (a).

(emphasis added).

Applicant's petition fails because there was no declaration of readiness that indicated that the SIBTF claim was ready to proceed to trial. The only issue listed on the declaration of readiness was "settlement" which is not a triable issue. Although the declaration of readiness did mention that there was an SIBTF claim it further stated that eligibility of the claim was "dependent on the determination of the work comp case". In other words, the parties were unable to ascertain if there was a triable issue for SIBTF benefits until applicant's psychiatric claim was industrially related or not. As this had yet to be determined, and there was no settlement of the case in chief, the SIBTF were not yet ripe for trial. Hence, the SIBTF issues were taken off calendar.

RECOMMENDATION

Based upon the foregoing, it is recommended that the Petition for Removal be denied.

DATE: July 28, 2026

Darcy Kosta
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE