

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **DANIEL RAMIREZ,**

5 *Applicant,*

6 vs.

7 **STATE OF CALIFORNIA, DEPARTMENT**
8 **OF HEALTH CARE SERVICES; STATE**
9 **COMPENSATION INSURANCE FUND,**

10 *Defendants.*

Case Nos. ADJ6821103

(Sacramento District Office)

**OPINION AND ORDERS DISMISSING
PETITION FOR RECONSIDERATION,
GRANTING REMOVAL ON BOARD
MOTION AND DECISION AFTER
REMOVAL**

11
12 We have considered the allegations of the Petition for Reconsideration, and we have reviewed the
13 record in this matter.

14 The Petition for Reconsideration is taken from the WCJ's order taking the matter off calendar
15 ("OTOC"). However, a petition for reconsideration is properly taken only from a "final" order, decision,
16 or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A "final" order has been defined as one "which
17 determines any substantive right or liability of those involved in the case." (*Rymer v. Hagler* (1989) 211
18 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410, 413]; *Kaiser Foundation Hospitals v. Workers'*
19 *Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661, 665].)
20 Interlocutory *procedural or evidentiary* decisions, entered in the midst of the workers' compensation
21 proceedings, are *not* considered to be "final" orders because they do not determine any substantive
22 question. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075 [65
23 Cal.Comp.Cases 650, 655]; *Rymer, supra*, 211 Cal.App.3d 1180; *Kaiser Foundation Hospitals (Kramer),*
24 *supra*, 82 Cal.App.3d 45 [43 Cal.Comp.Cases 665]; see also, e.g., 2 Cal. Workers' Comp. Practice
25 (Cont.Ed.Bar 4th ed. 2000) §§ 21.8, 21.9.) Pre-trial orders regarding evidence, discovery, trial setting,
26 venue, or similar issues such as the OTOC in this case are non-final interlocutory orders that do not
27 determine any substantive right of the parties. Accordingly, the petition, to the extent it seeks

1 reconsideration, must be dismissed. (E.g., *Elwood v. Workers' Comp. Appeals Bd.* (2001) 66
2 Cal.Comp.Cases 272 (writ den.); *Jablonski v. Workers' Comp. Appeals Bd.* (1987) 52 Cal.Comp.Cases
3 399 (writ den.); *Beck v. Workers' Comp. Appeals Bd.* (1979) 44 Cal.Comp.Cases 190 (writ den.).)

4 As for the Petition for Removal, it is subject to denial because an OTOC ordinarily does not result
5 in substantial prejudice or irreparable harm, and reconsideration would be an adequate remedy if a final
6 decision adverse to petitioner ultimately issued. (Cal. Code Regs., tit. 8, § 10843.)

7 Nevertheless, we note that the Petition for Removal raises only constitutional issues that the
8 Appeals Board has no authority to resolve. (*Greener v. Workers' Comp. Appeals Bd.* (1993) 6 Cal.4th
9 1028 [58 Cal.Comp.Cases 793].) Therefore, in order for petitioner to have a final order for purposes of
10 appellate review, we will grant removal on our own motion (Lab. Code, § 5310) and amend the OTOC to
11 include a final order that applicant's appeal of the Independent Medical Review determination is denied.

12 For the foregoing reasons,

13 **IT IS ORDERED** that applicant's Petition for Reconsideration is **DISMISSED**.

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

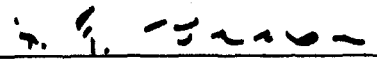
1 IT IS FURTHER ORDERED that removal is GRANTED ON THIS BOARD'S OWN
2 MOTION, and that as the Board's Decision After Removal, the OTOC dated October 23, 2014 is
3 AMENDED to read as follows:

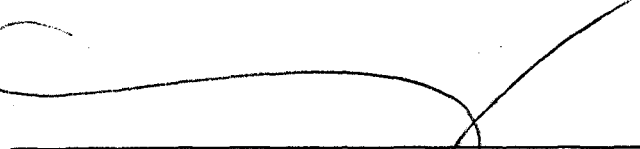
4 "Applicant wants to raise constitutional issues only. The WCAB has no authority to declare
5 Independent Medical Review (IMR) unconstitutional. Therefore, applicant's IMR appeal is DENIED
6 and this matter is ORDERED TAKEN OFF CALENDAR."

7 WORKERS' COMPENSATION APPEALS BOARD

8
9 
10 _____
11 KATHERINE ZALEWSKI

12 I CONCUR,

13
14 
15 _____
16 FRANK M. BRASS

17 
18 _____
19 MARGUERITE SWEENEY



20 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

21
22 JAN 02 2015

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

25 DANIEL RAMIREZ
26 MASTAGNI HOLSTEDT
27 STATE COMPENSATION INSURANCE FUND



28 jtl/jp

29 TORRICO, Jose