

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

ARMANDO AMEZCUA, *Applicant*

vs.

MILGARD WINDOWS MANUFACTURING, INC.;
XL SPECIALTY INSURANCE COMPANY, administered by BROADSPIRE, *Defendants*

Adjudication Numbers: ADJ19104113, ADJ19104112, ADJ19104123, ADJ19104121
Riverside District Office

**OPINION AND ORDERS DISMISSING
PETITION FOR RECONSIDERATION,
DENYING PETITION FOR REMOVAL,
GRANTING REMOVAL ON MOTION
OF THE APPEALS BOARD AND
NOTICE OF INTENT
TO IMPOSE SANCTIONS**

Applicant's attorney, John R. Ramirez (SBN 201939) and The Ramirez Firm, has filed a Petition for Reconsideration in the above captioned case, wherein, Mr. Ramirez objected to an Order taking the matter off calendar. Specifically, in the Petition, Mr. Ramirez alleges that he is entitled to the unpaid portion of attorney's fees under Labor Code¹ section 5710; Mr. Ramirez seeks to proceed to a trial on the issue of attorney's fees.

We have not received an answer from defendant.

The WCJ filed a Report recommending that the Petition for Reconsideration be dismissed as the Order taking the matter off calendar was a non-final order. To the extent that the petition seeks removal, the WCJ recommended that the petition be denied as applicant failed to demonstrate irreparable harm or significant prejudice.

We have considered the allegations in the Petition for Reconsideration and the contents of the Report, and we have reviewed the record. Based upon our review of the record, we will dismiss applicant's Petition for Reconsideration as applicant seeks reconsideration of a non-final order.

¹ All future references are to the Labor Code unless noted.

We will treat the Petition as seeking removal and deny removal as Mr. Ramirez failed to demonstrate irreparable harm, significant prejudice, or that reconsideration will not be an adequate remedy. (Cal. Code Regs., tit. 8, § 10955.) We will grant removal on motion of the Workers' Compensation Appeals Board (Appeals Board) pursuant to section 5310 and issue a notice of intent to impose sanctions against John Ramirez of up to \$750.00, as it appear that he may have filed a frivolous petition for reconsideration and failed to respond to multiple admonishments to review the petition. (§ 5813.)

FACTS

This case has not proceeded to an evidentiary hearing. Under our authority in section 5301, we take judicial notice of the Electronic Adjudication Management System ("EAMS") adjudication file and for purpose of deciding applicant's Petition, we have accepted the factual assertions in the Petition for Reconsideration as true.²

On July 29, 2024, applicant's attorney filed a petition for attorney's fee pursuant to section 5710. Applicant's attorney represented that he personally represented applicant at deposition, and requested a fee award of one hour of preparation time and 3.6 hours of actual deposition time. (Petition for Benefits Pursuant to California Labor Code 5710 and Proposed Order, p.1, July 29, 2024.) Applicant requested a fee issue at the hourly rate of \$425.00 per hour, or \$1,955.00 total.

On July 30, 2024, the workers' compensation administrative law judge (WCJ) issued an order that defendant pay \$1,840.00 as a reasonable fee. The WCJ found that applicant was entitled to a rate of \$400.00 per hour. Accordingly, the dispute in this matter is over \$115.00. The order was served upon all parties and contained a self-destruct clause advising that a timely objection within 20 days would void the order.

On August 1, 2024, applicant filed an objection letter along with a declaration of readiness to proceed to a mandatory settlement conference on the issue of 5710 fees.

The matter proceeded to a hearing on October 3, 2024. The WCJ ordered the matter taken off calendar over applicant's attorney's objection and deferred the issue of section 5710 attorney fees. (Minutes of Hearing, October 3, 2024.)

² WCAB Rule 10515 (Cal. Code Regs., tit. 8, § 10515) states that: "Demurrers, petitions for judgment on the pleadings and petitions for summary judgment are not permitted." We wish to make clear that under our power in section 5301, we accept Mr. Ramirez's allegations solely to explain why Mr. Ramirez's Petition is without merit.

On October 15, 2024, applicant's attorney filed a petition for reconsideration from the order taking the matter off calendar.

DISCUSSION

I.

Preliminarily, we note that 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.

(§ 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 case was transmitted to the Appeals Board on October 18, 2024, and 60 days from the date of transmission is Tuesday, December 17, 2024. This decision is issued by or on Tuesday, December 17, 2024, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on October 18, 2024, and the case was transmitted to the Appeals Board on October 18, 2024. 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 September 20, 2024.

II.

As we previously stated in our En Banc decision in *Ledezma v. Kareem Cart Commissary and Mfg.*, and further emphasized in our Significant Panel Decision of *Reed v. County of San Bernardino* (2024), ADJ17850714, 89 Cal.Comp.Cases ____:

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, 260 Cal. Rptr. 76; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal. App. 3d 528, 534–535 [163 Cal. Rptr. 750, 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 [97 Cal. Rptr. 2d 418, 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.

(*Ledezma v. Kareem Cart Commissary and Mfg.*, (2024) 89 Cal. Comp. Cases 462, 475 (En Banc, emphasis in original).)

Not only did we make clear in *Ledezma* that **orders regarding trial setting are not final orders**, but we also made clear that **seeking reconsideration of non-final orders is sanctionable**. (See generally, *id.*; see also, *Ledezma v. Kareem Cart Commissary and Mfg*, (2024) 89 Cal. Comp. Cases 549 (En Banc) [“ORDER IMPOSING SANCTIONS AND COSTS”].)

Accordingly, we will dismiss the petition for reconsideration as it improperly seeks reconsideration of what is clearly a non-final order.

II.

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, § 10843(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, § 10843(a).)

Whether to bifurcate an issue for trial is within the discretion of the WCJ, who may order bifurcation upon a showing of good cause.

(a) The parties shall submit for decision all matters properly in issue at a **single trial** and produce at the trial all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense. However, a workers' compensation judge may order that the issues in a case be bifurcated and tried separately upon a showing of good cause.

(Cal. Code Regs., tit. 8, § 10787(a) (Emphasis added).)

As bifurcation is within the discretion of the trial judge, upon removal, a party must show that the trial judge abused their discretion. This requires a showing that the WCJ exercised their discretion “. . . in an arbitrary, capricious, or patently absurd manner that results in a manifest miscarriage of justice.” (*People v. Lancaster*, (2007) 41 Cal. 4th 50, 71; *People v. Goldsmith*, (2014) 59 Cal. 4th, 258, 266.)

Here, Mr. Ramirez seeks a trial over the amount of \$115.00. We agree with the WCJ that under these circumstances, judicial economy would best be served by trying such a dispute along

with the case in chief as part of a single trial. Indeed, as WCAB 10787(a) makes abundantly clear, parties must submit all matters at issue at *a single trial*. (Cal. Code Regs., tit. 8, § 10787(a).)³ Allowing this matter to proceed to a trial and potentially, reconsideration, could cause significant delay of a decision on benefits in this matter, which would not further the Appeals Board’s constitutional mandate to accomplish substantial justice expeditiously. Here, Mr. Ramirez failed to demonstrate that the Order taking the matter off calendar caused irreparable harm, significant prejudice, or that reconsideration will not be an adequate remedy. (Cal. Code Regs., tit. 8, § 10955.) Accordingly, we will deny the petition to the extent that it seeks removal.

III.

Finally, we address the issue of sanctions.

Section 5813 permits the Workers’ Compensation Appeals Board to impose sanctions of up to \$2,500.00 against any party who engages in “. . . bad-faith actions or tactics that are **frivolous** or solely intended to cause unnecessary delay.” (§ 5813, (emphasis added).)

WCAB Rule 10421(b) states in relevant part that:

Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the Workers’ Compensation Appeals Board, or that are done for an improper motive or are indisputably without merit.

(Cal. Code Regs., tit. 8, § 10421.)

WCAB Rule 10421(b) further provides a comprehensive but non-exclusive list of actions that could be subject to sanctions. As applicable here, subdivision (b) states that a party may be subject to sanctions where the party has engaged in the following actions:

(2) Filing a pleading, petition or legal document unless there is some reasonable justification for filing the document.

(6) Bringing a claim, conducting a defense or asserting a position:

³ We again emphasize that WCAB Rule 10515 (Cal. Code Regs., tit. 8, § 10515) prohibits demurrers, petitions for judgment on the pleadings, and petitions for summary judgment. This means that when an issue is submitted to a WCJ for decision, a record must be created and evidence must be admitted pursuant to WCAB Rule 10787 (c) (Cal. Code Regs., tit. 8, § 10787 (c)) to support the WCJ’s decision. (See *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc) [decisions of the Appeals Board “must be based on admitted evidence in the record”].)

- (A) That is:
(i) Indisputably without merit;

(7) Presenting a claim or a defense, or raising an issue or argument, that is not warranted under existing law . . .

(Cal. Code Regs., tit. 8, § 10421(b).)

Here, it appears that Mr. Ramirez improperly filed a Petition for Reconsideration in response to a non-final order. It appears that Mr. Ramirez did this in six different cases and he was admonished in five of those cases to review his filings and make necessary corrections.

On November 5, 2024, the Appeals Board issued a significant panel decision in *Latrice Reed v. County of San Bernardino*. (2024 Cal. Wrk. Comp. LEXIS 69.) We admonished Mr. Ramirez in the decision and specifically, in footnote six, we stated:

Mr. Ramirez has filed petitions for reconsideration from orders taking the matter off calendar in at least six other cases. (See *Aragon v. County of San Bernardino*, ADJ17970013; *Vlasak v. County of San Bernardino*, ADJ17850714; *Arroyo v. County of San Bernardino*, ADJ18582166; *Hernandez Sanchez v. Mission Foods*, ADJ18430275; and *Delifus v. Community Care and Rehabilitation Center*, ADJ17705798; *Amezcuca v. Milgard Windows Manufacturing, Inc.*, ADJ19104112, et. al.) Since we are admonishing Mr. Ramirez for the first time here, and it does not appear that Mr. Ramirez's other petitions were filed for an improper purpose, we do not consolidate the cases to take up the issue of sanctions. **Upon receipt of this decision, however, we recommend that Mr. Ramirez re-consider the merits of his petitions in those matters.**

(*Id.* at pp. 7-8, (emphasis added).)

On November 8, 2024, we again admonished Mr. Ramirez in *Aragon v. County of San Bernardino*, ADJ17970013 as follows:

Mr. Ramirez has filed petitions for reconsideration from orders taking the matter off calendar in at least five other cases. (See *Vlasak v. County of San Bernardino*, ADJ17850714; *Arroyo v. County of San Bernardino*, ADJ18582166; *Hernandez Sanchez v. Mission Foods*, ADJ18430275; and *Delifus v. Community Care and Rehabilitation Center*, ADJ17705798; *Amezcuca v. Milgard Windows Manufacturing, Inc.*, ADJ19104112, et. al.) We are admonishing Mr. Ramirez for the second time here, however, we recognize that Mr. Ramirez has not had sufficient time since our prior admonishment on November 5 to act upon these pending cases. We further note that it does not appear that Mr. Ramirez's other petitions were filed for an improper purpose, and thus, we do not take up the issue of sanctions *at this time*. Upon receipt of this decision, however, we recommend that Mr. Ramirez re-consider the merits of his petitions in those matters.

(Opinion and Orders Dismissing Petition for Reconsideration and Denying Petition for Removal, ADJ17970013, November 8, 2024, p. 5.)

On November 19, 2024, we issued another admonishment to Mr. Ramirez in *Arroyo v. County of San Bernardino*, ADJ18582166, as follows:

Mr. Ramirez has filed petitions for reconsideration from orders taking the matter off calendar in at least three other pending cases. (See *Vlasak v. County of San Bernardino*, ADJ17850714; *Arroyo v. County of San Bernardino*, ADJ18582166; and *Delifus v. Community Care and Rehabilitation Center*, ADJ17705798; *Amezcuca v. Milgard Windows Manufacturing, Inc.*, ADJ19104112, et. al.) We are admonishing Mr. Ramirez for the third time here, however, we recognize that Mr. Ramirez may not have had sufficient time since our prior admonishments on November 5 and November 8 to act upon these pending cases. We further note that it does not appear that Mr. Ramirez's other petitions were filed for an improper purpose, and thus, we do not take up the issue of sanctions at this time. Upon receipt of this decision, however, we strongly recommend that Mr. Ramirez re-consider the merits of his petitions in those matters.

(Opinion and Orders Dismissing Petition for Reconsideration and Denying Petition for Removal, ADJ18582166, November 19, 2024, p. 5.)

On December 2, 2024, we issued two identical admonishments to Mr. Ramirez in *Vlasak v. County of San Bernardino*, ADJ17850714, and *Delifus v. Community Care and Rehabilitation Center*, ADJ17705798 as follows:

Mr. Ramirez has filed a petition for reconsideration from orders taking the matter off calendar in at least one other pending case. (See *Amezcuca v. Milgard Windows Manufacturing, Inc.*, ADJ19104112, et. al.) We are admonishing Mr. Ramirez for the **fourth and final** time here. To be clear, Mr. Ramirez's conduct in this and other cases is sanctionable. We have thus far restrained from issuing a notice of intent to impose sanctions and chosen instead to admonish Mr. Ramirez to review the petitions that he has filed and to take appropriate action to correct his mistakes. If Mr. Ramirez does not wish to take action in response to this admonishment, the issue of sanctions may be raised.

(Opinion and Orders Dismissing Petition for Reconsideration and Denying Petition for Removal, ADJ17850714, November 8, 2024, p. 5.)

It does not appear that Mr. Ramirez responded to any of the admonishments given to him. It appears that Mr. Ramirez filed a frivolous petition for reconsideration in this matter and allowed it to proceed on the merits, taking no steps to either withdraw or amend the pleading. It does not appear that our admonishments have had the actual effect of correcting Mr. Ramirez's conduct. Accordingly, and good cause appearing, pursuant to section 5813 and WCAB Rule 10421 we will issue a notice of intention to impose sanctions against John Ramirez (SBN 201939) in an amount up to \$750.00 as he filed a petition for reconsideration from a non-final order, which appears to constitute frivolous conduct, particularly since Mr. Ramirez was admonished on five occasions to correct his conduct, and it appears that he failed to act. As defendant did not file an answer to the petition for reconsideration, we do not take up the issue of costs at this time.

Accordingly, we dismiss applicant's Petition for Reconsideration as applicant seeks reconsideration of a non-final order taking this matter off calendar. We treat the petition as one seeking removal and deny removal on the merits as applicant failed to demonstrate irreparable harm. On motion of the Appeals Board, we will grant removal to take up the issue of sanctions, and issue a notice of intent to impose sanctions of up to \$750.00 against John Ramirez (SBN 201939).

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the October 3, 2024 Order taking the matter off calendar is **DISMISSED**.

IT IS FURTHER ORDERED that applicant's Petition for Removal of the October 3, 2024 Order taking the matter off calendar is **DENIED**.

IT IS FURTHER ORDERED that on motion of the Appeals Board, removal of this matter is **GRANTED**.

NOTICE IS HEREBY GIVEN that absent written objection in which good cause to the contrary is demonstrated, within twenty (20) days plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, §§ 10605(a)(1), 10600) after service of this Notice that pursuant to Labor Code section 5813 and Appeals Board Rule 10421 (Cal. Code Regs., tit. 8, § 10421) the Workers' Compensation Appeals Board will order **JOHN RAMIREZ** (SBN 201939), to pay sanctions of up to \$750.00 to the general fund.

IT IS FURTHER ORDERED that all responses to this notice *by any party* must be filed within twenty (20) days plus five (5) additional days for mailing (Cal. Code Regs., tit. 8, 10605(a)(1), 10600) after service of this Notice, and must be electronically filed in the Electronic Adjudication System (EAMS).

Untimely or misfiled responses may not be accepted or considered.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 17, 2024

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

**ARMANDO AMEZCUA
THE RAMIREZ FIRM
EMPLOYER DEFENSE GROUP, LLP**

EDL/mc

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