

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

LIBRADA SANCHEZ, *Applicant*

vs.

**GOODWILL INDUSTRIES; REDWOOD FIRE AND CASUALTY INSURANCE
COMPANY c/o BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ10107934
Oakland District Office**

**OPINION AND ORDER
DISMISSING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of our Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, issued on February 21, 2025, wherein we rescinded the order of the workers' compensation administrative law judge ("WCJ") that had dismissed lien claimant's lien.

Initially, we note that the Petition for Reconsideration was wrongly filed with the Oakland District Office, rather than with the Appeals Board as required by WCAB Rule 10940, subdivision (a). (Cal. Code Regs., tit. 8, § 10940(a) ["Petitions for reconsideration of decisions after reconsideration of the Appeals Board shall be filed with the office of the Appeals Board."]) However, the WCJ in this matter promptly transmitted the Petition to us, and we will therefore consider the Petition as if it had been properly filed with us.

We received an Answer. We have reviewed the Petition and the Answer, as well as the record. For the reasons discussed below, we will dismiss the Petition for Reconsideration because it seeks review of a non-final order.

DISCUSSION

I.

Former Labor Code 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, Labor Code 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 Labor Code 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 March 17, 2025, and 60 days from the date of transmission is May 16, 2025. This decision is issued by or on May 16, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, a notice of transmission was served by the district office on March 13, 2025, but the case was actually transmitted to the Appeals Board on March 17, 2025. Thus, we conclude that the parties were not provided with the notice of transmission required by Labor Code section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to

act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on March 17, 2025.¹

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 (*Rymer*); *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd.* (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, our February 21, 2015 order rescinding the dismissal of the lien does not determine any substantive right or liability, nor does it determine a threshold issue fundamental to the claim for benefits.² Accordingly, we will dismiss the Petition for Reconsideration because it seeks review of a non-final order.

¹ In defense of the WCJ, however, we also note that this failure was attributable to Petitioner’s own failure to properly file the petition with us directly; the WCJ’s decision to transmit the case to us was therefore the proverbial good deed that never goes unpunished. (See Cal. Code Regs., tit. 8, § 10940(a).)

² We note that the original order dismissing the lien *was* a final order; it does not follow, however, that our subsequent order rescinding that order is *also* a final order. Nor is Petitioner’s citation to *Rea v. Workers’ Comp. Appeals Bd.* (2005) 70 Cal. Comp. Cases 312 apposite. The question here is not whether defendant is aggrieved by the February 21, 2025 order, but whether that order was final. *Rea* itself considered both the question of whether the petitioner in that case was aggrieved by the Appeals Board’s decision, *and* whether the Appeals Board’s decision was a final order. (See *id.*, at pp. 325–26.)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the February 21, 2025 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration is **DISMISSED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 14, 2025

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

**CABALLERO COLLECTIONS
MULLEN FILIPPI
ANTHONY RATTO
LAUGHLIN FALBO
NMC MEDICAL CLINIC SAN JOSE
RECOVERY RESOURCES ALAMEDA**

AW/kl

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