

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

ROCHELLE BOYD, *Applicant*

vs.

**VISSER;
NATIONAL INSTERSTATE RICHFIELD, *Defendants***

**Adjudication Number: ADJ11629744
Pomona District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the February 13, 2023 Findings of Fact, wherein the workers' compensation administrative law judge (WCJ) determined, in relevant part, that applicant did not sustain injury arising out of and in the course of employment to the brain, internal, psyche, or sexual dysfunction, and that applicant did not establish good cause for the issuance of additional panels of Qualified Medical Evaluators (QMEs) in internal, neurology and psychiatry.

Applicant contends the WCJ applied an incorrect standard in evaluating the request for additional QMEs, and that the evidentiary record supports the issuance of additional panels of QMEs.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the February 13, 2023 Findings of Fact, order the issuance of additional

panels in internal medicine and psychiatry, and defer the issue of whether additional panels are necessary pending development of the record.

BACKGROUND

Applicant claimed injury to the cervical and lumbar spine, the internal system, psyche, head, brain and in the form of sexual dysfunction, while employed as a bus driver by defendant Visser on September 18, 2018. Defendant admits injury to the cervical and lumbar spine.

On September 24, 2019, treating physician Satish Lal, M.D., evaluated applicant, who complained of left shoulder pain with radicular symptoms to the upper and lower extremities, back pain, stiffness, numbness and tingling in the bilateral upper and lower extremities. (Ex. C, report of Satish Lal, M.D., dated September 24, 2019, at pp. 2-3.) Dr. Lal diagnosed applicant as having sustained injury to the cervical and lumbar spine, and to the left shoulder. (*Id.* at p. 4.)

On August 21, 2021, Soheil Aval, M.D., evaluated applicant as the Qualified Medical Evaluator in orthopedics. Dr. Aval diagnosed industrial injury to the cervical and lumbar spine. (Ex. A, report of Soheil Aval, M.D., dated August 12, 2021, at p. 9.) The QME further opined:

In terms of non-orthopedic complaints, the patient at this time has numerous complaints including difficulty with sexual function, difficulty sleeping, as well as symptoms at times of gastritis, depression and anxiety. The patient states she has required treatment for PTSD. None of these complaints are within my area of expertise and I would defer to the appropriate specialists. (*Id.* at p. 10.)

On December 1, 2022, the parties proceeded to trial on the issue of whether applicant had sustained injury to the brain, internal system, psyche, and in the form of sexual dysfunction. (Minutes of Hearing and Summary of Evidence, dated December 1, 2022, at 2:13.) The parties also placed in issue, “whether applicant may obtain panels in internal, neurology, psyche, and urology.” (*Id.* at 2:15.) Applicant testified regarding the nature and severity of her claimed orthopedic symptoms, and also described symptoms including light sensitivity, difficulty with balance and equilibrium, chronic constipation or extreme diarrhea, gastritis, difficulty with sleep, anxiety, libido and urological symptoms. (*Id.* at pp. 3-4.)

On February 13, 2023, the WCJ issued her Findings of Fact, determining in relevant part that applicant had not met her burden of establishing injury arising out of and in the course of employment (AOE/COE) to the brain, internal, psyche and sexual dysfunction. (Findings of Fact No. 8, Findings of Fact, dated February 13, 2023.) The WCJ further determined that applicant “has

not sustained the burden of proof in support of claim for additional panels in internal, neurology and psyche.” (Findings of Fact No. 9.) The WCJ’s Opinion on Decision found that applicant’s lay testimony was insufficient to support a finding of injury AOE/COE to the claimed body parts, and that the record reflected no medical evidence beyond applicant’s orthopedic complaints. The Opinion also noted that the record reflected no referrals by a treating or evaluating physician to additional specialties, and that in the absence of medical evidence to support the necessity of additional panels, applicant had not met her burden of proof. (Opinion on Decision, dated February 13, 2023, at p. 4.)

Applicant’s Petition for Reconsideration (Petition) contends the WCJ’s “reasoning to deny panel is exactly the relieve (sic) that applicant is seeking.” (Petition, at 2:19.) Applicant contends that the defendant will not authorize treatment on disputed body parts, and that a medical-legal evaluation is necessary to resolve issues of causation to these contested body parts. Applicant also asserts that QME Dr. Aval has deferred applicant’s complaints outside his medical specialty to the appropriate specialists, and that applicant’s trial testimony supports the need for evaluation in additional QME specialties. (*Id.* at 3:22.)

The WCJ’s Report notes that it was applicant who sought trial on issues including contested body parts, and that the trial went forward over defense objection. Additionally, “the reference in a report to complaints being beyond the expertise of the reporting physician does not constitute a referral to that specialty.” (Report, at p. 2.)

DISCUSSION

Administrative Director (AD) Rule 31.7(b) provides for an additional QME panel in another specialty as follows in relevant part:

(b) Upon a showing of good cause that a panel of QME physicians in a different specialty is needed to assist the parties reach an expeditious and just resolution of disputed medical issues in the case, the Medical Director shall issue an additional panel of QME physicians selected at random in the specialty requested. For the purpose of this section, good cause means:

(1) A written agreement by the parties in a represented case that there is a need for an additional comprehensive medical-legal report by an evaluator in a different specialty and the specialty that the parties have agreed upon for the additional evaluation; or

(2) Where an acupuncturist has referred the parties to the Medical Unit to receive an additional panel because disability is in dispute in the matter; or

(3) An order by a Workers' Compensation Administrative Law Judge for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected and the residential or employment-based zip code from which to randomly select evaluators; or

(4) In an unrepresented case, that the parties have conferred with an Information and Assistance Officer, have explained the need for an additional QME evaluator in another specialty to address disputed issues and, as noted by the Information and Assistance Officer on the panel request form, the parties have reached agreement in the presence of and with the assistance of the Officer on the specialty requested for the additional QME panel. The parties may confer with the Information and Assistance Officer in person or by conference call.

Here, applicant seeks the issuance of additional panels in neurology, urology, internal medicine and psychiatry to evaluate her claimed injury. (Petition, at 4:12.) Orthopedic QME Dr. Aval has indicated that he would defer to specialists in these medical fields outside of his specialty. (Ex. A, report of Soheil Aval, M.D., dated August 12, 2021, at p. 10.)

Labor Code section 4062.2 governs the process to obtain a medical-legal evaluation from a panel QME in a represented case if the parties do not agree on an agreed medical evaluator (AME). (Lab. Code, § 4062.2.) Defendant has denied liability for applicant's claimed injuries to the internal system, psyche, head, brain, and sexual dysfunction. (Minutes, at 2:3.) In the absence of additional panels in relevant specialties, applicant is effectively prevented from conducting the medical-legal discovery necessary to a determination the nature and extent of the admitted injury. We therefore agree with applicant that additional QME panels are appropriate. (See *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; Lab. Code, §§ 5701, 5906 [the Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues].) Following our review of the medical record, as well as applicant's trial testimony, we are persuaded that QME evaluations in internal medicine and psychiatry are reasonable and necessary. The QMEs in those specialties may then address the need for additional panels in neurology, urology, or any other specialties that may be indicated. Accordingly, we will

rescind the Findings of Fact that applicant did not sustain her burden of proving injury to the brain, internal, psyche, and sexual dysfunction, pending development of the record.

The WCJ asserts in her Report that a medical referral is required to establish good cause for the issuance of an additional panel of QMEs in another specialty. (Report, at p. 2.) Here, however, applicant claims injury to body parts outside the field of orthopedic medicine. The orthopedic QME has indicated he would defer evaluation in fields outside of orthopedic medicine to the appropriate specialists. Consequently, and irrespective of whether a physician specifically refers applicant to another specialty, additional QME panels will be required to fully address the claimed injury.

We remind the parties that the WCJ has broad discretion under the Labor Code and under our Rules relating to discovery “to issue such interlocutory orders relating to discovery as he determines are necessary to insure the full and fair adjudication of the matter before him, to expedite litigation and to safeguard against unfair surprise.” (*Hardesty v. McCord & Holdren* (1976) 41 Cal.Comp.Cases 111 [1976 Cal. Wrk. Comp. LEXIS 2406].) Additionally, WCAB Rule 10421 provides for sanctions in the event that a party has engaged in “[b]ad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay...that are done for an improper motive or are indisputably without merit.” (Cal. Code Regs., tit. 8, § 10421(b).) The WCJ may also consider sanctions against a party that is “[b]ringing a claim, conducting a defense or asserting a position, that is...[d]one solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation.” (Cal. Code Regs., tit. 8, § 10421(b)(6)(iii).) Any party asserting that discovery is not undertaken in good faith may, on appropriate motion and on appropriate showing of good cause, request that the WCJ review those discovery efforts and provide reasonable relief, as is appropriate and warranted.

Accordingly, we will grant the Petition, rescind the Findings of Fact, and substitute new findings that applicant is entitled to new panels of QMEs in internal medicine and psychology, and that the issue of the need for additional panels of QMEs in urology and neurology is deferred.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the Findings of Fact dated February 13, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact dated February 13, 2023 is **RESCINDED** and that the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. ROCHELLE BOYD, while employed on 09-18-2018 as a bus driver at Upland, California, by VISSER, whose workers' compensation insurance carrier was NATIONAL INTERSTATE RICHFIELD, sustained injury arising out of and occurring in the course of employment to cervical spine and lumbar spine; and claims to have sustained injury arising out of and in the course of employment to internal, psyche, head, sexual dysfunction, and brain.
2. The employer has furnished some medical treatment. The primary treating physician is Satish Lal, M.D. Orthopedic PQME was Dr. Soheil Aval, M.D.
3. There is good cause for the issuance of additional panels of Qualified Medical Evaluators in internal medicine and psychiatry.

4. The issue of the need for additional panels of QMEs in urology and neurology is deferred, with jurisdiction reserved to the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 24, 2023

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

**ROCHELLE BOYD
MONTROYA LAW
DIETZ, GILMOR & CHAZEN**

SAR/abs

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