

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

AZZA SIDAHMED, Applicant

vs.

**ALAMEDA COUNTY COUNSEL,
permissibly self-insured and administered by AIMS, *Defendants***

**Adjudication Number: ADJ17029088
Oakland District Office**

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

Applicant seeks removal in response to the November 20, 2023 Findings of Fact and Orders (F&O), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as an administrative legal assistant on March 6, 2019, sustained industrial injury to the back and right knee. The WCJ found that Qualified Medical Evaluator (QME) panel no. 7590870 in orthopedic surgery issued by the Medical Unit on June 5, 2023 was valid, while panel no. 7590891 issued by the Medical Unit the same day was invalid. The WCJ further determined that defendant established good cause to cancel the QME evaluation scheduled by applicant.

Applicant contends that QME panel obtained by defendant was obtained using an incorrect claim number and was therefore *void ab initio*. Applicant further contends that defendant's failure of timely service of the panel provides additional grounds to invalidate the panel.

We have received an Objection to Petition for Removal (Answer) from defendant. 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 F&O, and substitute new findings of fact that panel no. 7590891 is valid, and that panel no. 7590870 is invalid.

FACTS

Applicant claimed injury to back and right knee while employed as an administrative legal assistant by defendant Alameda County Counsel on March 6, 2019. Defendant admits injury arising out of and in the course of employment but disputes the nature and extent of the injury.

On January 11, 2023, defendant authorized Shawn Teran, M.D., to act as the primary treating physician with reference to claim no. CTYA-105264.

On May 18, 2023, defendant issued an objection to the March 16, 2023 medical report issued by treating physician Shawn Teran, M.D., dated March 16, 2023. (Ex. A, Objection Pursuant to [Labor Code] section 4062 to the Report of Shawn Teran, dated May 18, 2023.)

On June 2, 2023, applicant and defendant independently requested a panel of QMEs from the Division of Workers' Compensation Medical Unit (DWC Medical Unit). (Ex. 101, Defendant's Faxed Letter Regarding the Orthopedic QME Panel, June 13, 2023; Ex. 2, Chiropractic Panel Number 7590891 issued by Medical Unit, June 9, 2023.) Defendant's panel request listed Claim No. CTYA-107057. Applicant's panel request listed claim no. CTYA-105264.

On June 5, 2023, the DWC Medical Unit issued panel no. 75980870 in response defendant's request, and panel no. 7590891 in response to applicant's request.

On June 9, 2023, applicant's counsel objected to panel no. 759870, obtained by defendant, noting that the claim number used in obtaining the panel was invalid. (Ex. 3, Applicant's Letter Objecting to Defendant's Orthopedic Panel, June, 9, 2023.)

On June 13, 2023, defense counsel wrote to applicant's counsel, waiving their right to a strike with regard to panel no. 7590870. (Ex. 101, Defendant's Faxed Letter Regarding the Orthopedic QME Panel, June 13, 2023.)

Also on June 13, 2023, the DWC Medical Unit issued a letter revoking panel number 7590870, obtained pursuant to defense request, because a prior panel had issued with respect to the listed claim number of CTYA-107057. (Petition, at p. 2:16; Answer, at p. 4:17.)

On June 21, 2023, applicant's counsel wrote to defense counsel, reiterating the objection to panel no. 7590870, obtained by defendant, and selected Ruben Amezcuita, D.C. from panel no. 7590891, the panel obtained by applicant, to act as the QME.

On July 20, 2023, defense counsel wrote to Dr. Amezquita, noting a dispute over the validity of the selection of the QME, and informing Dr. Amezquita that “until this issue is heard by the WCAB[,] [d]efendant will not [be] paying for or participating in this exam and does not recognize you as QME.” (Ex. 6, Defendant's letter requesting cancellation of Chiropractic QME Evaluation, dated July 20, 2023.)

On September 7, 2023, the parties proceeded to trial, framing in relevant part, the issue of which QME panel was valid.

On November 20, 2023, the WCJ issued his F&O, determining that applicant sustained injury arising out of and in the course of employment, that panel no. 7590870, issued in response to defendant’s request, was valid, while panel no. 7590891, requested by applicant, was invalid. (Findings of Fact, Nos. 1, 5 & 6.) The WCJ further determined that defendant established good cause to cancel the QME evaluation scheduled by applicant.

Applicant’s Petition for Removal contends panel no. 7590870, issued in response to defendant’s request, was *void ab initio* because it listed an incorrect claim number, and further, that defendant failed to timely serve the panel as required by Administrative Director (AD) Rule 30(b)(1)(C). (Cal. Code Regs., tit. 8, § 30(b)(1)(C).)

Defendant’s Answer characterizes the incorrect claim number used to obtain panel no.7590870 as an administrative error, and contends that by not raising the issue of timely service of the panel at trial, applicant waived the argument.

DISCUSSION

I.

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; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (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.

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.

Here, the WCJ’s decision includes a finding of injury arising out of and in the course of employment. (Finding of Fact No. 1.) This is a final order subject to reconsideration and not removal. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1075 [65 Cal.Comp.Cases 650].)

Although the decision contains findings that are final, the petitioner is only challenging the WCJ’s interlocutory findings/orders determining the issue of the validity of the two QME panels obtained by the parties. Therefore, we will apply the removal standard to our review. (See *Gaona, supra*, 5 Cal.App.5th 658, 662.)

There are 25 days allowed within which to file a petition for reconsideration from a “final” decision that has been served by mail upon an address in California. (Lab. Code, §§ 5900(a), 5903; Cal. Code Regs., tit. 8, § 10507(a)(1).) This time limit is extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10508.) To be timely, however, a petition for reconsideration must be *filed* (i.e., received) within the time allowed; proof that the petition was mailed (posted) within that period is insufficient. (Cal. Code Regs., tit. 8, §§ 10845(a), 10392(a).) As explained further below, petitions for reconsideration are required to be filed at the district office, and not directly at the Appeals Board. (Cal. Code Regs., tit. 8, § 10940(a)); see Cal. Code Regs., tit. 8, § 10205(l) [defining a “district office” as a “trial level workers’ compensation court.”]).

This time limit is jurisdictional and, therefore, the Appeals Board has no authority to consider or act upon an untimely petition for reconsideration. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1076 [65 Cal.Comp.Cases 650, 656] (*Maranian*); *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1182; *Scott v Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 979, 984 [46 Cal.Comp.Cases 1008, 1011]; *U.S. Pipe & Foundry Co. v. Industrial Acc. Com. (Hinojoza)* (1962) 201 Cal.App.2d 545, 549 [27 Cal.Comp.Cases 73, 75-76].)

Timely petitions for reconsideration filed *and received* by the Appeals Board are “acted upon within 60 days from the date of filing” pursuant to section 5909, by either denying or granting the petition. The exception to this rule is a petition *not received* by the Appeals Board within 60 days due to irregularities outside the petitioner’s control. (See *Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 635, fn. 22 [70 Cal.Comp.Cases 312].) Labor Code section 5909 provides that a petition is denied by operation of law if the Appeals Board does not grant the petition within 60 days after it is filed. (Lab. Code, § 5909.)¹

However, we believe that “it is a fundamental principle of due process that a party may not be deprived of a substantial right without notice....” (*Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1108 [57 Cal.Comp.Cases 493].)² In *Shipley*, the Appeals Board denied the applicant’s petition for reconsideration because it had not acted on the petition within the statutory time limits of Labor Code section 5909. This occurred because the Appeals Board had misplaced the file, through no fault of the parties. The Court of Appeal reversed the Appeals Board’s decision holding that the time to act on applicant’s petition was tolled during the period

¹ The Appeals Board does not deny petitions for reconsideration by operation of law pursuant to section 5909 based on the Supreme Court’s holdings that summary denial of reconsideration is no longer sufficient after the enactment of section 5908.5. (*Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 754-755 [33 Cal.Comp.Cases 350], *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) [“We hold that if the appeals board denies a petition for reconsideration its order may incorporate and include within it the report of the referee, provided that the referee’s report states the evidence relied upon and specifies in detail the reasons for the decision.” (See Lab. Code, § 5908.5; See also *Goytia v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 889, 893 [35 Cal.Comp.Cases 27].)]

² Under the grant of authority in the California Constitution, the Appeals Board operates as an appellate court that reviews and decides appeals from decisions issued by workers’ compensation administrative law judges, and all decisions of the Appeals Board are final unless appealed to the courts of appeal. (Cal. Const., art. XIV, § 4; §§ 111-116, 133-134, 3201, 5300-5302, 5900 et seq.) In performing its duties as a court, the Appeals Board is bound by the constitutional mandate that it “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character...” (Cal. Const., Art. XIV, § 4.) *Substantial justice requires the Appeals Board to protect the due process rights of every person seeking reconsideration.* (See *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986]; and *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].)

that the file was misplaced. (*Shipley, supra*, 7 Cal.App.4th at p. 1108.) Like the Court in *Shipley*, “we are not convinced that the burden of the system’s inadequacies should fall on [a party].” (*Shipley, supra*, 7 Cal.App.4th at p. 1108.)

Pursuant to the holding in *Shipley* allowing tolling of the 60-day time period in section 5909, the Appeals Board acts to grant or deny such petitions for reconsideration within 60 days of receipt of any such petition, and thereafter issues a decision on the merits. By doing so, the Appeals Board also preserves the parties’ ability to seek meaningful appellate review.³ (Lab. Code, §§ 5901, 5950, 5952; see *Evans, supra*, 68 Cal.2d at p. 753.) This approach is consistent with *Rea* and other California appellate courts,⁴ which have consistently followed *Shipley*’s lead when weighing the statutory mandate of 60 days against the parties’ constitutional due process right to a true and complete judicial review by the Appeals Board.⁵

³ “The purpose of [section 5900] is to allow reconsideration, in the context of a specific, framed challenge, of a matter which has been heard only once previously. [Citations omitted.] The power to reconsider affords the WCAB an opportunity to review its own decisions and the decisions of the WCJs ‘in house,’ by applying the Board’s administrative expertise to rectify errors, when required, prior to judicial involvement.” (*Maranian, supra*, 81 Cal.App.4th at p. 1074.) Thus, meaningful review by the Appeals Board of factual determinations made at the trial level affords the parties essential due process because an appellate court considering a petition for writ of review of a decision of the Appeals Board may not reweigh the evidence or decide disputed questions of fact. (Lab. Code, § 5952.) Rather, the appellate courts must determine whether the evidence, when viewed in light of the entire record, supports the award of the WCAB. (*Keulen v. Workers Compensation Appeals Bd.* (1998) 66 Cal.App.4th 1089, 1095-1096 [63 Cal.Comp.Cases 1125].)

⁴ See e.g., *Hubbard v. Workers Compensation Appeals Bd. of California* (1993) 58 Cal.Comp.Cases 739 [writ of review granted to annul Appeals Board’s denial of petition for reconsideration by operation of law (Lab. Code, § 5909)]; see also, *Frontline Medical Associates, Inc. v. W.C.A.B. (Lopez, Leonel; Sablan, Yolanda)* (2022) 87 Cal.Comp.Cases 314 (writ den.); *Entertainment by J & J, Inc. v. Workers’ Comp. Appeals Bd. (Bernstein)* (2017) 82 Cal.Comp.Cases 384 (writ den.); *Bailey v. Workers Compensation Appeals Bd. of California* (1994) 59 Cal.Comp.Cases 350 (writ den.). Recent denials in all District Courts of Appeal include: First District, Div. 1 (*Scaffold Solutions v. Workers’ Compensation Appeals Board and Angelo Paredes* (2023) (A166655)); First District, Div. 4 (*Kaiser Foundation Health Plan v. Workers’ Compensation Appeals Board and Julie Santucci* (2021) (A163107)); Second District, Div. 3 (*Farhed Hafezi and Fred F. Hafezi, M.D., Inc. v. Workers’ Comp. Appeals Bd.* (2020) (B300261)(SAU8706806)); Third District (*Reach Air Medical Services, LLC et al. v. Workers’ Compensation Appeals Board. et al. (Lomeli)* (2022) (C095051)); Third District (*Ace American Insurance Company v. Workers’ Compensation Appeals Board and David Valdez* (C094627) (2021)); Fourth District, Div. 2 (*Carlos Piro v. Workers’ Compensation Appeals Board and County of San Bernardino* (2021) 86 Cal.Comp.Cases 599); Fourth District, Div. 3 (*Patricia Lazcano v. Workers’ Comp. Appeals Bd.* (2022) 88 Cal.Comp.Cases 54); Fifth District (*Great Divide Insurance Company v. Workers’ Compensation Appeals Board et al. (MelendezBanegas)* (2021) 86 Cal.Comp.Cases 1046); Sixth District (*Rebar International, Inc., et al. v. Workers’ Comp. Appeals Board et al. (Haynes)* (2022) 87 Cal.Comp.Cases 905).

⁵ But see *Zurich American Ins. Co. v. Workers’ Compensation Appeals Bd.* (2023) 97 Cal.App.5th 1213, wherein the Second District Court of Appeal, Division 7, concluded that Labor Code section 5909 terminates the Appeals Board’s jurisdiction to consider a petition for reconsideration after 60 days, and therefore decisions on a petition for reconsideration made after that date are void as in excess of the Board’s jurisdiction unless specified equitable circumstances are present. The Court’s opinion in *Zurich* appears to reflect a split of authority on the application of “*Shipley*” because it disagreed “with the conclusion in *Shipley* that a petitioner has a due process right to review by

In this case, the WCJ issued the Findings and Order on November 20, 2023, and applicant filed a timely petition on December 15, 2023 at the Oakland district office. As required by Rule 10205.4 (Cal. Code Regs., tit. 8, § 10205.4), applicant’s paper Petition was thereafter scanned into the Electronic Adjudication System (EAMS). (See Cal. Code Regs., tit. 8, §10206 [electronic document filing rules], § 10205.11 [manner of filing of documents].) The Division of Workers’ Compensation (DWC) is headed by the Administrative Director, who administers all 24 district offices, including employment of more than 190 WCJs and maintenance of EAMS. (See Cal. Code Regs., tit. 8, §§10205, 10205.4, 10206, 10208.5; see also Lab. Code §§ 110, 111 [delineating the powers of the Administrative Director and Appeals Board].) When a Petition is filed, a task is sent to the WCJ through EAMS so that the WCJ receives notice that a Report is required. (See Cal. Code Regs., tit. 8, §10206; 10962.) No such notice is provided to the Appeals Board. Thereafter, the district office electronically transmits the case to the Appeals Board through EAMS. Here, according to Events in EAMS, which functions as the “docket,” the district office transmitted the case to the Appeals Board on February 14, 2024. Thus, the first notice to the Appeals Board of the Petition was on February 14, 2024. Due to this lack of notice *by the district office*, the Appeals Board failed to act on the petition within 60 days, through no fault of the parties.⁶ Therefore, considering that applicant filed a timely petition and that the Appeals Board’s failure to act on that petition was in error, we find that our time to act on applicant’s petition was tolled until 60 days after February 14, 2024.

the Board of a petition for reconsideration even after 60 days has passed...” (*Id.*, at p. 1237.) The Court in *Zurich* did not indicate that its decision applies retroactively.

In addition to disregarding the respondent’s right to due process and depriving the parties of meaningful review by the Appeals Board, the *Zurich* Court apparently failed to consider that Labor Code section 5803 provides for *continuing jurisdiction* by the Appeals Board over all of its “orders, decisions, and awards,” and section 5301 provides for “full power, authority and jurisdiction” by the Appeals Board for all proceedings under section 5300. Additionally, jurisdiction is conferred on the Appeals Board when a petition is timely filed under Labor Code section 5900(a), and the Appeals Board may review the entire record, even with respect to issues not raised in the petition for reconsideration before it. A grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. Industrial Acc. Com.* (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. Industrial Acc. Com.* (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].)

⁶ Contrary to the Court’s speculation in *Zurich, supra*, given the tremendous volume of documents that the district offices must process, the vast number of cases in the system, and the limitations of the EAMS system, the parties’ ability to inquire at the district office as to the status of a petition for reconsideration is limited; in fact, there is simply no mechanism to do so. Instead, the parties must rely on a verification of timely filing from the EAMS system. (Cal. Code Regs., tit. 8, § 10206.3.)

II.

Applicant contends defendant's QME panel was *void ab initio* because it listed an incorrect claim number. The WCJ's Opinion Decision notes that "there was no misrepresentation beyond what appears to be a clerical error regarding the correct claim number. The date of injury, the basis for the objection and the body parts were accurately represented by defendant...therefore I find that the clerical error in defendant's panel request is not, by itself, sufficient to invalidate defendant's first-in-ti[m]e panel request." (Opinion on Decision, at p. 2.)

Applicant's Petition responds that the minimum requirements for submitting a panel request are specific and mandatory, and a mistake of fact voids the resulting panel. (Petition, at p. 5:3.)

Administrative Director (AD) Rule 30(b)(1) (Cal. Code Regs., tit. 8, § 30(b)) specifies that a party requesting the issuance of a panel must submit certain information, including:

- (1) The party requesting a QME panel online shall:
 - (A) Identify the following elements in the appropriate sections:
 1. Panel Request Information Section
 - i. Date of Injury
 - ii. Claim Number
 - iii. Requesting Party
 - iv. Reason QME Panel is being Requested
 - v. Dispute type
 - vi. Name of primary treating physician
 - vii. Date of report being objected to
 - viii. Date of objection communication
 - ix. Specialty of treating physician
 - x. QME Specialty Requested
 - xi. Opposing Party's QME Specialty Preferred (if known)

In addition, AD Rule 30(c) provides:

(c) If after the issuance of a panel it appears to the satisfaction of the Medical Director that the panel was issued by mistake, misrepresentation of fact contained in the forms or document filed in support of the request, or the parties have agreed to resolve their dispute using an AME or by other agreement, the issued panel may be revoked. Notice of the revocation shall be sent to parties listed on the panel request.

(Cal. Code Regs., tit. 8, § 30(c).)

Here, there is no dispute that defendant's panel QME request listed an incorrect claim number. Because panel QME requests are available in litigated and non-litigated cases, a *case* number is not required to obtain a panel of QMEs. Rather, the issuance of a panel requires a *claim* number as a means for the parties and the Medical Unit to identify a claim and any prior panels that may have issued with respect to that claim.

Moreover, the proper identification of a claim number provides notice to the parties of the injury for which a party is seeking the issuance of a panel, especially in cases such as this, where the injured worker may have previous or currently pending claims of industrial injury. Thus, a party requesting the issuance of a panel of QMEs must provide accurate information to comply with AD Rule 30, and also because the parties' ability to correlate a request for the issuance of a panel with the correct claimed injury is essential to due process.

In its June 2, 2023 request for the issuance of a panel of QMEs, defendant used a claim number corresponding to another claim for which the DWC Medical Unit had already issued a QME panel. Accordingly, the Medical Unit exercised its authority pursuant to AD Rule 30(c) to revoke panel no. 7590870. (Petition, at p. 2:16; Answer, at p. 4:17.) However, and notwithstanding this revocation, we are persuaded that the failure to properly list the mandatory information required under AD Rule 30 rendered defendant's June 2, 2023 request for the issuance of a panel of QMEs *void ab initio*.

Accordingly, and on the facts before us, we are persuaded that panel no. 7590870 was not properly obtained by defendant and was of no legal force or effect. Consequently, the first valid panel request was submitted to the DWC Medical Unit by applicant on June 2, 2023, resulting in the issuance of panel no. 7590891, which is the valid panel applicable to the declared medical dispute herein.

We will therefore rescind the November 20, 2023 F&O, and substitute new findings of fact that panel no. 7590870 is not valid, while panel no. 7590891 is valid and applicable with respect to the declared medical dispute. We further observe that because defendant made no timely strike from panel no. 7590891, applicant's selection of Ruben A. Amezcuita, D.C. was valid. We will therefore order the parties to proceed with a QME evaluation by Dr. Amezcuita.

We are also compelled to discuss defendant's communications with the QME selected by the applicant from panel no. 7590891. To the extent that defendant maintained the QME evaluation was inappropriate or unwarranted, we note that a party seeking to stay an action by another party

pending a hearing may file an Emergency Petition for Stay pursuant to WCAB Rule 10530. (Cal. Code Regs., tit. 8, § 10530.) Here, however, notwithstanding actual knowledge that its panel request used an incorrect claim number, and notwithstanding the June 13, 2023 revocation of panel no. 7590870 by the DWC Medical Unit, defendant unilaterally contacted the QME selected by applicant and declared applicant's selection to be wrongful and unlawful. (Ex. 6, Defendant's letter requesting cancellation of Chiropractic QME Evaluation, July 20, 2023.) Defendant's letter advised the QME that defendant would not pay for, or participate in, the QME's evaluation of applicant. (*Ibid.*)

We remind defendant that under Workers' Compensation Appeals Board (WCAB) Rule 10421 (Cal. Code Regs., tit. 8, § 10421), parties are prohibited from bringing a claim, conducting a defense or asserting a position that is done solely or primarily for the purpose of causing unnecessary delay or a needless increase in the cost of litigation, or where such claim or defense is not warranted under existing law. (Cal. Code Regs., § 10421(b)(6)(A)(iii)-(b)(7).) While defendant had a right to bring a legal challenge to applicant's requested QME panel, defendant opted not to seek an emergency stay or take other appropriate interim action, and instead sought the cancellation of a properly obtained QME evaluation by asserting the basis for the QME appointment was unlawful and declaring the defendant would not reimburse the QME for the evaluation. We thus find it necessary to **ADMONISH** defense counsel Christine D. Putnam and Michael Sullivan & Associates, jointly and severally, for these actions and note that similar actions in the future may result in the imposition of costs and sanctions pursuant Labor Code section 5813 and WCAB Rule 10421(a). (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421(a).)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of November 20, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of November 20, 2023 is **RESCINDED** and that the following is **SUBSTITUTED** therefor.

FINDINGS OF FACT

1. Applicant, Azza Sidahmed, while employed on March 6, 2019, as an administrative legal assistant at Oakland, California, by Alameda County Counsel, sustained injury arising out of and in the course of employment to the back and right knee.
2. At the time of injury, the employer was permissibly self-insured and administered by AIMS.
3. Qualified Medical Evaluator panel no. 7590870 is invalid.
4. Qualified Medical Evaluator panel no. 7590891 is valid and applicable in these proceedings.
5. Defendant has not established good cause to cancel the chiropractic QME examination scheduled.

ORDER

- a. The parties are ordered to proceed with Ruben A. Amezcuita, D.C., as the validly selected Qualified Medical Evaluator in this matter.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 18, 2024

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

**AZZA SIDAHMED
NYMAN TURKISH
MICHAEL SULLIVAN & ASSOCIATES**

SAR/abs

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