

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

BRIAN COLLINS, *Applicant*

vs.

**CITY OF VACAVILLE, administered by INNOVATIVE CLAIMS SOLUTIONS, INC.,
*Defendants***

**Adjudication Number: ADJ10939613; ADJ11371215
Sacramento District Office**

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

Applicant seeks removal of the Qualified Medical Examination Order (Order) issued by the workers' compensation administrative law judge (WCJ) on July 10, 2020.¹ By the Order, the WCJ ordered that applicant shall attend an examination with Daniel D'Amico, M.D. as the qualified medical evaluator (QME).

Applicant contends that when both parties strike the same doctor from the QME panel, a new panel must be issued.

We received an answer from defendant. The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that we deny the Petition.

We have considered the allegations of applicant's Petition for Removal, defendant's answer and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will grant removal, rescind the Order and return this matter to the trial level for further proceedings consistent with this opinion.

FACTUAL BACKGROUND

Applicant claims injury to his right ankle and left shoulder on December 14, 2015 while employed as a police officer by the City of Vacaville (ADJ10939613). He also has another claim,

¹ The Order is dated July 8, 2020, but was not served until July 10, 2020.

which is not at issue (ADJ11371215).

On February 25, 2020, applicant filed a declaration of readiness to proceed (DOR) to a mandatory settlement conference. The disputed issue was identified as:

THE PARTIES EACH STRUCK DR. WELBORN FROM THE QME PANEL. THEREFORE A DOCTOR HAS NOT YET BEEN PROPERLY CHOSEN. NEVERTHELESS DEFENDANT HAS PROCEEDED TO SET A QME APPOINTMENT WITH DR. D'AMICO FROM THE PANEL. APPLICANT OBJECTS AS THIS IS NOT AGREED TO. WCAB ASSISTANCE IS SOUGHT.

(Applicant's DOR, February 25, 2020, p. 2.)

Defendant filed an objection to applicant's DOR on March 9, 2020.

The matter proceeded to a hearing on May 21, 2020. The Minute Order from the hearing states: "Both parties struck the same MD from the QME panel. Parties must file points and authorities on which party can schedule a QME with one of the remaining two MD's. Points and authorities due 6/5/2020, issue will then be submitted." (Minutes of Hearing, May 21, 2020.)

Both parties submitted briefs per the Minute Order and attached exhibits to their briefs. The WCJ then issued the disputed Order as outlined above. To date, no evidence has been admitted into the record regarding the QME dispute.

DISCUSSION

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d);² *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, former § 10566, now § 10787 (eff. Jan. 1, 2020).) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a

² All further statutory references are to the Labor Code unless otherwise stated.

minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence.” (*Hamilton, supra*, at p. 475.)

Although the parties attached documents to their trial briefs, the Order in this matter was issued without creation of an evidentiary record. We are unable to address whether the WCJ’s decision is supported by substantial evidence in the absence of a record.

Upon return of this matter to the trial level, we recommend the trier of fact create a complete evidentiary record regarding this dispute and issue a new decision. Either party may then challenge that decision. We make no comment on the disputed issue between the parties and will defer determination of the dispute to the trier of fact in the first instance.

Therefore, we will grant removal, rescind the Order and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal of the Qualified Medical Examination Order issued by the WCJ on July 10, 2020 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the Qualified Medical Examination Order issued by the WCJ on July 10, 2020 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 21, 2021

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

**BRIAN COLLINS
MASTAGNI HOLSTEDT
STOCKWELL HARRIS WOOLVERTON & HELPHREY**

AI/pc

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