

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

FELICIA SONNIER, *Applicant*

vs.

**LOS ANGELES UNIFIED SCHOOL DISTRICT, permissibly self-insured,
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ10793298
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

We have considered the allegations of applicant's Petition for Removal and defendant's answer.¹ Based on our review of the record and for the reasons discussed below, we will deny the Petition as one seeking reconsideration.

If a decision includes resolution of a "threshold" issue, then it is a "final" decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment (AOE/COE), jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers' Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.)² Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision 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

¹ Commissioner Dodd is unavailable to participate further in this decision and therefore, she was replaced with another panelist.

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

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 July 22, 2021 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (Opinion) includes a finding regarding injury AOE/COE to the right hand and right elbow. Injury AOE/COE is a threshold issue fundamental to the claim for benefits. Accordingly, the Opinion is a final order subject to reconsideration rather than removal.

Although the decision contains a finding that is final, applicant is only challenging an interlocutory finding/order in the decision regarding whether a replacement qualified medical evaluator (QME) panel must issue because the reporting of Lawrence Miller, M.D. was stricken for violation of Labor Code section 4628. (Lab. Code, § 4628.) Therefore, we will apply the removal standard to our review. (See *Gaona, supra.*)

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020); 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, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020).)

As discussed in the Opinion, section 4628 is “as an anti-ghostwriting statute.” (*Scheffield Medical Group v. Workers' Comp. Appeals Bd.* (1999) 70 Cal.App.4th 868, 881.) The statute was “enacted in 1989 as part of the overall reform package to ensure the reliability of the medical evaluation, which it hoped to achieve by controlling the quality of the medical-legal report.” (*Id.*; see also *Ameri-Medical Corp. v. Workers' Comp. Appeals Bd.* (1996) 42 Cal.App.4th 1260 [61 Cal.Comp.Cases 149].) The medical-legal evaluative report “is a crucial element of proof, if not the most crucial element, considered by the WCJ in deciding the issues.” (*Id.* at p. 1279, quoting *Crawford v. Workers' Comp. Appeals Bd.* (1989) 213 Cal.App.3d 156, 169.)

The purpose of section 4628 is “to ensure that the doctor who signed the report had actually examined the injured worker and had prepared the evaluation.” (*Scheffield Medical Group, supra,*

70 Cal.App.4th at p. 881.) In this matter, Dr. Miller repeatedly failed to comply with the requirements of section 4628 and signed under penalty of perjury that he performed the review of records although he had not done so. Preservation of the integrity of the medical-legal evaluation process is critical and the Legislature's express purpose in enacting section 4628 was to prevent precisely the type of report ghostwriting that occurred in this matter. Under the circumstances here, a replacement QME panel was warranted in order to preserve the integrity of the medical-legal evaluation process. (See Cal. Code Regs., tit. 8, §§ 31.5(a)(13), 41.5(d)(4); see also *Alvarez v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 575, 589 [75 Cal.Comp.Cases 817] ["In a field that is dependent on expert medical opinions, the impartiality and appearance of impartiality of the panel qualified medical evaluator is critical".])

We are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy. Therefore, we will deny the Petition as one seeking reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration issued by the Workers' Compensation Appeals Board on July 22, 2021 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ AMBER INGELS, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 1, 2021

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

**FELICIA SONNIER
KEGEL TOBIN & TRUCE
LAW OFFICES OF WILLIAM J. KROPACH**

AI/pc

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