

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

**JOEL SANCHEZ, *Applicant***

**vs.**

**NORA LIGHTING;  
THE HARTFORD, *Defendants***

**Adjudication Numbers: ADJ12189093, ADJ12954925  
Los Angeles District Office**

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

Applicant seeks removal from the February 9, 2023 Order of the Workers' Compensation Administrative Law Judge (WCJ) that the parties meet and confer to prepare and submit a joint letter to the Qualified Medical Evaluator (QME) Anant Ram, M.D. requesting that he address the alleged injuries in companion cases and review all medical records.

Applicant contends that the order compelling additional discovery abrogates applicant's due process rights, and that applicant's contentions regarding the QME's alleged Labor Code section 4628 violations should be heard.

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

We have considered the allegations of the Petition for Removal 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 the petition, rescind the order compelling additional discovery with the QME, and return this matter to the trial level for further proceedings consistent with this opinion.

## BACKGROUND

Applicant has filed two pending Applications for Adjudication. In ADJ12954925, applicant alleged injury to the back, hip(s), trunk, waist, upper and lower extremities while employed by defendant Nora Lighting as a “puller” from March 17, 2018 to March 17, 2019. Defendant denies injury arising out of and in the course of employment (AOE/COE).

In ADJ12189093, applicant alleged injury to the upper extremities, shoulder, back, trunk, hips and thigh while employed by defendant Nora Lighting as a “puller” on March 10, 2018. Defendant admits injury to the lumbar spine, and denies injury to all other claimed body parts. (Defendant’s Trial Brief, dated February 3, 2023, at 2:13.)

The parties have selected Anant Ram, M.D. to act the orthopedic QME. Dr. Ram has issued three reports, and the parties have also deposed the QME on two occasions. (Transcript of the Deposition of Anant Ram, M.D., dated August 10, 2021 and October 13, 2022.)

On October 20, 2022, applicant petitioned for the issuance of a replacement panel of QMEs in orthopedic medicine, averring the reporting of QME Dr. Ram failed to comply with the substantive provisions of section 4628. Applicant averred Dr. Ram “did not write all of the language in the report including the portion in which he discussed his use of the persons involved in reviewing or summarizing the medical record,” and that Dr. Ram failed to review all of the records submitted to his office. (Petition for Replacement Panel, at 1:23.)

On December 14, 2022, the parties proceeded to hearing, and requested trial on applicant’s petition for a replacement panel.

On February 9, 2023, the parties proceeded to trial. The Minutes of Hearing reflect the following:

Parties agree *Navarro* does not apply and QME Dr. Ram failed to comment on both alleged injuries. Parties are ordered to meet and confer to prepare and submit a joint cover letter to QME Dr. Ram requesting he address both alleged injuries ADJ12189093 and ADJ12954925, and review all records if not already done so.

The WCJ ordered the matter off calendar. (Minutes of Hearing, dated February 9, 2023.)

Applicant’s Petition for Removal avers a right to be have his Petition for Replacement Panel heard and adjudicated, and that the WCJ’s order taking the matter off calendar abrogates applicant’s due process rights. (Petition for Removal, at 5:3.)

The WCJ's report recommends we treat applicant's Petition as one seeking reconsideration rather than removal, because the February 9, 2023 order makes findings involving the fundamental rights of the parties. The WCJ further observes that while, "on its face the reporting of Dr. Ram cannot be found to be substantial medical evidence...because he does not comment on both injuries...applicant's focus on the contentious deposition testimony taken of Dr. Ram alone does not support the argument Dr. Ram has a clear bias against applicant or applicant's counsel." (Report, at pp. 3-4.) The Report concludes additional development of the record is necessary, and recommends that we deny the Petition, accordingly.

### DISCUSSION

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.

Here, the WCJ's decision solely resolves an intermediate procedural or evidentiary issue or issues. The decision does not determine any substantive right or liability and does not determine a threshold issue. Accordingly, it is not a "final" decision, and applicant has appropriately filed his petition for relief as seeking removal, rather than reconsideration.

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, § 10955(a); 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, § 10955(a).)

An adequate and complete record is necessary to understand the basis for the WCJ's decision and the WCJ shall "...make and file findings upon all facts involved in the controversy[.]" (Lab. Code, § 5313; *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal.Wrk.Comp. LEXIS 4947] (Appeals Bd. en banc) (Hamilton).) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at 475.) The purpose of this requirement is to enable "the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]" (*Hamilton, supra*, at 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Here, the record does not divulge the basis for the WCJ's discovery order compelling the parties to submit a joint letter requesting that the QME address both pending dates of injury and review the medical records previously sent to him. Additionally, the February 9, 2023 order does not substantively address applicant's petition for replacement panel, set forth with specificity the evidence considered, or discuss the rationale for the discovery order entered by the WCJ.

We will therefore grant removal in this matter, rescind the Order dated February 9, 2023, and return the matter to the trial level for further proceedings. Upon return to the trial level, we recommend the WCJ conduct proceedings as he deems necessary to address the issues raised by the parties, and to create a substantive record that complies with *Hamilton, supra*, 68 Cal.2d 753.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Removal from the February 9, 2023 Order is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the February 9, 2023 Order is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**April 25, 2023**

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

**JOEL SANCHEZ  
SOLOV AND TEITELL  
LAW OFFICES OF LYDIA B. NEWCOMB**

**SAR/abs**

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