

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

**MARIA ROQUE, *Applicant***

**vs.**

**PALMDALE SCHOOL DISTRICT, Permissibly Self-Insured,  
administered by ADMINSURE INC., *Defendants***

**Adjudication Number: ADJ16268064  
Van Nuys District Office**

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

Defendant seeks removal in response to the Order granting additional qualified medical evaluator (QME) Panels in internal medicine and psychiatry issued by the workers' compensation administrative law judge (WCJ) on April 24, 2023. Defendant contends that there is no record of testimony or evidence to determine if good cause existed for additional QME Panels in internal medicine and psychiatry.

The WCJ issued a Report and Recommendation on Petition for Removal (Report) dated May 19, 2022, recommending that the Petition be denied. We did not receive an Answer from applicant.

We have considered the allegations in the Petition 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 for Removal, rescind the April 24, 2023 Order, and return the matter to the WCJ for further proceedings and decision.

**BACKGROUND**

Applicant filed an application for adjudication on June 7, 2022, claiming a cumulative trauma injury to various body parts from December 9, 2015 through July 27, 2021, while employed as a Monitor for the Palmdale School District.

According to defendant's Petition, on October 12, 2022, applicant was evaluated by PQME orthopedic surgeon Michael Tooke, M.D.

On December 15, 2022, defendant filed a Declaration of Readiness (DOR) to proceed to a Priority Conference. Defendant contended that applicant’s attorney did not respond to defendant’s attorney’s letter regarding the findings of the PQME.

On March 9, 2023, a Priority Conference was held. The minutes reflect defendant requested a trial, which applicant’s attorney opposed. The WCJ granted applicant’s request for a continuance to May 11, 2023, and under the comments section, it states: “NEED ADD PANELS.”

Applicant amended her cumulative injury claim and added internal injury(diabetes) in a document dated March 21, 2023, and filed on March 22, 2023.

Applicant’s attorney filed a Petition for Additional Panels in internal medicine and psychiatry dated April 9, 2023, and filed on April 10, 2023.

On April 24, 2023, the WCJ issued an Order Granting Additional Panels in internal medicine and psychiatry (Order) without holding a hearing.

On May 9, 2023, defendant filed a Petition for Removal.

## **DISCUSSION**

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 substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); *Cortez*, supra; *Kleemann*, supra.) Additionally, 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)<sup>1</sup>.)

A WCJ is required to “. . . make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order, or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.” (Lab. Code, §§ 5502, 5313; Cal. Code Regs., tit. 8, § 10761;

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<sup>1</sup> All statutory references not otherwise identified are to the Labor Code.

see also *Blackledge v. Bank of America, ACE American Insurance Company (Blackledge)* (2010) 75 Cal.Comp.Cases 613, 621-622 (Appeals Bd. en banc)<sup>2</sup>.)

The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton*, supra, at p. 476.) 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 p. 475.) In *Hamilton*, we held that the record of proceeding must contain at a minimum, "the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence." (*Ibid.*)

Furthermore, decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *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, § 10787.) "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 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.)

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 p. 475.) In *Hamilton*, we

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<sup>2</sup> En banc decisions of the Appeals Board are binding precedent on all Appeals Board panels and WCJs. (Cal. Code Regs., tit. 8, § 10325(a); *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

held that the record of proceeding must contain, at a minimum, “the issues submitted for decision, the admissions and stipulations of the parties, and the admitted evidence.” (*Ibid.*)

In the April 24, 2023 Order granting applicant’s Petition for additional QME panels, the WCJ merely states: “IT IS HEREBY ORDERED that The DIR Medical Unit shall issue an additional panels QME List in the area of Internal Medicine (MMM) and Psychiatry (MPD.)” The WCJ does not discuss her reasoning for her decision. Additionally, the Order issued without a hearing, no minutes were filed, no testimony was taken, and the WCJ did not provide a summary of the evidence she relied on in making her decision.

Here, it appears that the WCJ based her decision solely on applicant’s Petition as showing good cause to issue additional QME panels and did not provide an opportunity for parties to present evidence and create a record.

When applicant filed her petition for additional panels, the WCJ should have issued a notice of intention to grant the petition or set the matter for hearing, pursuant to WCAB Rule 10832, created a record, and then issued a decision. (Lab. Code, § 5313; Cal. Code Regs., tit. 8, § 10510; Cal. Code Regs., tit. 8, § 10750; Cal. Code Regs., tit. 8, § 10758; Cal. Code Regs., tit. 8, § 10832.)

Without an evidentiary record, we are unable to evaluate the basis of the WCJ’s decision when issuing the April 24, 2023 Order granting applicant’s Petition for additional QME panels. Therefore, we must return this matter to the trial level for further proceedings consistent with this opinion.

Accordingly, we grant defendant’s Petition for Removal, rescind the April 24, 2023 Order, and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Removal in response to the Order issued on April 24, 2023 by the WCJ is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Removal of the Workers' Compensation Appeals Board that the decision of April 24, 2023 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**November 15, 2023**

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

**MARIA ROQUE  
GALE SUTOW & ASSOCIATES  
LAW OFFICES OF ROBERT OZERAN**

**DLM/oo**

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