

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

VERONICA DOYLE, *Applicant*

vs.

HABIT EMPLOYMENT LP; GALLAGHER BASSETT CORONA, *Defendants*

**Adjudication Number: ADJ14929760
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Facts and Order and Opinion on Decision (F&O) issued by the workers' compensation administrative law judge (WCJ) on November 8, 2023. By the F&O, the WCJ found that applicant was employed between December 15, 2020 and May 14, 2021 and that applicant suffered hypertensive cerebrovascular damage/recurrent strokes with residual cognitive impairment. The WCJ also ordered an additional Qualified Medical Evaluator (QME) panel in the specialty of psychology. In the Opinion on Decision, the WCJ explained that the additional QME panel in the specialty of psychology was necessary to develop the record on the contested issue of industrial causation.

Defendant contends that applicant did not demonstrate that an additional QME panel in the specialty of psychology was required to develop the record to determine whether her injury was industrial.

We have not received an answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration/Removal (Report), recommending that the petition be denied.

We have considered the allegations of defendant's Petition for Reconsideration and the contents of the WCJ's Report. Based on our review of the record, and for the reasons stated below, we will deny reconsideration.

DICUSSION

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, 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.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision issues. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers’ compensation proceedings, are not considered “final” orders. (*Maranian v. Workers’ Comp. Appeals Bd. (Maranian)* (2000) 81 Cal.App.4th 1068, 1075 [65 Cal.Comp.Cases 650].)

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 F&O includes a finding regarding a threshold issue, namely, the existence of an employment relationship between applicant and defendant. (F&O, p. 1, Finding of Fact No. 1.) Accordingly, the WCJ’s decision is a final order subject to reconsideration rather than removal.

Turning to defendant’s Petition, defendant challenges the WCJ’s decision to order an additional QME panel in the specialty of psychology in order to determine causation. This is an evidentiary decision to develop the medical record, which, as noted above, is not a “final” decision. (*Maranian, supra*, 81 Cal.App.4th at p. 1075.) Thus, although the F&O contains a finding that is final, defendant is only challenging an interlocutory finding/order therein. 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. (Cortez)* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases

155]; *Kleemann v. Workers' Comp. Appeals Bd. (Kleemann)* (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).)

Here, the WCJ determined that there is insufficient medical evidence upon which the threshold issue of causation may be determined. (Report, p. 3.) Where there is insufficient evidence on a threshold issue, the WCJ has a duty to further develop the record. (Lab. Code, §§ 5701, 5906; *McClune v. Workers' Comp. Appeals Bd. (McClune)* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 404 [65 Cal.Comp.Cases 264]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924].) The WCJ has the authority to order additional medical evidence when required for substantial evidence. (Lab. Code, §§ 5701, 5906; *Old Republic Ins. Co. v. Workers' Comp. Appeals Bd.* (2020) 85 Cal.Comp.Cases 504, 508 (writ den.); *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc); *McClune, supra*.)

With respect to the WCJ's order to develop the record using an additional QME panel in psychology, we are not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to defendant. As explained in the WCJ's Report, not only does the current state of the record demonstrate that the QME panel in psychology is necessary to determine causation, but this very issue was also put before the WCJ for decision by the parties during a hearing on October 24, 2023. (Report, p. 3; Minutes of Hearing, October 24, 2023, p. 2 [Issue No. 1: "Applicant's entitlement to a QME panel in psychology to evaluate cause of stroke."].) Based on the foregoing, we will not disturb the WCJ's interlocutory decision to order the additional QME panel in the specialty of psychology.

We deny defendant's Petition as one seeking reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the November 8, 2023 F&O is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 24, 2024

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

**VERONICA DOYLE
PACIFIC WORKERS'
QUINTAIROS, PRIETO, WOOD & BOYER**

AH/cs

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