

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

MARIA GONZALEZ, *Applicant*

vs.

**CENTRAL CALIFORNIA CHILD DEVELOPMENT, INC., and ILLINOIS MIDWEST
INSURANCE on behalf of STAR INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ11069868
Stockton District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration to further study the factual and legal issues. This is our Decision After Reconsideration.

Applicant seeks reconsideration of the July 12, 2021 Findings and Order wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a janitor by Central California Child Development sustained an injury to her right ankle. The WCJ ordered the parties to obtain a replacement panel in the field of orthopedics in order to replace the initially selected PQME who is no longer available.

Applicant contends that there is sufficient evidence to warrant requesting a panel in rheumatology for applicant's claimed injury in the form of complex regional pain syndrome (CRPS).

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, as our Decision After Reconsideration, we will rescind the Findings and Order, and issue a new Findings and Order directing the parties to obtain a replacement panel in the specialty of orthopedics and a new panel in the specialty of rheumatology.

As an initial matter, 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.

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.

Although the Findings and Order contain a finding that is final, applicant's Petition only challenges the WCJ's denial of its request for an additional qualified medical evaluator panel. This is an interlocutory decision and is subject to the removal standard rather than reconsideration pursuant to the discussion above. (See *Gaona, supra.*)

The current dispute that is the subject of applicant's petition stems from an order to further develop the medical record issued by the WCJ on October 28, 2020. At the October 26, 2020 trial, four exhibits were admitted into evidence. Applicant's Exhibit 4 was a transcript of a May 20, 2019 deposition of Mohinder Nijjar, M.D.¹ The deposition was not completed. Subsequently, Dr. Nijjar passed away.

At trial on July 12, 2021, the parties did not submit any exhibits and the matter was submitted on the current record. The issue submitted for decision was framed as follows: "THE SOLE ISSUE IS: 'The specialty of the QME for the replacement panel.' Also a notation that applicant contends the issue is one of an additional specialty in rheumatology." (July 12, 2021, Minutes of Hearing and Summary of Evidence, p. 3.) Although characterized as a "sole issue," it

¹ A December 13, 2018 deposition transcript of the deposition of Charlotte Vang, D.P.M. was attached to the deposition transcript as Exhibit 1.

appears that two issues were raised—the specialty of the replacement panel and whether there should be an additional rheumatology panel.

In this case, it appears that a second panel is warranted based on the record in order to promote an expeditious resolution of this case. Based on Dr. Nijjar’s deposition, including the exhibits attached to it, a rheumatology panel will provide additional evidence on the causation of CRPS. Therefore, we will amend the Findings and Order to order the parties to request two panels from the medical unit.

For the foregoing reasons,

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers’ Compensation Appeals Board, that the July, 12, 2021 Findings and Order is **RESCINDED**, and the following is **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Applicant, while employed by Central California Child Development, insured by Star Insurance, as a janitor (Occupational Group 340) sustained an injury on July 24, 2017 to the right ankle which arose out of and occurred during the course of employment.
2. Dr. Nijjar was selected as a panel qualified medical evaluator in the field of orthopedics.
3. Pursuant to a Finding and Order issued on October 28, 2020, there is a need for further development of the medical record.
4. Dr, Nijjar is no longer available to serve as a panel qualified medical evaluator.
5. A new panel qualified medical evaluator in the field of orthopedics is necessary to further develop the medical record.
6. An additional panel qualified medical evaluator in the field of rheumatology is necessary to further develop the medical record.

ORDER

IT IS HEREBY ORDERED that the parties contact the medical unit and request a replacement panel in the specialty of orthopedics and a second panel in the specialty of rheumatology.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 12, 2021

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

**BRADFORD & BARTHEL
EMPLOYMENT DEVELOPMENT DEPARTMENT
MARIA GONZALEZ
OCCUPATIONAL INJURY LAW CENTER**

MWH/oo

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