WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CLELL HOBSON, *Applicant*

vs.

NEW YORK YANKEES;
ACE AMERICAN INSURANCE COMPANY, administered by ESIS, *Defendants*

Adjudication Number: ADJ9085188
Santa Ana District Office

OPINION AND ORDERS DISMISSING PETITION FOR RECONSIDERATION AND DENYING PETITION FOR REMOVAL

Applicant seeks reconsideration of the "Findings and Order; Opinion on Decision" (F&O) issued on June 24, 2025, by the workers' compensation administrative law judge (WCJ). The WCJ found that the parties were required to obtain a qualified medical evaluator (QME) pursuant to Labor Code[1] sections 4060 and 4062.2.

Applicant contends that the WCJ erred because the end date of his cumulative injury was in 1985 before the enactment of the current process for QMEs in 2005.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, we will dismiss the Petition for Reconsideration as the June 24, 2025 F&O was not a final order. We will treat the petition as seeking removal and deny the Petition for Removal as petitioner has not demonstrated irreparable harm or substantial prejudice.

[1] All future references are to the Labor Code unless noted.

We will also order that the clerical error in Finding One as to the date of our Opinion and Decision After Reconsideration is corrected to read "May 16, 2024." (*Toccalino v. Workers' Comp. Appeals Bd*. (1982) 128 Cal.App.3d 543, 558, [47 Cal.Comp.Cases 145] internal citation omitted ["The Appeals Board or a Workers' Compensation Judge may correct a clerical error at any time and without necessity for further hearings, notwithstanding the lapse of the statutory period for filing a petition for reconsideration."].)

FACTS

Applicant was employed as a professional baseball player during the period of June 5, 1973, through September 1, 1985, when he claims to have sustained a cumulative injury to multiple body parts. (Minutes of Hearing and Summary of Evidence, May 30, 2019, p. 2, lines 14-20.) Applicant filed his claim in 2013.

This matter was previously adjudicated and remanded for further development of the record, wherein the Appeals Board explained:

> The WCJ correctly decided that all the QME reporting obtained in this matter was obtained in violation of sections 4060 and 4062.2. Section 4062.2 clearly states: "(a) Whenever a comprehensive medical evaluation is required to resolve any dispute arising out of an injury or a claimed injury occurring on or after January 1, 2005, and the employee is represented by an attorney, the evaluation shall be obtained only as provided in this section." (§ 4062.2(a).) Applicant claims a date of injury in this case of 2013. The parties should have followed the Labor Code in obtaining a QME. The dueling QME system only applies where the date of injury occurred before January 1, 2005. (*Nunez v. Workers' Comp. Appeals Bd*., (2006), 136 Cal. App. 4th 584.)
>
> We make no decision on the merits at this time as no record exists to support such a decision. No exhibits address causation of applicant's injury. The present medical record is deficient as it does not exist. The parties may come to an agreement to withdraw their objections and resubmit the matter on the present medical record, which the WCJ may then review and issue a decision on the merits. In the alternative, the parties may proceed with obtaining a QME through the proper channels.

(Opinion and Decision After Reconsideration, May 16, 2024, p. 5.)

The above passage was provided as guidance within the body of the opinion and was not part of any formal order. Notwithstanding this guidance, the parties thereafter submitted the issue of whether they must follow the QME process outlined in sections 4060 and 4062.2.

DISCUSSION

I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(§ 5909.)

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on July 30, 2025, and 60 days from the date of transmission is Sunday, September 28, 2025, which by operation of law means this decision is due by Monday, September 29, 2025. (Cal. Code Regs., tit. 8, § 10600.). This decision is issued by or on September 29, 2025, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on July 30, 2025, and the case was transmitted to the Appeals Board on July 30, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 30, 2025.

II.

As stated in our en banc decision:

> 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, 260 Cal. Rptr. 76; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd*. (*Pointer*) (1980) 104 Cal. App. 3d 528, 534–535 [163 Cal. Rptr. 750, 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 [97 Cal. Rptr. 2d 418, 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.

(*Ledezma v. Kareem Cart Commissary and Mfg*, (2024) 89 Cal. Comp. Cases 462, 475 (En Banc, emphasis added).)

Here, the order issued by the WCJ solely addressed the evidence to gather during discovery of the case. No final order has issued. Accordingly, the Petition for Reconsideration is dismissed. Applicant's counsel is politely admonished to remain cognizant of this issue in the future and to only seek reconsideration where a final order exists or there is genuine doubt as to whether a final order may have issued.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd*. (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) 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); see also *Cortez, supra; Kleemann, supra*.) A petitioner must also 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, and for the reasons discussed below, and per the prior guidance that we have already given, the WCJ was correct to order the parties to use the QME process as outlined in the Labor Code. Accordingly, petitioner has not demonstrated irreparable harm or substantial prejudice and removal is denied.

III.

Section 4062.2 states: "(a) Whenever a comprehensive medical evaluation is required to resolve **any dispute** arising out of an injury or a claimed injury occurring **on or after January 1, 2005**, and the employee is represented by an attorney, the evaluation **shall be obtained only as provided in this section**." (§ 4062.2(a), (emphasis added).)

Date of injury for cumulative injury claims is established under section 5412, which states: "The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment." (§ 5412.)

As used in section 5412, "disability" means either compensable temporary disability or permanent disability. (*Chavira v. Workers' Comp. Appeals Bd*. (1991) 235 Cal.App.3d 463 [56 Cal.Comp.Cases 631]; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Rodarte) (2004)* 119 Cal.App.4th 998 [69 Cal.Comp.Cases 579].) Medical treatment alone is not "disability" for purposes of determining the date of a cumulative injury pursuant to section 5412, but it may be evidence of compensable permanent disability. (*Rodarte*, *supra*, 119 Cal. App. 4th at p. 1005.) Likewise, modified work is not a sufficient basis for finding compensable temporary disability,

but it may be indicative of a compensable permanent disability, especially if the worker is permanently precluded from returning to their usual and customary job duties. (*Id*.)

The existence of disability is a medical question beyond the bounds of ordinary knowledge, and, as such, will typically require medical evidence. (*City & County of San Francisco v. Industrial Acc. Com*. (*Murdock*) (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103]; *Bstandig v. Workers' Comp. Appeals Bd*. (1977) 68 Cal. App. 3d 988 [42 Cal.Comp.Cases 114].) Knowledge requires more than an uninformed belief. Because the existence of disability typically requires medical evidence, an "applicant will not be charged with knowledge that his disability is job related without medical advice to that effect unless the nature of the disability are such that applicant should have recognized the relationship between the known adverse factors involved in his employment and his disability." (*City of Fresno v. Workers' Comp. Appeals Bd.* (*Johnson*) (1985) 163 Cal.App.3d 467, 473 [50 Cal.Comp.Cases 53].)

The dates of injurious exposure under section 5500.5 and the date of injury under section 5412 **are separate analyses**. While the two dates may coincide, **they are not synonymous**. It appears that applicant is conflating these two dates interchangeably.

Applicant argues that his date of injury was in 1985, when he claims to have last sustained injurious exposure while playing baseball. We first emphasize that there has been no finding of injury and no finding of a section 5412 date of injury. However, the question as to whether the parties should use the QME process in place in 1985 or the current QME process does not turn on applicant's last day of injurious exposure as a baseball player. Applicant filed his Application in 2013, so for the purposes of determining this issue, we assume that his claim was filed when he had knowledge. It may be that after pursuing medical discovery, the evidence supports a finding of a different section 5412 date of injury, but we do not see that this preliminary decision to order the parties to proceed under the current QME process will cause applicant substantial prejudice or irreparable harm.

Finally, applicant argues that he should not be required to discard reports, which applicant obtained outside the proper QME procedure. (See *Valdez v. Workers' Comp. Appeals Bd*. (2013) 57 Cal.4th 1231 [Wherein the Supreme Court held that the admission of reports from privately retained and compensated physician is not precluded in disability benefits proceedings.].) However, no finding issued to that effect. Applicant's independently retained reports have not been

stricken from evidence, and we do not decide whether such reporting is admissible, as that issue is not raised.

Accordingly, we dismiss the Petition for Reconsideration as the June 24, 2025 F&O was not a final order and deny the Petition for Removal.

We also order that the clerical error in Finding One as to the date of our Opinion and Decision After Reconsideration is corrected to read "May 16, 2024." (*Toccalino*, *supra*, 128 Cal.App.3d at p. 558.)

For the foregoing reasons,

IT IS ORDERED applicant's Petition for Reconsideration of the Findings and Order issued on June 24, 2025, by the workers' compensation administrative law judge is **DISMISSED**.

IT IS FURTHER ORDERED that applicant's Petition for Removal of the Findings and Order issued on June 24, 2025, by the workers' compensation administrative law judge is **DENIED**.

IT IS FURTHER ORDERED that the clerical error in Finding One of the Findings and Order issued on June 24, 2025, by the workers' compensation administrative law judge, as to the date of our Opinion and Decision After Reconsideration is corrected to read "May 16, 2024."

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 10, 2025

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

CLELL HOBSON
GLENN, STUCKEY & PARTNERS
HANNA, BROPHY, MacLEAN, McALEER & JENSEN

EDL/mc

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