

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

FREDY RAMOS, *Applicant*

vs.

AQUA CONSTRUCTION, INC.;
REPUBLIC INDEMNITY COMPANY OF AMERICA, *Defendants*

Adjudication Number: ADJ19757339
Marina Del Rey District Office

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

Applicant has filed a petition for removal from the Findings and Order issued on March 11, 2025, by the workers' compensation administrative law judge (WCJ), wherein the WCJ found that pursuant to AD Rule 10205.6(b), a strike from a qualified medical evaluator (QME) panel must be made via first class mail, absent agreement of the parties. (Cal. Code Regs., tit. 8, § 10205.6(b).) The WCJ found that WCAB Rule 10625(b)(2), does not apply to permit electronic service of a QME strike. (Cal. Code Regs., tit. 8, § 10625(b)(2).)

Applicant contends that WCAB Rule 10625 should permit electronic transmission of a QME strike.

We have received an Answer from defendant along with a request for supplement briefing, which we have accepted. The WCJ filed a Report and Recommendation on Petition for Removal (Report) recommending that we grant removal and decide the issue as there appears to be an expressed conflict between the AD Rule and the WCAB Rule.

We have considered the allegations of the Petition for Removal, the Answer and supplemental brief, and the contents of the WCJ's Report. Based on our review of the record, we will grant removal and as our Decision After Removal, we will rescind the March 11, 2025 F&O and substitute a new finding that pursuant to Labor Code section 4062.2, a strike of a QME may be exercised by timely notifying opposing counsel of the strike. As formal service of a strike is not

required, neither of the rules of service are contemplated in this dispute. Accordingly, applicant's strike, which was electronically served upon defendant on November 11, 2024, is valid.

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); 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 has issued an order which precludes applicant's striking of a QME. This order constitutes substantial prejudice or irreparable harm because the order is based upon an incorrect interpretation of law. Thus, we grant removal to decide the issue.

As noted in the WCJ's Opinion on Decision:

The facts surrounding this litigation are not seriously in dispute, only the application of possibly conflicting CCR rules. Defense attorney began the PQME process on 09-27-2024 by objecting to the report of the treating physician and then requested an orthopedic panel from the Medical Unit. The parties received panel number 7748773. The defense attorney served the panel on applicant's attorney on 11-05-2024, and also served a strike of one of the people on the panel, Dr. Kabaei. Defense attorney served the panel and his strike by means of first class mail with the US Post Office. There is no evidence in the record that the parties ever made an agreement on the method of service in this case, and defendant used first class mail as the so-called default method of service. Please see Joint Exhibit X2.

Applicant's attorneys emailed on 11-11-2024 a response, striking Dr. Hyunwoo Kang from panel 7748773. Applicant's attorneys did NOT send their 11-11-2024 strike response by first class mail, but by **email** to the defense attorney's personal business email at the defense law firm. Please see Joint Exhibit X3.

On 11-21-2024 defense attorney served by first class mail a new strike on panel 7748773 by striking Dr. John Garlich. Please see Joint Exhibit X4. Defense attorney argued in this correspondence that applicant's attorney's strike response of 11-11-2024 was not valid because it was sent by email and not by the so-called default method of service, which allegedly was first class mail. Defense attorney seemed to suggest that the purportedly invalid method of service meant the strike was not valid.

(Opinion on Decision, March 11, 2025, pp. 3-4.)

The question presented is whether applicant may electronically serve a strike upon defendant pursuant to WCAB Rule 10625(b)(2). (Cal. Code Regs., tit. 8, § 10625(b)(2).) However, as explained below, there is no requirement that a strike be “served” upon the opposing party.

Section 4062.2 states, in pertinent part:

(c) Within 10 days of assignment of the panel by the administrative director, each party may strike one name from the panel. The remaining qualified medical evaluator shall serve as the medical evaluator. If a party fails **to exercise the right** to strike a name from the panel within 10 days of assignment of the panel by the administrative director, the other party may select any physician who remains on the panel to serve as the medical evaluator. The administrative director may prescribe the form, the manner, or both, by which the parties shall conduct the selection process.

The Labor Code only requires that a party exercise their right to strike. Nowhere does the code limit the methods that may be used to exercise that right. While a party may exercise a right by formally serving a document, such service is not required.¹ Furthermore, to require formal service of a document to exercise a right would defeat the fundamental principles of workers’ compensation. As stated in a recent en banc decision:

The workers’ compensation system “was intended to afford a simple and nontechnical path to relief.” (*Elkins v. Derby* (1974) 12 Cal. 3d 410, 419 [115 Cal. Rptr. 641, 525 P.2d 81, 39 Cal. Comp. Cases 624]; Cf. Cal. Const., art. XX, § 21; § 3201.) Generally, “the informality of pleadings in workers’ compensation proceedings before the Board has been recognized.” (*Zurich Ins. Co. v. Workmen’s Comp. Appeals Bd.* (1973) 9 Cal. 3d 848, 852 [38 Cal. Comp. Cases 500, 512]; *Bland v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal. 3d 324, 328–334 [35 Cal. Comp. Cases 513].) “[I]t is an often-stated principle that the Act disfavors application of formalistic rules of procedure that would defeat an employee’s entitlement to rehabilitation benefits.” (*Martino v. Workers’ Comp. Appeals Bd.* (2002) 103 Cal. App.4th 485, 490 [126 Cal. Rptr. 2d 812, 67 Cal. Comp. Cases 1273].) Courts have repeatedly rejected pleading technicalities as grounds for depriving the Board of jurisdiction. (*Rubio v. Workers’ Comp. Appeals Bd.* (1985) 165 Cal. App. 3d 196, 200–01 [211 Cal. Rptr. 461, 50 Cal. Comp. Cases 160]; *Liberty Mutual Ins. Co. v. Workers’ Comp. Appeals Bd.* (1980) 109 Cal. App. 3d 148, 152–153 [167 Cal. Rptr. 57, 45 Cal. Comp. Cases 866].) “Necessarily, failure to comply with the rules as to details is not jurisdictional.” (*Rubio, supra*, at pp. 200–201; see Cal. Code Regs., tit. 8, § 10517.)

Therefore, in workers’ compensation proceedings, it is settled law that (1) pleadings may be informal. (*Zurich Ins. Co., supra*, 9 Cal. 3d at p. 852; *Beaida*

¹ The exercise of a strike may even be communicated orally; however, the parties should keep in mind their burden of proof if a dispute occurs and that proving a strike was exercised may be easier if it is properly documented.

v. Workmen's Comp. Appeals Bd. (1968) 263 Cal. App. 2d 204, 207–210 [33 Cal. Comp. Cases 345]); (2) claims should be adjudicated based on substance rather than form (*Bland, supra*, 3 Cal. 3d at pp. 328–334; *Martino, supra*, 103 Cal. App. 4th at p. 491; (3) pleadings should liberally construed so as not to defeat or undermine an injured employee's right to make a claim (*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal. App. 4th at pp. 925–926 [72 Cal. Comp. Cases 778]); *Martino, supra*, 103 Cal. App. 4th at p. 490; and (4) technically deficient pleadings, if they give notice and are timely, normally do not deprive the Board of jurisdiction (*Bland, supra*, 3 Cal. 3d at pp. 331–332).

(*Perez v. Chicago Dogs*, (2025) 90 Cal.Comp.Cases 830, 838-839 (Appeals Board en banc).)

Based upon the above principles, applicant timely notified defendant via email of the strike. As service of the strike was not required, we need not interpret the two competing rules. We observe however, that Labor Code sections 5307 and 5500.3 exclusively grant the authority to the Appeals Board to regulate the adjudication process, so that to the extent that an AD Rule and an WCAB Rule conflict, the WCAB Rule applies.

Accordingly, we grant removal and as our Decision After Removal, we rescind the March 11, 2025 F&O and substitute a new finding that pursuant to Labor Code section 4062.2, a strike of a QME may be exercised by timely notifying opposing counsel of the strike.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Removal from the Findings and Order issued on March 11, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Worker's Compensation Appeals Board that the Findings and Order issued on March 11, 2025, by the WCJ is **RESCINDED** with the following **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Pursuant to Labor Code section 4062.2, a strike of a QME may be exercised by timely notifying opposing counsel of the strike.
2. Applicant timely exercised a strike in this matter, and the parties may proceed accordingly.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 7, 2025

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

**FREDY RAMOS
HINDEN & BRESLAVSKY, APC
GOLDMAN, MAGDALIN STRAATSMA, LLP**

EDL/mt

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