

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

JOSIE VERGARA, *Applicant*

vs.

COMPASS GROUP; AIU INSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ19167634
San Jose District Office**

**OPINION AND ORDER
DENYING PETITION
FOR REMOVAL**

We have considered the allegations of the Petition for Removal 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 based upon the WCJ's analysis of the merits of petitioner's arguments in the WCJ's report, we will deny removal.

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; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [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 [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.

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.

We acknowledge the parties’ stipulations as set forth in the pre-trial conference statement concerning, inter alia, employment and injury arising out of and in the course of employment (AOE/COE) to the lumbar spine. (Pre-trial Conference Statement, dated July 25, 2024, at p. 2.)

Labor Code section 5702 provides:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award *based upon such stipulation*, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

(Lab. Code, § 5702, italics added.)

The WCAB is thus authorized to reject the stipulation of the parties and to determine the underlying issues by directing investigation or in supplemental proceedings. However, the WCAB is also specifically authorized to “make its findings and award based on such stipulation.”

Here, the WCJ’s Opinion on Decision appears to accept as factual the trial stipulations of the parties, e.g., applicant’s employment by defendant and injury AOE/COE to the lumbar spine. However, these stipulations as reflected in the WCJ’s Opinion on Decision are not yet legally operative or binding because the WCJ has neither approved nor rejected the parties’ stipulations. Accordingly, in evaluating whether to apply the reconsideration or removal standard to our review, our inquiry is confined to the Findings of Fact set forth in the WCJ’s decision, rather than the statements or analysis contained in the Opinion on Decision.

We further observe that the WCJ’s Findings of Fact are relevant only to the interim procedural issue of the selection of a Qualified Medical Evaluator (QME). Therefore, we will apply the removal standard to our review. (See *Gaona, supra*, 5 Cal.App.5th 658, 662.)

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).)

The process by which a party may seek the issuance of a panel of QMEs is addressed in AD Rule 30 (Cal. Code Regs., tit. 8, § 30). The Rule requires that represented parties submit a request for a panel of QMEs electronically to the DWC Medical Unit, and that they identify the following elements:

1. Panel Request Information Section
 - i. Date of Injury
 - ii. Claim Number
 - iii. Requesting Party
 - iv. Reason QME Panel is being Requested
 - v. Dispute type
 - vi. Name of primary treating physician
 - vii. Date of report being objected to
 - viii. Date of objection communication
 - ix. Specialty of treating physician
 - x. QME Specialty Requested
 - xi. Opposing Party's QME Specialty Preferred (if known)

(Cal. Code Regs., tit. 8, § 30(b)(1)(A)(1).)

Here, applicant's May 21, 2024 request for a panel of QMEs listed an incorrect claim number and incorrectly identified the primary treating physician. (Ex. B, Panel QME Request, dated May 21, 2024.) The Division of Workers' Compensation (DWC) Medical Unit issued QME panel number 7695740 in response to applicant's request. (*Ibid.*)

The WCJ's October 7, 2024 Findings of Fact, Conclusions of Law, and Order (F&O) determined that panel number 7695740 was invalid because the panel request listed an incorrect

claim number, listed an incorrect primary treating physician, and because the resulting panel was not timely served on defense counsel. (Findings of Fact Nos. 1 & 2.) In the WCJ’s accompanying Opinion on Decision, the WCJ observed that in our panel decision¹ in *Sidahmed v. Alameda County Counsel* (March 18, 2024, ADJ17029088) [2024 Cal. Wrk. Comp. P.D. LEXIS 103], we determined that “the proper identification of a claim number provides notice to the parties of the injury for which a party is seeking the issuance of a panel, especially in cases such as this, where the injured worker may have previous or currently pending claims of industrial injury ... [t]hus, a party requesting the issuance of a panel of QMEs must provide accurate information to comply with AD Rule 30, and also because the parties’ ability to correlate a request for the issuance of a panel with the correct claimed injury is essential to due process.” (*Id.* at p. 13.)

Applicant’s Petition for Removal seeks to distinguish *Sidahmed*, *supra*, by observing that the applicant in that matter had filed multiple cases with the same employer, and that the need to distinguish between the various claims using a correct claim number was a primary reason for our determination that an incorrect claim number was tantamount to a denial of due process. (Petition, at p. 4:12.) However, we agree with the WCJ’s analysis of the issue when he states that “[b]ecause the claim number represents a necessary and pivotal means for the parties to request a panel of medical evaluators, relying upon incorrect information – even when a clerical error – denies the opposing party due process.” (Report, at p. 3.)

More recently, we have further addressed the need for accuracy in listing the correct claim number in a QME panel request in *Silveira v. FedEx Ground Package Systems* (July 18, 2025, ADJ20165742 [2025 Cal. Wrk. Comp. P.D. LEXIS 243]). Therein, we determined that defendant’s request for a QME panel was invalid despite listing a claim number that that was incorrect by only one digit. In seeking to balance the informal nature of workers’ compensation proceedings with the right to substantive and procedural due process, we wrote:

We acknowledge that generally, both the Labor Code and our rules “[disfavor] application of formalistic rules of procedure that would defeat an employee’s entitlement to [] benefits.” (*Martino v. Workers’ Comp. Appeals Bd.* (2002) 103

¹ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers’ Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

Cal.App.4th 485, 490 [126 Cal. Rptr. 2d 812, 67 Cal.Comp.Cases 1273].) Indeed, WCAB Rule 10517 (Cal. Code Regs., tit. 8, §10517) specifies that pleadings are deemed amended to conform to the stipulations agreed to by the parties on the record or may be amended by the Appeals Board to conform to proof. This rule represents the application of California's public policy in favor of adjudication of claims on their merits, rather than on the technical sufficiency of the pleadings.

However, our analysis must be grounded in principles of due process. "Due process requires notice and a meaningful opportunity to present evidence in regards to the issues." (*Rea v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 625, 643 [25 Cal. Rptr. 3d 828, 70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452–1454 [285 Cal. Rptr. 222, 56 Cal.Comp.Cases 537].) Here, we are persuaded that due process requires that the initial mechanism by which a party obtains a QME evaluation must be accurate, transparent, and accessible to all parties. In contrast to the other identifiers listed in AD Rule 30, the claim number is the sole basis used by the Medical Unit to track whether a panel previously issued. Thus, the claim number underlying a panel request must be correctly identified to provide all parties with the opportunity to evaluate the validity of the request and to be heard on issues arising out of the request, as necessary.

In sum, we believe that the better course is to require that parties strictly comply with the requirement in AD Rule 30 to provide a complete and correct claim number in making a request, rather than weighing and adjudging the individual facts and equity surrounding each incorrectly listed claim number in a QME panel dispute. In so doing, we seek to avoid the dangers of inconsistent outcomes, provide clarity to parties with respect to applicable minimum standards in requesting a QME panel, and allow parties to more easily predict whether a particular panel is valid without the need to seek intervention at the WCAB.

(*Silveira, supra*, at pp. 12-13.)

Our analyses in both *Sidahmed, supra*, and *Silveira, supra*, emphasize that a correct claim number is the primary method of identifying a claim in connection with a QME panel request, and that the correct identification of the pending claim is necessary to properly apprise all interested parties of the status of the QME dispute resolution process. (Lab. Code, §§ 4060, 4061, 4062.2; Cal. Code Regs., tit. 8, § 30.) We are also persuaded that the requirement that panel requests contain accurate claims information will reduce litigation and allow parties to more easily predict whether a particular panel is valid without the need to seek the intervention of the WCAB.

Here, based upon the WCJ's analysis of the merits of petitioner's arguments, 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 petitioner.

For the foregoing reasons,

IT IS ORDERED that the Petition for Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 7, 2025

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

**JOSIE VERGARA
LAW OFFICE OF MANUEL REYNOSO
HERMANSON, GUZMAN AND WANG**

SAR/abs

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