WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

AISHA MALONE, *Applicant*

vs.

DEPARTMENT OF MOTOR VEHICLES; legally uninsured, administered by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ15732786
Lodi District Office

OPINION AND ORDER DISMISSING PETITION FOR RECONSIDERATION, GRANTING PETITION FOR REMOVAL AND DECISION AFTER REMOVAL

Defendant seeks removal or in the alternative reconsideration of the Findings of Fact, Orders (F&O) issued on February 18, 2026, by the workers' compensation administrative law judge (WCJ). The F&O found, in pertinent part, that the qualified medical evaluator (QME) may reevaluate applicant and will be allowed to review the following material:

A. Reports from Dr. Lance Miller from 3/8/23 through 7/21/25.
B. Driving test accident report dated 7/13/21.
C. DMV injury report dated 7/13/21.
D. In view imaging dated 8/12/25; 7/25/25.
E. Subpoenaed records from government employees insurance.
F. Subpoenaed records from farmers insurance.
G. Subpoenaed records from Stanford healthcare.
H. Subpoenaed records from national home health.
I. Subpoenaed records from Kaiser East Bay area.
J. Subpoenaed records Kaiser Central Valley.
K. Subpoena records from Kaiser-Vallejo.
L. Subpoena records from Kaiser foundation Hospital.

The WCJ further found that the following were admitted into evidence:

Joint Exhibit A
Joint Exhibit B
Joint Exhibit D
Joint Exhibit E
Joint Exhibit H
Joint Exhibit K

Joint Exhibit L
Joint Exhibit M
Joint Exhibit N
Joint Exhibit O
Joint Exhibit P
Joint Exhibit Q
Joint Exhibit R
Joint Exhibit S

Defendant contends that the WCJ erred in excluding from evidence the following proposed exhibits marked for identification only: Joint Exhibit C, Duty Statement, dated August 24, 2021; Joint Exhibit F, Police Report, dated July 13, 2021; Joint Exhibit G, accident photos from the Police Report, dated July 13, 2021; Joint Exhibit I, subpoenaed records from the Scranton Law Firm, pages 1 to 185 and pages 2,734 through 3,074; and Joint Exhibit J, Barnes Firm subpoenaed records, pages 2,886 through 3,025. Defendant further contends that the WCJ erred in disallowing the QME to review excluded Joint Exhibits C, F, G, I and J, and the admitted Exhibits L and P, Kaiser Diablo subpoenaed records in connection with a reevaluation.

On March 25, 2026, defendant filed a "Petition Setting Forth Good Cause for Supplemental Pleading" and a supplemental pleading. We accept and consider the supplemental pleading. (Cal. Code Regs., tit. 8, § 10964.)

We did receive an Answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the amended Petition, the Answer and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and as discussed below, we will dismiss the petition to the extent it seeks reconsideration and grant it to the extent it seeks removal, rescind the F&O, and return this matter to the WCJ for further proceedings and decision.

DISCUSSION

I.

Preliminarily, we note that former Labor Code[1] 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:

[1] All further references are to the Labor Code unless otherwise stated.

> (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.

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 March 25, 2026 and 60 days from the date of transmission is Sunday, May 24, 2026, a weekend. The next business day that is 60 days from the date of transmission is Tuesday, May 26, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision was issued by or on May 26, 2026, 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.

Here, according to the proof of service for the Report and Recommendation by the WCA, the Report was served on March 25, 2026, and the case was transmitted to the Appeals Board

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

March 25, 2026. 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 March 25, 2026.

II.

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].) 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].)

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.

Here, the orders issued by the WCJ included final findings on the issues of date of injury, employment, liability and injury AOE/COE to the neck and bilateral knees. However, in the decision of March 31, 2025, the WCJ issued the same finding. Consequently, that finding is already final and cannot now be challenged by way of appellate review. Thus, we dismiss the Petition as one for Reconsideration.

Here, defendant is only challenging the interlocutory finding relating to the admissibility of records and records to be reviewed by the QME. Therefore, we will treat the Petition as one for removal and 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*. (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 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, as discussed below, we conclude 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.

III.

BACKGROUND

On November 13, 2025, at trial, the WCJ stated that the issue was:

> What comes before us today is the question of whether or not the applicant must be reevaluated by [QME] Dr. Atazai and what materials, if any, Dr. Atazai is allowed to review in connection with that re-evaluation.

Defendant presented a list of materials that they wished to have QME Zaid Atazai, D.C., review including medical and non-medical documents:

1. Employee's insurance
2. Scranton Law Firm
3. Barns Law Firm
4. Farmers Insurance
5. Kaiser Diablo
6. Current medical
7. Stanford Healthcare
8. Hall Ambulance
9. National Home Health
10. Kaiser East Bay
11. Kaiser Diablo Area
12. Kaiser Central Valley
13. Kaiser Napa/Solano-Vallejo
14. Kaiser Foundation Hospital

Over applicant's objection, the WCJ stated that it was his intention to identify the totality of the records presented by defendant for identification and then review those records in camera to determine their relevance and admissibility. (Minutes of Hearing (MOH), November 13, 2025, at pp. 2:12-3:3.)

The WCJ then listed the exhibits marked for identification as follows:

Joint Exhibit A:	Reports from Dr. Lance Miller from 3/8/24 through 7/21/25.
Joint Exhibit B:	Inview Imaging, dated 8/12/25; 7/25/25.
Joint Exhibit C:	Duty statement, dated 8/24/21.
Joint Exhibit D:	Driving Test Accident Report, dated 7/13/21.
Joint Exhibit E:	DMV injury report, dated 7/13/21.
Joint Exhibit F:	Police report, dated 7/13/21.
Joint Exhibit G:	Accident photos from the police report, dated 7/31/21.
Joint Exhibit H:	Subpoenaed records from government employment's insurance.
Joint Exhibit I:	Subpoenaed records from the Scranton Law Firm, pages 1 to 185 and pages 2,734 through 3,074.
Joint Exhibit J:	Barnes Firm subpoenaed records, pages 2,886 through 3,025.
Joint Exhibit K:	Subpoenaed records of Farmers Insurance.
Joint Exhibit L:	Kaiser Diablo subpoenaed records.
Joint Exhibit M:	Subpoenaed records from Stanford Healthcare.
Joint Exhibit N:	Subpoenaed records from National Home Health.
Joint Exhibit O:	Subpoenaed records from Kaiser East Bay Area.
Joint Exhibit P:	Subpoenaed records from Kaiser Diablo area.
Joint Exhibit Q:	Subpoenaed records from Kaiser Central Valley.
Joint Exhibit R:	Subpoenaed records from Kaiser-Vallejo.

Joint Exhibit S: Subpoenaed records from Kaiser Foundation Hospital.

(*Id*. at pp. 3:4-4:18.)

There is nothing further in the record to indicate the scope of the in camera review.

In the F&O, without reference to any of the exhibits by their designated letter, the WCJ indicated by name only which records that the QME would be allowed to review. He admitted Exhibits A, B, D, E, H, K, L, M, N, O, P, Q, R, and S, and although he made no separate order, the WCJ apparently excluded Joint Exhibits C, F, G, I, and J.

In the Report, by way of explanation for these findings, the WCJ provided:

> The reason the additional exhibits were excluded from evidence was based upon the fact that they were either not relevant, duplicative, overly burdensome, or their prejudicial effect outweighed their probative value.
> …
>
> This WCJ admitted all relevant evidence proffered by defense. The evidence excluded was duplicative or overly burdensome. It is this WCJ's opinion that the evidence admitted allowed the defendant to provide the QME with ample evidence to support the defense position regarding apportionment. For example, joint exhibit C (duty statement) would not have been relevant on the issue of apportionment. By way of another example, the records from two of applicant's law firms Joint exhibits I and J) totaled over 700 pages of records, and purportedly contained information that was readily available in the medical records which were admitted into evidence (joint exhibit A, B, L, M, N, O, P, Q, R, and S) These exhibits provided the defendant with ample records to provide to the QME for purposes of meeting their burden of proof on apportionment. To allow additional records from law firms and insurance companies would be duplicative and burdensome. Not to mention, some of the records from the law firms could have contained information that may be covered by the attorney-client privilege.

(Report, at p. 3.)

IV.

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) An adequate and complete record is necessary to understand the basis for the WCJ's decision. (Lab. Code, § 5313; see also Cal. Code Regs., tit. 8, § 10566.) "It is the responsibility of the parties and the WCJ to ensure that the record is complete when a case is submitted for decision on the record. At a minimum, the record must contain, in properly organized form, the issues submitted for decision, the admissions and stipulations of the parties, and admitted evidence."

(*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 475.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] … For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Id*. at p. 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350] [a full and complete record allows for a meaningful right of reconsideration]; *Lewis v. Arlie Rogers & Sons* (2003) 69 Cal.Comp.Cases 490, 494, emphasis in original ["decision [must] be based on an ascertainable and adequate record," including "an orderly identification in the record of the evidence submitted by a party; and *what evidence is admitted or denied admission*."].) "An organized evidentiary record assists an arbitrator in rendering a decision, informs the parties what evidence will be utilized by the arbitrator in making a determination, preserves the rights of parties to object to proffered evidence, and affords meaningful review by the Board, or reviewing tribunal." (*Id*.)

In the MOH, defendant "offered" a list of materials for Dr. Atazai's review that includes several documents which may not be marked as potential exhibits and/or reviewed by the WCJ including applicant's deposition, the report from Dr. Gutierrez, "Current medical" and Hall Ambulance. (MOH at p. 2:12-23.) The MOH lists several potential exhibits that were "Not in FileNet at time of trial" or the day of submission. (*Id*. at pp. 3-4.) Currently, the following exhibits are not in EAMS: Joint Exhibits H, K, M, N, O, Q, R and S. In the MOH, applicant lodged an objection to review of those exhibits, but no ruling on the objection was in MOH nor was it deferred and addressed in the F&O. Importantly, there is nothing in the MOH to indicate how the WCJ conducted the review and how he ultimately determined which evidence to admit.

Next, the F&O fails to list materials to be reviewed by the QME by their exhibit letter designation and instead lists them by a different letter which creates confusion. Even with respect to the exhibits that contained over a thousand pages, the WCJ made no attempt to cull the relevant materials and merely states that the records that were not admitted were "not relevant, duplicative, overly burdensome, or their prejudicial effect outweighed their probative value." The decision failed to explain the basis for admitting or excluding each potential exhibit into evidence, and just as significantly, the decision failed to provide a second analysis as to why each document would be provided to the QME, thereby depriving the parties of any meaningful review on the merits.

Thus, we must rescind the F&O.

V.

Here, the WCJ announced the in camera review of the evidence on the day of trial. While *Regents of University of California v. Workers' Comp. Appeals Bd*. (2014) 226 Cal.App.4th 1530 [173 Cal. Rptr. 3d 80] (*Lappi*) considered the application of the Evidence Code to the disclosure of assertedly privileged materials for the purpose of determining their related privilege claims in WCAB proceedings, it is instructive in considering the application of in camera review. Above all, the WCJ must create a record in order to preserve the ability of the parties to seek reconsideration and appellate review.

First, a determination on the relevance of the offered materials must be made. Code of Civil Procedure section 2017.010 states in part: "Unless otherwise limited by order of the court in accordance with this title, any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in that action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code of Civ. Proc., § 2017.010.) However, workers' compensation proceedings are not bound by the common law or statutory rules of evidence and procedure. Furthermore, it is well established that in workers' compensation proceedings there is a public policy favoring liberal pre-trial discovery that may reasonably lead to relevant and admissible evidence applicable in workers' compensation cases. (*Allison v. Workers' Comp. Appeals Bd*. (1999) 72 Cal.App.4th 654, 663 [64 Cal.Comp.Cases 624].) We emphasize that in workers' compensation proceedings, the Labor Code makes explicit that the WCJ and the Appeals Board have greater discretion with respect to evidentiary matters than courts in civil proceedings, and not narrower discretion. Section 5708 mandates that we are not "bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division." (Lab. Code, § 5708.) Section 5709 specifically allows informality in our proceedings and ensures that "admission into the record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure" will not invalidate an order, decision or award. (Lab. Code, § 5709.)

Hence, in reviewing the identified materials offered by defendant, the WCJ has significant flexibility to admit documents into evidence. Nonetheless, it is also defendant's responsibility to

sort the records, *before trial*, and determine whether it is necessary to offer packages of documents that include extraneous or duplicative materials. That is, it is incumbent upon the parties to make the initial determination of whether a document is relevant to meeting their burden of proof. We agree with the WCJ's sentiments that defendant improperly shifted the burden to review the thousands and thousands of pages of documents onto the WCJ rather than taking the time to determine which documents were relevant in the first instance. We remind defendant that a WCJ that is faced with these circumstances can refuse to allow submission of the documents and can consider the imposition of sanctions pursuant to section 5813.

Once admitted, the WCJ has the authority to determine the weight or sufficiency of each piece of evidence in consideration against any other. (Lab. Code, § 5312; Cal. Code Regs., tit. 8, § 10330; see also *Clendaniel v. Industrial Acc. Com*. (1941) 17 Cal.2d. 659, 662.)

In this case, the next part of the WCJ's determination is whether each piece of evidence should be provided to the QME for review and commentary. In our en banc decision, *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803 (Appeals Board en banc), we discussed the legal principles concerning documents to be produced to the QME. We stated that "[s]ection 4062.3 contains different procedural requirements depending on the nature of the documents or materials to be provided to the QME." (*Id.* at p. 1810.)

Section 4062.3 describes information to be provided to a QME and states in relevant part:

> (a) Any party may provide to the qualified medical evaluator selected from a panel any of the following information:
>
> > (1) Records prepared or maintained by the employee's treating physician or physicians.
> >
> > (2) Medical and nonmedical records relevant to determination of the medical issue.

(Lab. Code, § 4062.3(a).

Here, the WCJ was charged with deciding whether medical and non-medical evidence should be produced to the QME. The WCJ allowed the QME, Dr. Atazai to review some insurance company records and some reports of the July 13, 2021 industrial injury, but failed to explain why these non-medical records should be reviewed by the QME.

Although here the context of the dispute is not whether a violation has occurred, these *Suon* factors may be helpful to the WCJ in considering whether evidence should be reviewed by the QME: 1. The prejudicial impact versus the probative weight of the information; 2. The reasonableness, authenticity and, as appropriate, relevance of the information to determination of the medical issues; 5. Whether there were good faith efforts by the parties to agree on the information to be provided to the QME; and 6. The constitutional mandate to "accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character." (Cal. Const., art. XIV, § 4.) (*Id.* at pp. 1815-1816.) Once the WCJ has made the determination as to which materials should be reviewed by the QME, and explained the basis for the decision, the WCJ must identify with particularity the pages that should be sent and the pages that should not be sent. (See *Hamilton*, *supra*.)

Accordingly, we dismiss the Petition as one for reconsideration, grant it as one for removal, and as our Decision After Removal, we rescind the F&O and return the matter to the WCJ for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the F&O issued by the WCJ on February 18, 2026 is **DISMISSED**.

IT IS ORDERED that the Petition for Removal of the F&O issued by the WCJ on February 18, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Removal of the Workers' Compensation Appeals Board that the F&O of February 18, 2026 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 22, 2026

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

AISHA MALONE
LAW OFFICE OF CHRISTINA LOPEZ
STATE COMPENSATION INSURANCE FUND

SL/abs

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