

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

CHRISTOPHER DUNNE, *Applicant*

vs.

CITY AND COUNTY OF SAN FRANCISCO, *Defendants*

**Adjudication Number: ADJ22209281
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant seeks reconsideration of our May 15, 2026 Opinion and Order Dismissing Petition for Reconsideration and Granting Petition for Removal and Decision after Removal (O&O) wherein we rescinded the January 8, 2026 Findings and Order (F&O) issued by the workers' compensation arbitrator (WCA) and substituted it with a new F&O which held that applicant was entitled to designate Robert Noriega, M.D. as the Independent Medical Examiner (IME) for applicant's cumulative injury claim.

Defendant contends that "neither the carve out Agreement nor the Labor Code grant the Appeals Board jurisdiction to remove an Arbitrator's Order" and that applicant "did not suffer prejudice" and was not "denied due process" as applicant "*agreed* to strike language from the cover letter" to IME, David Teichera, M.D., on the issue of varicose veins, but sought to designate Dr. Noriega instead as he was "unhappy with [Dr. Teichera's] initial opinion[.]" (Petition for Reconsideration (Petition), p. 10.) Defendant further argues that "Dr. Teichera's opinions are not final" and that applicant is able to "pursue additional discovery and challenge Dr. Teichera's opinions." (*Id.* at pp. 10, 12.)

We have not received an Answer from applicant.

We have considered the contents of the Petition, and we have reviewed the record in this matter. Based on our review of the record, and for the reasons discussed below, as well as those set forth in our O&O, we will deny the Petition.

FACTS

As previously set forth in our May 15, 2026 O&O, applicant claimed that while employed by defendant as a police officer/sergeant during the period from March 26, 2007, through June 23, 2025, he sustained an injury arising out of and occurring in the course of employment (AOE/COE) to his bilateral lower extremities and circulatory system, resulting in varicose veins. As a member of the City and County of San Francisco police department, the claim was subject to the alternate dispute resolution process (ADR) pursuant to the collective bargaining agreement of Labor Code¹ section 3201.7.

Applicant previously alleged three other injuries, including May 16, 2022 and September 21, 2023 injuries to the right knee, and a January 17, 2024 injury to the lumbar spine while employed by defendant as a police officer/sergeant. Applicant designated Dr. Teicheira as the IME for these claims. The September 21, 2023 and January 17, 2024 claims were accepted as industrial.

In a letter dated June 30, 2025, defendant notified applicant that benefits were delayed for the cumulative injury claim due to lack of “medical substantiation.” (Exhibit H.)

In a letter dated June 4, 2025, defendant notified applicant of a July 2, 2025 appointment with Dr. Teicheira. (Exhibit I.) On June 25, 2026, defendant prepared a letter addressed to Dr. Teicheira in advance of the evaluation. (Exhibit I.) Both letters listed the September 21, 2023 and January 17, 2024 dates of injury but not the cumulative injury.

On June 30, 2025, applicant’s attorney’s office provided defendant with a proposed cover letter to Dr. Teicheira (Exhibit I) and on July 1, 2025, defendant responded via email (Exhibits J and K) objecting to portions of the cover letter referencing the cumulative injury and use of Dr. Teicheira as the IME for the new claim. Defendant alleged that Dr. Teicheira was “not [a] qualified internist in the field of varicose vein[s].” (Exhibit J.) Applicant’s attorney’s office responded via email on the same date with a revised cover letter removing the requested portions and noting that Dr. Teicheira was in fact a “certified QME internist” but if defendant wished to proceed with another exam at a later date, applicant would be willing to acquiesce. (Exhibit L.)

In a letter to applicant dated July 28, 2025 defendant accepted applicant’s cumulative injury to the varicose veins. (Exhibit N.)

Thereafter, Dr. Teicheira issued a report dated July 30, 2025 wherein he concluded, in

¹ All further statutory references are to the Labor Code unless otherwise indicated.

relevant part, that he could not find “any substantial medical evidence that [applicant’s] employment caused the varicose veins[.]” (Exhibit X, p. 25.)

In a letter dated August 13, 2025, defendant denied applicant’s cumulative injury claim based upon Dr. Teicheira’s findings. (Exhibit O.) The letter indicated that per an agreement between applicant’s labor organization and defendant, the parties would proceed with the ADR process. (*Ibid.*; See Exhibit Q.)

Following receipt of defendant’s denial, applicant attempted to retain Dr. Noriega as the IME for the cumulative injury claim. An appointment letter dated August 22, 2025 was issued by Dr. Noriega’s office notifying the parties of an October 28, 2025 internal medicine examination. (Exhibit 4.)

On August 25, 2025, defendant issued a letter to applicant objecting to the IME with Dr. Noriega on the basis that applicant had been examined by Dr. Teicheira for the cumulative injury claim and was not entitled to a second IME opinion. (Exhibit R.)

On December 18, 2025, an arbitration hearing was held with WCA Saul Allweiss on the sole issue of applicant’s entitlement to an IME appointment with Dr. Noriega for the cumulative injury claim.

On January 8, 2026, the WCA issued an F&O which held that applicant was not entitled to an IME examination with Dr. Noriega for the cumulative injury claim on the basis that applicant had already been evaluated by Dr. Teicheira for the claim and was not entitled to a second IME opinion.

Applicant sought reconsideration of the F&O and on May 15, 2026, we granted reconsideration and issued an O&O wherein we rescinded the F&O and substituted it with a new F&O, which held that applicant is entitled to designate Dr. Noriega as the IME for the cumulative injury claim.

It is from this O&O that defendant seeks reconsideration.

DISCUSSION

I.

Preliminarily, 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.

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 under the Events tab 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 June 4, 2026, and 60 days from the date of transmission is August 3, 2026. This decision was issued by or on August 3, 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 constitute notice of transmission.

Here, the Petition seeks reconsideration of our O&O. Therefore, no Report and Recommendation is required by the WCA, and no other notice of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the Petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on June 4, 2026.

II.

We also find it relevant here to discuss the distinction between a petition for reconsideration and a petition for removal. A petition for reconsideration is taken only from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order is defined as one that determines “any substantive right or liability of those involved in the case” or a “threshold” issue fundamental to a claim for benefits. (*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 [43Cal.Comp.Cases 661]; *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, injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations. (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. (*Maranian, supra*, at 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, and other similar issues.

Here, the O&O pertains to an intermediate procedural or evidentiary issue—to wit, entitlement to designation of an IME for the cumulative injury claim—and does not determine any substantive right or liability or a threshold issue. Accordingly, although defendant’s Petition was filed as one for reconsideration, it is not a “final” decision, and the removal standard applies.

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 can show that substantial prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a).) The petitioner must also demonstrate that reconsideration will not be an adequate

remedy if a final decision adverse to the petitioner ultimately issues. (*Ibid.*)

In the instant case, 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 defendant.

III.

Turning now to the merits of the Petition, defendant contends that “neither the carve out Agreement nor the Labor Code grant the Appeals Board jurisdiction to remove an Arbitrator’s Order[.]” (Petition, p. 10.) Defendant cites various sections of the ADR Agreement (Exhibit Q) as well as section 3201.7 as evidence.

We find it important to note that there is no language within the ADR Agreement or section 3201.7 which prohibits parties from seeking removal of a decision issued by a WCA to the Appeals Board. In fact, section 4.3, encompassed in the ADR Dispute Resolution Process section, states that “Either party may appeal an arbitrator’s decision under this section to the Workers’ Compensation Appeals Board (“WCAB”) in the same manner as a Petition for Reconsideration to the WCAB.” Further, section 7.7, relating to Medical-Legal Dispute Resolution, states that “Decisions of an arbitrator under this section may be appealed to the WCAB in the same manner as a Request for Reconsideration.” Finally, section 4.5 of the ADR Agreement, which is referenced by defendant in support of their contention, merely indicates that the parties retain the right to file a petition for internal removal within the ADR system where “reconsideration by the WCAB will not be an adequate remedy.” (Exhibit Q, p. 8.) Thus, based upon the language of the ADR Agreement, applicant was within his rights when he sought reconsideration of the January 8, 2026 F&O.

Defendant further asserts that applicant “did not suffer prejudice” and was not “denied due process” as applicant “*agreed* to strike language from the cover letter” to Dr. Teichera on the issue of varicose veins but sought to designate Dr. Noriega instead as he was “unhappy with [Dr. Teichera’s] initial opinion[.]” (Petition, p. 10.)

We disagree. As iterated in our O&O, there was no stipulation between the parties for Dr. Teichera to act as IME on all of applicant’s claimed injuries. Further, applicant agreed to withhold information pertaining to the cumulative injury in anticipation of another evaluation with a different IME. This was prejudicial to applicant in that he was unable to provide his position on the

cumulative injury or pose any specific questions to Dr. Teicheira for him to address during his examination of applicant related to compensability and other relevant issues with respect to the cumulative injury. Given that applicant was unable to provide information or raise inquiries to which he is otherwise entitled under Administrative Director (A.D.) Rules 35(a)(3) and 35.5(c)(1) (Cal. Code Regs., tit. 8, §§ 35(a)(3), 35.5(c)(1)), denying a separate IME with Dr. Noriega would violate the applicant's due process rights.

As noted previously, the Appeals Board may not ignore due process for the sake of expediency. (*Barri v. Workers' Comp. Appeals Bd.* (2018) 28 Cal.App.5th 428, 469 [83 Cal.Comp.Cases 1643] [claimants in workers' compensation proceedings are not denied due process when proceedings are delayed in order to ensure compliance with the mandate to accomplish substantial justice]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805][all parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions].) "Even though workers' compensation matters are to be handled expeditiously by the Board and its trial judges, administrative efficiency at the expense of due process is not permissible." (*Fremont Indem. Co. v. Workers' Comp. Appeals Bd.* (1984) 153 Cal.App.3d 965, 971 [49 Cal.Comp.Cases 288]; see *Ogden Entertainment Services v. Workers' Comp. Appeals Bd. (Von Ritzhoff)* (2014) 233 Cal.App.4th 970, 985 [80 Cal.Comp.Cases 1].)

The Appeals Board's constitutional requirement to accomplish substantial justice means that the Appeals Board must protect the due process rights of every person seeking reconsideration. (See *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd.* (1999) 74 Cal.App.4th 928, 936 [64 Cal.Comp.Cases 986] ["essence of due process is...notice and the opportunity to be heard"]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) In fact, "a denial of due process renders the appeals board's decision unreasonable..." and therefore vulnerable to a writ of review. (*Von Ritzhoff, supra*, 233 Cal.App.4th at p. 985 citing Lab. Code, § 5952(a), (c).) Thus, due process requires meaningful consideration of the merits of every case de novo with a well-reasoned decision based on the evidentiary record and the relevant law.

Further, we reiterated that although there are no specific rules addressing the selection of IMEs in a multiple claim situation, cases such as *Navarro v. City of Montebello* (2014) 79 Cal.Comp.Cases 418, 420 (Appeals Bd. en banc), which address the use of panel Qualified Medical Evaluators (PQMEs) in multiple claim situations, continue to provide guidance. In

Navarro, we held that the “Labor Code does not require an employee to return to the same PQME for an evaluation of a subsequent claim of injury.” Accordingly, an applicant need not return to the same IME for evaluation of a subsequent claim of injury. Sections 4062.3(j) and 4064(a) state that a medical evaluation shall address “all medical issues arising from all injuries reported on one or more claim forms.” In keeping with requirements set forth under sections 4062.3(j) and 4064(a), we clarified in *Navarro* that at the time of evaluation, the evaluator shall consider all issues arising out of any claims reported before the evaluation, and if several subsequent claims of injury are filed before the evaluation takes place, the evaluator shall also consider those claims. (*Id.* at p. 425.)

Here, applicant filed his cumulative injury claim after Dr. Teicheira had been selected as the IME for applicant’s other industrial claims, but Dr. Teicheira had not yet examined applicant for those claims. However, in response to applicant’s proposed cover letter to Dr. Teicheira (Exhibit I), defendant objected to the portions of applicant’s cover letter specifically referencing the cumulative injury (Exhibits J and K). Defendant also contended that Dr. Teicheira was “not [a] qualified internist in the field of varicose vein[s].” (Exhibit J.) As a result, applicant removed the requested information and acquiesced to an examination with another IME at a later date. (Exhibit L.) In light of these circumstances, and taking into consideration applicant’s due process rights, we continue to believe that applicant is entitled to designate Dr. Noriega as the IME in his cumulative injury claim.

Accordingly, we deny defendant’s Petition.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of our May 15, 2026 Opinion and Order Dismissing Petition for Reconsideration and Granting Petition for Removal and Decision after Removal is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 10, 2026

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

**CHRISTOPHER DUNNE
RAINS LUCIA STERN ST. PHALLE & SILVER
OFFICE OF THE CITY ATTORNEY, SAN FRANCISCO
SAUL ALLWEISS, ARBITRATOR**

RL/cs

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