

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

GABINO TORRES, *Applicant*

vs.

**VLOT CALF RANCH, INC.; ARCH INSURANCE COMPANY,
administered by LWP CLAIM SOLUTIONS¹, *Defendant***

**Adjudication Number: ADJ19688721
Fresno District Office**

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

Applicant seeks removal, or in the alternative, reconsideration, of the Findings of Fact and Order (F&O) issued on April 30, 2026 wherein the workers' compensation administrative law judge (WCJ) found that Ehsan Saadat, M.D. shall be replaced as the orthopedic Panel Qualified Medical Evaluator (PQME) in this case due to his failure to provide an evaluation date within ninety (90) days pursuant to Administrative Director (AD) Rule 31.5(e)² and ordered that the parties continue with panel 3793035 and Michael Klassen, M.D. as the replacement PQME.

Applicant contends that substantial justice requires that Dr. Saadat remain as the PQME in this matter as the WCJ did not adequately weigh the prejudice caused by restarting the QME process and misapplied elements from the case of *Vazquez v. Inocensio Renteria* (2025) 90 Cal.Comp.Cases 514 (Appeals Bd. en banc).

¹ The Minutes of Hearing and Summary of Evidence (MOH/SOE) as well as the F&O indicate that defendant is Vlot Calf Ranch, Inc., insured by Arch Insurance Company, and administered by LWP Claims, but both the Application for Adjudication of Claim (Application) and defendant's Answer list the employer as Vlot Brothers Trucking Company, Inc. The proper identity of the defendant and their carrier should be clarified by the parties for the record. (See *DiFusco v. Hands on Spa* (2025) 90 Cal.Comp.Cases 1007 (Appeals Bd. en banc).)

² The WCJ was likely referring to AD Rule 31.3(e) and not 31.5(e) as the latter does not exist.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition, rescind the F&O, and substitute it with a new F&O, which finds that there is no good cause to replace Dr. Saadat as the PQME in this matter.

FACTS

Applicant filed an Application claiming that while employed by defendant on August 3, 2024 as a truck driver, he sustained injury arising out of and occurring in the course of employment (AOE/COE) to the head, back, neck, and shoulders.

The parties proceeded with discovery and selected Dr. Saadat as the PQME. Applicant was evaluated on November 6, 2024, and a corresponding report was issued shortly thereafter, along with supplemental reports dated January 23, 2025 and October 20, 2025. Additionally, Dr. Saadat was deposed by the parties on August 12, 2025.

On December 23, 2025, defendant contacted Dr. Saadat's office to schedule a reevaluation. An appointment date of April 15, 2026 was provided. Defendant did not agree to waive the 90-day requirement under AD Rule 31.3(e) and requested a replacement QME panel.

On January 23, 2026, replacement QME panel 3793035 was issued. On February 3, 2026, applicant issued a conditional strike of one of the physicians. (Exhibit 5.) Defendant also issued a strike, and Dr. Klassen was ultimately selected from the panel.

On February 3, 2026, applicant filed a Declaration of Readiness to Proceed to an Expedited Hearing on the replacement panel issue. Thereafter, an expedited hearing was set for April 1, 2026.

At trial, the issues set for determination included whether defendant is entitled to a replacement panel and whether there is good cause to replace Dr. Saadat as PQME. The issue of sanctions, costs, and fees pursuant to Labor Code³ section 5813 and WCAB Rule 10421 were deferred.

³ All further statutory references will be to the Labor Code, unless otherwise noted.

On April 30, 2026, the WCJ issued an F&O which held, in relevant part, that Dr. Saadat would be replaced by Dr. Klassen as the PQME as Dr. Saadat was unable to provide an evaluation date within 90 days.

It is from this F&O that applicant 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 May 21, 2026, and 60 days from the date of transmission is July 20, 2026. This decision was issued by or on July 20, 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 shall constitute notice of

transmission.

Here, according to the proof of service for the Report, the Report was served on May 21, 2026, and the case was transmitted to the Appeals Board on May 21, 2026.⁴ Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on May 21, 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 [43 Cal.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. If a decision includes a determination of a “threshold” issue, then it is treated as a “final” decision, regardless of whether all issues are resolved or whether there is an ultimate decision on

⁴ It appears that a second Report, which appears virtually identical to the first, was served on May 27, 2026.

the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Bd. en banc).)

Where a decision contains both final and non-final determinations, it is a hybrid decision. When a party challenges a hybrid decision, the petition seeking relief is treated as a petition for reconsideration because the determination on the threshold issue is final and binding on the Appeals Board and all parties to the case. When a petition is treated as one for reconsideration, then, the Appeals Board follows section 5908.5 and considers the merits of any final findings, awards, or orders. If the Appeals Board does not disturb the final finding, award, or order, or affirms it, the parties' remedy is to seek appellate relief. (Lab. Code, § 5950 et seq.) If no further relief is sought, the finding, award, or order, is binding on all parties as the "law of the case." (Lab. Code, § 5904; *Goodrich v. Industrial Acc. Com.* (1943) 22 Cal.2d 604, 611.)

However, where a petitioner challenges a WCJ's determination regarding an interlocutory issue, the Appeals Board will apply the removal standard applicable to non-final decisions with respect to that issue. Notably, decisions on interlocutory or interim issues by a WCJ or the Appeals Board may still be challenged by a petition for reconsideration once a final decision is issued.

Here, the F&O includes stipulations as to the issue of employment, which is a "final" decision on a threshold issue. Thus, although we do not address the merits of this "final finding, we will treat the Petition as one for reconsideration. In his Petition, applicant only challenges the interlocutory finding/order as to the replacement of the QME. As such, we will apply the removal standard to our review of that issue. (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 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.*)

Here, the WCJ struck current PQME, Dr. Saadat, and ordered the parties to continue with a PQME from a replacement panel, thereby starting the medical-legal discovery process anew, significantly altering the course of these proceedings, and likely extending the ultimate resolution of this matter. As further discussed below, the decision was based upon an incorrect analysis of

factors set forth in the case of *Vazquez v. Inocensio Renteria* (2025) 90 Cal.Comp.Cases 514 (Appeals Bd. en banc).

In light of the foregoing, we conclude that applicant has demonstrated that substantial prejudice or irreparable harm will result if removal is not granted and reconsideration will not be an adequate remedy if a final decision adverse to the applicant ultimately issues.

III.

Turning now to the merits of the Petition, applicant contends that the WCJ did not adequately weigh the prejudice caused to applicant by restarting the QME process and that substantial justice requires that Dr. Saadat remain as the PQME in this matter. Applicant further contends that the WCJ did not properly analyze the elements set forth in *Vazquez*.

In *Vazquez*, we held that for represented cases, “the determination of whether a QME should be replaced due to *unavailability* to set an evaluation is within the discretionary power of the Appeals Board, and a PQME may be replaced where a party demonstrates good cause for the replacement.” (*Id.* at p. 523.) Under *Vazquez*, good cause is determined based upon a balancing of multiple factors, which include:

- a. The length of delay caused by the QME's unavailability.
- b. The amount of prejudice caused by the delay in availability versus the amount of prejudice caused by restarting the QME process.
- c. What efforts, if any, have been made to remedy the QME's availability.
- d. Case specific factual reasons that justify replacing or keeping the current QME, including whether a party may have waived its objection.
- e. The Appeals Board's constitutional mandate to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.” (Cal. Const., art. XIV, § 4.)

(*Id.* at p. 527.)

Here, defendant contacted Dr. Saadat’s office on December 23, 2025 to schedule a re-evaluation, and an appointment date of April 15, 2026 was provided, which is a period of one-hundred-thirteen (113) days from the date of defendant’s request.

Defendant contends that Dr. Saadat was unable to schedule an evaluation within the 90-day time limit per AD Rule 31.3(e) and that given defendant’s refusal to waive the 90-day time

limit, defendant is entitled to request a new panel under AD Rules 31.3(e) and 31.5(a)(2). (*See* Exhibit A.)

AD Rule 31.3(e) states, in relevant part, that:

If a party with the legal right to schedule an appointment with a QME is unable to obtain an appointment with a selected QME within ninety (90) days of the date of the appointment request, that party may waive the right to a replacement in order to accept an appointment no more than one-hundred-twenty (120) days after the date of the party's initial request for an appointment. When the selected QME is unable to schedule the evaluation within one-hundred-twenty (120) days of the date of that party's initial request for an appointment, either party may report the unavailability of the QME and the Medical Director shall issue a replacement pursuant to section 31.5 of Title 8 of the California Code of Regulations upon request, unless both parties agree in writing to waive the one-hundred-twenty (120) day time limit for scheduling the initial or any subsequent evaluation.

(Cal. Code Regs., tit. 8, § 31.3(e).)

AD Rule 31.5(a)(2) further provides that:

(a) A replacement QME to a panel, or at the discretion of the Medical Director a replacement of an entire panel of QMEs, shall be selected at random by the Medical Director and provided upon request whenever any of the following occurs:

...

(2) A QME on the panel issued cannot schedule an examination for the employee within ninety (90) days of the initial request for an appointment, or if the 90 day scheduling limit has been waived pursuant to section 31.3(e) of Title 8 of the California Code of Regulations, the QME cannot schedule the examination within one-hundred and twenty (120) days of the date of the initial request for an appointment.

(Cal. Code Regs., tit. 8, § 31.5(a)(2).)

Although we recognize the time constraints outlined under AD Rules 31.3(e) and 31.5(a)(2), we note that taken together, the two rules refer to entitlement to replacement panels for *initial* evaluations unable to be scheduled within 90 days. Here, applicant completed an initial evaluation with Dr. Saadat on November 6, 2024. Thus, defendant was attempting to schedule a *re-evaluation*.

Further, assuming *arguendo* that AD Rules 31.3(e) and 31.5(a)(2) were applicable herein, under *Vazquez*, there are five factors to consider in determining whether good cause exists for a replacement panel. We address each one in turn.

With respect to the first factor—the length of delay caused by the QME's unavailability—as noted above, defendant contacted Dr. Saadat's office on December 23, 2025 to schedule a reevaluation, and an appointment date of April 15, 2026 was provided, which is a period of 113 days from the date of defendant's request. The April 15, 2026 evaluation date was therefore twenty-three (23) days in excess of the 90-day time limit.

With respect to the second factor—the amount of prejudice caused by the delay in availability versus the amount of prejudice caused by restarting the QME process—we note that Dr. Saadat has already established injury AOE/COE to the cervical and lumbar spine (Exhibit 4, p. 10). A new PQME and potential reversal of Dr. Saadat's opinions would therefore be extremely prejudicial, particularly in comparison to a delay of 23 days.

With respect to the third factor, whether any efforts were made to remedy the QME's availability—as the scheduling party, defendant does not appear to have made any attempts to remedy the QME's availability by requesting an earlier appointment, asking for applicant to be added to a waitlist, or making other similar efforts for the scheduling of a speedier reevaluation.

With respect to the fourth factor—specific factual reasons that justify replacing or keeping the current QME—as noted above, Dr. Saadat has already found injury AOE/COE to the cervical and lumbar spine (Exhibit 4, p. 10) and has issued numerous reports in this case (Exhibits 2-4). Dr. Saadat was also deposed by the parties (Exhibit 1).

Dr. Saadat's prior reporting relates to the fifth factor—the Appeals Board's constitutional mandate to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character” (Cal. Const., art. XIV, § 4.). Restarting the process with a new PQME would not only prolong discovery but incur additional costs, rendering the time and resources spent on the prior discovery essentially meaningless.

Based upon the foregoing, we conclude that defendant has not established good cause for the replacement of Dr. Saadat. Accordingly, we grant applicant's Petition, rescind the F&O, and substitute it with a new F&O, which reflects that there is no good cause to replace Dr. Saadat as the PQME in this matter.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the workers' compensation administrative law judge's April 30, 2026 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the April 30, 2026 Findings and Order is **RESCINDED**, and the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Gabino Torres Reyes, born [DOB omitted], while employed on August 3, 2024, as a truck driver, occupational group number 350, at Livingston, California, by Vlot Calf Ranch, claims to have sustained injury arising out of and in the course of employment to the low back, head, and neck.
2. The employer has furnished no medical treatment.
3. No attorney fees have been paid, and no attorney fee arrangements have been made.
4. Good cause has not been established for the replacement of Ehsan Saadat, M.D. as the orthopedic panel Qualified Medical Evaluator in this matter.

ORDER

All other issues are ordered deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 15, 2026

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

**GABINO TORRES
GROSSMAN LAW OFFICES
LAW OFFICES OF BRADFORD & BARHTEL, LLP**

RL/cs

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