

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

WANDA RHODES, *Applicant*

vs.

**ONTARIO MONTCLAIR SCHOOL DISTRICT, permissibly self-insured,
administered by ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Numbers: ADJ10333462; ADJ21853030
Pomona District Office**

**OPINION AND ORDERS DENYING
PETITION FOR RECONSIDERATION AND
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration and defendant seeks removal, or in the alternative reconsideration, of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on April 23, 2026, wherein the WCJ found that applicant sustained an injury on May 1, 2015 to her right calf, right knee, and psyche "while working for" defendant and claimed to have sustained injury to the low back, stomach, headaches, sleep, and CRPS; that further development of the record is necessary; and that there is good cause to order additional qualified medical evaluator (QME) panels in internal medicine and neurology.

Applicant contends that the WCJ failed to rule on the admission of her Exhibits 1, 2, 3, 4 and 7.

Defendant contends that applicant failed to show good cause and the WCJ failed to make a finding of good cause under Labor Code section 5502(d)(3) that further development of the record was appropriate, and that the case should be decided on the existing record.

We received an Answer from applicant to defendant's Petition. Defendant's response to applicant's Petition is included in their Petition.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) in response to applicant's Petition, recommending that it be granted in part, to amend the F&O to admit applicant's Exhibits 1, 2 and 7 into evidence, with Exhibits 3 and 4 remaining excluded from evidence.

The WCJ issued a second Report in response to defendant's Petition, recommending that it be denied.

We have considered the allegations in the Petitions, the Answers, and the contents of the Reports with respect thereto.

Based on our review of the record, and as discussed below, we will deny defendant's Petition as one for Reconsideration, we will grant applicant's Petition as one for Reconsideration, and we will affirm the WCJ's decision, except that we will amend it to clarify that applicant was employed by defendant as a physical education teacher at the time of her injury (Finding of Fact 1) and to admit applicant's Exhibits 1, 2, 3, and 4 into evidence and to defer admission of Exhibit 7 (Orders).

BACKGROUND

The WCJ offered the following relevant facts.

The Applicant, Wanda Rhodes, sustained an injury on May 1, 2015 to her right calf, right knee, and psyche while working for the Ontario-Montclair School District. She further alleged the following body parts/systems as a result of this May 1, 2015 injury: the low back, stomach, headaches, sleep, and CRPS.

The Applicant treated with various providers, including but not limited to Dr. Ronny Ghazal and Dr. Scott Strum at Concentra. Early treatment records indicate that the Applicant primarily treated for a meniscus tear in the right knee, treatment of which included a meniscectomy on or around January 4, 2017. Sometime after her surgery, the Applicant's medical providers started to memorize subjective complaints suggesting the presence of CRPS and started to diagnose the Applicant with the same. [FN 1 omitted.]

As part of discovery, the parties also secured medical-legal reporting via the QME Panel process. The Applicant was initially evaluated by the late Dr. Peter Sofia, Orthopedic PQME. The parties secured a replacement QME, Dr. Ram Alluri.

(Opinion on Decision, April 23, 2026, at pp. 3-4.)

On August 12, 2023, Dr. Alluri evaluated applicant and diagnosed her with right knee meniscus tear status-post lateral meniscus partial meniscectomy and complex regional pain syndrome (CRPS) of right lower extremity. (Joint Exhibit A1, at pp. 19-20.) Applicant reported

low back symptomatology to Dr. Alluri, and he observed: “[S]he developed right-sided low back pain which may be compensatory secondary to abnormal gait secondary to the right knee injury and right lower extremity complex regional pain syndrome.” (*Id.* at pp. 2-3; 21.) Applicant also reported right leg and low back pain were disturbing her sleep. (*Id.* at p. 3.) Dr. Alluri declared applicant to be permanent and stationary or maximum medically improved (MMI) for her right knee, right lower extremity and low back. (*Id.* at pp. 20-21.) Dr. Alluri assigned applicant whole person impairment (WPI) as follows: right knee range of motion 0%; right knee partial lateral meniscectomy 1%; right lower extremity CRPS 16%; and under diagnosis-related estimate (DRE) 0% for low back. (*Id.* at pp. 21-22.) Future medical treatment was indicated for the right lower extremity including medication and continued psychotherapy deferred to a psychiatrist. (*Id.* at p. 22.)

On May 31, 2024, applicant filed an amended Application for Adjudication of Claim (Application) to include psych.

On July 17, 2024, applicant filed an amended Application to include right calf.

On July 22, 2024, applicant filed a petition for an additional panel QME in psychiatry.

On July 25, 2024, applicant filed a declaration of readiness to proceed (DOR) to a mandatory settlement conference on the issue of her petition for an additional panel in psychiatry.

On July 29, 2024, Dr. Alluri was deposed. (Joint Exhibit A2.) Concerning applicant’s low back, because of her preexisting conditions, Dr. Alluri testified that it would be “more appropriate” to evaluate applicant under the range of motion (ROM) method rather than DRE method. (*Id.* at pp. 22:7-23:9; 24:11-25:2.) Further, to determine whether low back findings are new or old, Dr. Alluri testified that “it would be very helpful” for him to review the actual lumbar spine MRI films from 2017 and 2021, if they are available. (*Id.* at pp. 20:24-21:9.) Dr. Alluri confirmed that he did find industrial causation for the low back, but an impairment analysis under the ROM method and reviewing the MRI films is pending. (*Id.* at p. 26:16-25.)

Dr. Alluri testified that applicant reported stomach problems with nausea and vomiting, headaches, memory loss, some numbness and tingling. (*Id.* at pp. 11:15-20; 14:11-15.) Applicant also reported that pain interfered with her sleep. (*Id.* at pp. 13:19-14:2.)

Dr. Alluri testified that issues with headaches, sleep and stomach are outside of his expertise and he deferred to QME(s) in appropriate subspecialties. (*Id.* at pp. 11:21-25; 14:23-15:9.)

On August 8, 2024, applicant filed an amended Application to include stomach, headaches and sleep disorder.

On April 1, 2025, in partial reliance on Dr. Alluri's August 12, 2023 report, defendant filed a DOR for a mandatory settlement conference on the issues of permanent disability, apportionment and future medical.

On April 9, 2025, applicant wrote defendant and proposed a joint request for additional panels in neurology and internal medicine. (Exhibit 6, at pp. 71-76.)

On April 30, 2025, applicant filed a petition for additional QME panels in neurology and internal medicine.

On May 6, 2025, defendant filed an opposition to applicant's petition for additional QME panels in neurology and internal medicine.

On May 6, 2025, applicant filed an objection to the DOR listing outstanding discovery including the following: evaluation in non-orthopedic specialties, no medical-legal experts in all necessary specialties, pending petition for additional panel QMEs in neurology and internal medicine, pending review by Dr. Alluri of prior low back MRIs and application by Dr. Alluri of ROM method, and lack of psychiatric treatment.

At a May 7, 2025 mandatory settlement conference, over applicant's objection, the matter was continued to a trial on June 17, 2025. (Minutes of Hearing, May 8, 2025.)

On July 10, 2025, at the joint request of the parties, the trial was continued to August 4, 2025 with the WCJ commenting: "Parties given leave to fix exhibits, and will upload amended exhibits lists." (Minutes of Hearing, July 10, 2025.)

At trial on August 4, 2025, over applicant's and defendant's objections, the matter was continued to a trial on October 6, 2025, because

AA RECENTLY RECEIVED A CD (POST-MSC) THAT INCLUDES SCANS FOR A 2021 MRI; PQME DR. ALLURI PREVIOUSLY INDICATED HIS DESIRE TO REVIEW MRI SCANS; MATTER IS CONTINUED TO ALLOW PARTIES TO SECURE A SUPPLEMENTAL REPORT FROM PQME DR. ALLURI AS THIS DISCOVERY WAS NOT AVAILABLE AT THE TIME OF THE MSC PER LABOR CODE SECTION 550[2](d)(3).

AA WANTS OTOC; DEF WANTS TO PROCEED; MATTER IS CONTINUED ON COURT'S MOTION OVER PARTIES['] RESPECTIVE OBJECTIONS. (All capitals in original.)

(Minutes of Hearing, August 5, 2025.)

On August 13, 2025, applicant forwarded Dr. Alluri the subpoenaed records from UCLA Health Santa Clarita Imaging, CD-ROM. (Exhibit 2, at pp. 6-7.)

On August 25, 2025, Dr. Alluri reviewed an X-ray lumbar spine (4 views) and MRI lumbar spine both dated August 12, 2021. (Exhibit 2, at p. 2.) Dr. Alluri updated his reporting to assign applicant 19% WPI for the lumbar spine under the ROM method. (*Id.* at p. 4.) Additionally, under future medical care, Dr. Alluri indicated that he now defers not only to a psychiatrist, but also to a pain management specialist. (*Id.* at p. 5.)

On September 12, 2025, defendant sent an “interrogatory” to Dr. Alluri requesting that for applicant’s low back, he address causation, permanent impairment, apportionment and future medical care. (Exhibit 1, at p. 8.) Additionally, defendant requested a copy of the systems review wherein applicant reported headaches and gastrointestinal symptoms. (*Id.*)

On September 15, 2025, Dr. Alluri issued a supplemental report referencing his August 25, 2025 supplemental report concerning lumbar spine and including a screenshot of Systems Review wherein applicant reported neurological and stomach problems. (Exhibit 1, at pp. 3-4.)

On October 6, 2025, at the joint request of the parties filed October 3, 2025, the trial was continued to November 6, 2025, because the supplemental report from Dr. Alluri was pending. (Minutes of Hearing, October 6, 2025.)

On November 6, 2025, at the joint request of the parties, the trial was continued to December 22, 2025, because the supplemental report from Dr. Alluri was pending. (Minutes of Hearing, November 10, 2025.)

On December 22, 2025, the trial began and defendant objected to some of applicant’s Exhibits and they were marked as follows:

APPLICANT’S 1: (For Identification Only)

Supplemental orthopedic P.Q.M.E. report by Dr. Ram Alluri dated September 15, 2025.

APPLICANT’S 2: (For Identification Only)

Supplemental orthopedic P.Q.M.E. report by Dr. Ram Alluri dated August 25, 2025.

APPLICANT’S 3: (For Identification Only)

Pain psychology treatment summary report by Dr. Marilyn Jacobs dated May 24, 2021.

APPLICANT’S 4: (For Identification Only)

Pain psychology treatment summary report by Dr. Marilyn Jacobs dated February 23, 2021.

APPLICANT'S 7: (For Identification Only)

Correspondence regarding a proposal for additional Q.M.E. panels by Perez Law dated November 25, 2025.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), December 22, 2025, pp. 3:21-4:3; 4:8-10.)

The Exhibits marked for identification only were submitted but deferred until the WCJ's decision, and the following issues for trial were listed: 1) Parts of body injured: low back, stomach, headaches, sleep, and CRPS; 2) Permanent disability; 3) Apportionment; 4) The occupation and group number claimed: by the employee, group No. 390; and by the employer, group No. 212; 5) The need for further medical treatment as to disputed body parts; 6) Attorney fees; 7) Whether the applicant is entitled to permanent disability for psyche or sleep per Labor Code section 4660.1; 8) Whether there is good cause for additional Q.M.E. panels in internal medicine (MMM) and neurology (MPN) within ZIP code 92308; 9) Whether additional discovery is needed in psychology (PSY) to determine if the claim qualifies as a catastrophic injury per Labor Code 4660.1(c)(2)(B) and, if so, to what extent; 10) Whether further development of the record is necessary in accordance with *McDuffie vs. Los Angeles M.T.A.*¹

It is from the corresponding Findings and Order that applicant seeks reconsideration on the admissibility of her Exhibits marked for identification only, and defendant seeks reconsideration/removal of the F&O and requests a decision on the merits based on the current record.

DISCUSSION

I.

Preliminarily, former Labor Code section² 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date

¹In ADJ21853030, applicant claims cumulative injury to various body parts while employed by defendant from August 1, 1995 to December 21, 2017. This case is not currently at issue, and no decision has issued with respect to the merits.

² All statutory references are to the Labor Code unless otherwise stated.

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 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 May 14, 2026, and 60 days from the date of transmission is July 13, 2026. This decision is issued by or on July 13, 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 be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on May 14, 2026, and the case was transmitted to the Appeals Board on May 14, 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 May 14, 2026.

II.

If a decision includes resolution of a “threshold” issue, then it is a “final” decision, whether or not all issues are resolved or there is an ultimate decision on the right to benefits. (*Aldi v. Carr, McClellan, Ingersoll, Thompson & Horn* (2006) 71 Cal.Comp.Cases 783, 784, fn. 2 (Appeals Board en banc).) 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].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the WCAB or court of appeal. (See Lab. Code, § 5904.) Alternatively, non-final decisions may later be challenged by a petition for reconsideration once a final decision 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.

Here, the WCJ’s decision includes a finding regarding injury arising out of and in the course of employment to right knee, right calf and psyche and the existence of an employment relationship. Accordingly, the WCJ’s decision is a final order subject to reconsideration rather than removal, and we will grant reconsideration to clarify that applicant was employed by defendant as a physical education teacher at the time of her injury.

Although the decision contains a finding that is final, each of the petitioners is only challenging an interlocutory finding/order in the decision. Therefore, we will 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, based upon the WCJ's analysis of the merits of the defendant's arguments, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

Here, based upon the WCJ's analysis of the merits of the applicant's arguments, we are persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy because Exhibits 1, 2, 3 and 4 were erroneously excluded.

III.

Turning to the merits, we will first consider the defendant's contention that the case is ripe for decision on the current record.

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. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) "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 [70 Cal.Comp.Cases 312]; see also *Fortich v. Workers' Comp. Appeals Bd.* (1991) 233 Cal.App.3d 1449, 1452-1454 [56 Cal.Comp.Cases 537].) A fair hearing includes, but is not limited to, the opportunity to call and cross-examine witnesses; introduce and inspect exhibits; and to offer evidence in rebuttal. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker, supra*, at pp. 157-158 citing *Kaiser Co. v. Industrial Acc. Com. (Baskin)* (1952) 109 Cal.App.2d 54, 58 [17 Cal.Comp.Cases 21]; *Katzin v. Workers' Comp. Appeals Bd.* (1992) 5 Cal.App.4th 703, 710 [57 Cal.Comp.Cases 230].) As stated by the Court of Appeal:

A denial of due process to a party ordinarily compels annulment of the Board's decision only if it is reasonably probable that, absent the procedural error, the party would have attained a more favorable result. However, if the denial of due process prevents a party from having a fair hearing, the denial of due process is reversible per se.

(*Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd. (Pinkney)* (1994) 26 Cal.App.4th 789, 806 [59 Cal.Comp.Cases 461], citations omitted.)

It is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence "... a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence. [citations] Expert testimony is necessary "where the truth is occult and can be found only by resorting to the sciences." [citation].

(*Peter Kiewit Sons v. I.A.C.* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].)

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that "[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record ... the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*Id.* at p. 141.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*Id.*) If the existing physicians cannot cure the need for development of the

record, the selection of an AME should be considered by the parties. If the parties cannot agree to an AME, the WCJ can appoint a physician to evaluate applicant pursuant to section 5701.

Decisions of the Appeals Board “must be based on admitted evidence in the record.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.)

Here, the record is incomplete with the current QME, Dr. Alluri, deferring to the specialties of psychiatry, neurology, internal medicine and pain management. Defendant contends they will suffer “substantial prejudice and irreparable harm” if the record is further developed because it could result in additional liability for additional body parts. (Defendant’s Petition, at pp. 4:27-5:3; 10:17-18.)

First, we emphasize that our workers’ compensation system is a “benefit delivery system.” (See Lab. Code, §§ 3201, 3202, 3600.) A defendant is charged with the ongoing duty of developing such evidence as part of adjusting a claim. The “duty to investigate requires further investigation if the claims administrator receives later information, not covered in an earlier investigation, which might affect benefits due.” (Cal. Code Reg., tit. 8, § 10109(c).) Defendant’s duty to investigate is based in the constitutional mandate that the employer provide benefits and to “accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.” (Cal Const, Art. XIV § 4, emphasis added.) If a defendant has concerns about benefits due it must conduct timely investigation. Such investigation not only assures timely provision of benefits when due, it protects defendant from providing benefits that are not due. In sum, there is a clear statutory mandate that defendants furnish or pay compensation, including provision of medical treatment and payment of indemnity benefits when they are due. (See e.g., Lab. Code, §§ 3207, 4550, 4554, 4600, 4650, 5814, 5814.5.)

Next, pursuant to sections 4062.2 and 4064, there is an expectation in workers’ compensation that a comprehensive medical evaluation is appropriate to resolve “any dispute” and to address “all contested medical issues arising from all injuries” and that defendant is liable for

the cost of the evaluations. (See Lab. Code, §§ 4061(i), 4064(a), (d); see also §§ 4620, 4621, 4622.) Thus, a defendant is generally not irreparably harmed by the cost of potential additional medical-legal discovery as defendants are responsible for such costs under the Labor Code. (*Lopez v. Fresno Unified School District* 2018 Cal. Wrk. Comp. P.D. LEXIS 127.) The comprehensive medical evaluation is neither prejudicial nor harmful, rather it is the system we have in place to address an injured worker's claim.

Further, defendant argues that further development of the record would be unfair to the extent that it undercuts defendant's due process rights. (Defendant's Petition at p. 5:9-10.) Again, due process requires notice and opportunity to be heard. (See *Rea, supra*, at p. 643; *Fortich, supra*, at pp. 1452-1454.)

On May 31, 2024, applicant filed an amended Application to include psych and put defendant on notice that she was pursuing a claim of psyche injury. On July 22, 2024, in good faith discovery, applicant filed a petition for an additional panel QME in psychiatry; to date there is no order, either granting or denying, this petition. On July 29, 2024, Dr. Alluri testified about outstanding discovery related to the applicant's low back, as follows:

A. You know, I think the one thing is when calculating impairment for the lumbar spine, irrespective of, you know, whether or not I think the specific trauma from 2015 is contributing, I do need to calculate the impairment with the range of motion method. So, I revise the range -- the calculation of the lumbar impairment as currently stands. Whether or not I apportion it all the way to, you know, previous injury and degenerative changes or I apportion some part to the specific trauma in 2015 as a result of compensatory injury is to be determined; but I do think I need to re-calculate it based on the range of motion, because I do think that's more appropriate in this setting as opposed to the DRE method.

Q All right. Thank you. And you can do that after -- after you review whatever film is available for those MRIs?

A Yes. I think that would be the most logical.

(Joint Exhibit A2, at pp. 24:11-25:7.)

On August 8, 2024, when applicant amended the Application to include stomach, headaches and sleep disorder, she put defendant on notice that she was pursuing a claim of stomach, headaches and sleep disorder injury.

Hence, when defendant filed their DOR to MSC on April 1, 2025 on the issues of permanent disability, apportionment and future medical, defendant had notice of the outstanding

discovery for the following accepted and denied body parts: psyche, stomach, headaches, sleep and low back. Now, both parties will be heard on outstanding issues.

Citing *San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases] in their Petition, defendant states: "Good faith and diligence are required of both sides equally." (Defendant's Petition, at p. 14:2-4.) In the case at hand, the onus was equally on defendant to facilitate the completion of Dr. Alluri's low back ROM analysis after reviewing available MRI films and to proceed with the supplemental report they requested after the May 7, 2025 MSC. (Joint Exhibit A2, at pp. 24:11-25:7; Exhibit 1, at p. 8.)

Finally, defendant asserts that the WCJ erroneously assigned additional QME panels under AD Rule 31.7 which states in relevant part:

(a) Once an Agreed Medical Evaluator, an Agreed Panel QME, or a panel Qualified Medical Evaluator has issued a comprehensive medical-legal report in a case and a new medical dispute arises, the parties, to the extent possible, shall obtain a follow-up evaluation or a supplemental evaluation from the same evaluator.

(b) Upon a showing of good cause that a panel of QME physicians in a different specialty is needed to assist the parties reach an expeditious and just resolution of disputed medical issues in the case, the Medical Director shall issue an additional panel of QME physicians selected at random in the specialty requested. For the purpose of this section, good cause means:

(1) A written agreement by the parties in a represented case that there is a need for an additional comprehensive medical-legal report by an evaluator in a different specialty and the specialty that the parties have agreed upon for the additional evaluation; or

...

(3) An order by a Workers' Compensation Administrative Law Judge for a panel of QME physicians that also either designates a party to select the specialty or states the specialty to be selected and the residential or employment-based zip code from which to randomly select evaluators.

(Cal. Code Regs., tit. 8, § 31.7.)

Additional panels were listed as an issue for trial as follows: "Whether there is good cause for additional Q.M.E. panels in internal medicine (MMM) and neurology (MPN) within ZIP code 92308." (MOH/SOE, December 22, 2025, at p. 3:2-4.) On July 29, 2024, when Dr. Alluri deferred to panel QMEs in neurology and internal medicine, that was the "good cause" listed in the issue for trial.

Based on the foregoing, we do not believe the case is ripe for a decision on the merits.

IV.

Next, we will consider the applicant's contention that her Exhibits 1, 2, 3, 4 and 7, marked for identification only, were erroneously excluded from evidence. Applicant's Exhibits 1 and 2 are supplemental reports obtained from QME, Dr. Alluri, after the May 7, 2025 MSC. Exhibit 7 is a correspondence from applicant to defendant proposing, in relevant part, that the parties jointly request a new panel QME in pain medicine as recommended by Dr. Alluri on August 25, 2025. Applicant's Exhibits 3 and 4 are treating physician's progress reports from 2021 that were not listed on the May 7, 2025 pre-trial conference statement (PTCS).

In his Report, the WCJ recommended that his F&O be amended to admit applicant's Exhibits 1, 2 and 7 into evidence. (Report, May 14, 2026, at pp. 2-3.) However, the WCJ recommended that applicant's Exhibits 3 and 4 remain excluded from evidence because they were not listed on the May 7, 2025 PTCS and applicant had neither the court's nor the defendant's permission to add Exhibits 3 and 4 to the PTCS dated December 19, 2025. (*Id.* at p. 3.)

Defendant contends that applicant's Exhibits 1, 2 and 7 should remain excluded from evidence because applicant failed to adequately explain why she did not obtain the Dr. Alluri reports dated August 25, 2025 and September 15, 2025 before the May 7, 2025 MSC and applicant did not propose the additional QME panels in the November 25, 2025 letter before the May 7, 2025 MSC, therefore applicant did not establish good cause. (Defendant's Petition, at p. 16.)

We agree with the WCJ that he did erroneously exclude applicant's Exhibits 1 and 2 from evidence. We disagree with the WCJ in his exclusion from evidence applicant's Exhibits 3 and 4, and we disagree with defendant about excluding applicant's Exhibits 1 and 2. Since the issue of QME panels in psych and pain management has not been adjudicated, we will defer admission of Exhibit 7.

At trial, on August 4, 2025, the applicant's attorney requested that the matter go off calendar for this further discovery and the defendant requested to proceed to trial on the current record. On his own motion, the WCJ continued the matter to allow the parties to obtain a supplemental report from Dr. Alluri. Hence, in one fell swoop, the WCJ overruled both applicant's and defendant's objections to allow the additional discovery pursuant to section 5502(d)(3) but to keep the matter on calendar for trial.

Section 5502(d)(3) states:

If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.

(Lab. Code, § 5502(d)(3).)

Again, on August 4, 2025 day of trial, as the WCJ continued the matter to allow the parties to complete their discovery with Dr. Alluri, applicant provided evidence that demonstrated that the 2021 MRI was not available or could not have been discovered by the exercise of due diligence prior to the May 7, 2025 settlement conference to the satisfaction of the WCJ. It is the WCJ's duty to exercise discretion as to the evidentiary record and to make good cause determinations. If defendant disagreed with the WCJ's good cause determination to continue the trial to allow additional discovery, defendant had a due process right to file a petition for removal within 20 days (plus five days for mailing) from the August 5, 2025 service of the Minutes of Hearing.

Instead, defendant chose *to participate* in additional discovery with Dr. Alluri. On August 18, 2025, defendant drafted a supplemental report request to Dr. Alluri and sent it to him on September 12, 2025; this request resulted in applicant's Exhibit 1. Thereafter, twice, on October 6, 2025 and November 6, 2025, defendant requested trial continuance in anticipation of Dr. Alluri's supplemental report(s).

The fact that defendant objected to the admissibility of discovery that they obtained and requested continuances in anticipation of the same, could be perceived as bad faith conduct. Hence, the WCJ continued the trial to allow parties to complete their discovery with Dr. Alluri. From Dr. Alluri, applicant obtained applicant's Exhibit 2 and defendant obtained applicant's Exhibit 1. Accordingly we will admit applicant's Exhibits 1 and 2, though we defer the weight of this evidence to the WCJ in the first instance regarding outstanding issues related to the applicant's lumbar spine and CRPS. With respect to Exhibit 7, we will defer its admission as it concerns QME panels in psychology and pain management, an issue which has not been decided.

Next, we consider the admissibility of applicant's Exhibits 3 and 4, two treatment reports by Marilyn S. Jacobs, Ph.D., dated February 23, 2021 and May 24, 2021 respectively. Applicant

testified that she began treating with Joshua Prager, M.D., after a failed dorsal root ganglion implant. (MOH/SOE, December 22, 2025, at p. 8:10-13.) As he submitted Requests for Authorization, Dr. Prager appears to be applicant's primary treating physician. (Exhibit Q, at pp. 1, 4, 8.) Both applicant and defendant offered multiple reports from Dr. Prager as exhibits. (Exhibit 5; Exhibit Q.) Dr. Prager and Dr. Jacobs appear to work at the same facility based on their office address. On the May 7, 2025 PTCS, as exhibits, defendant listed a report by Dr. Jacobs dated November 30, 2022 and applicant listed a report by Dr. Jacobs dated December 1, 2022. (PTCS, May 7, 2025, at pp. 8; 10.)

As observed by the WCJ, applicant seemed to file a unilateral PTCS on December 19, 2025. The fact that applicant filed a PTCS more than six months after the MSC without the consent of the court or the defendant, evidenced by a lack of signature, could be perceived as bad faith conduct. Additionally, applicant asserts some of Dr. Jacobs' reports were included in the subpoenaed records of Dr. Prager listed on the May 7, 2025 PTCS. (Petition, May 1, 2025, at p. 4:12-16.) As Dr. Jacobs copied Dr. Prager/California Pain Medicine Center on her reports, this may be true, but it is unclear on this record and cannot be relied upon. However, there is evidence on this issue that can be relied upon. Dr. Prager referred applicant to psychiatry and/or pain psychology and received/reviewed Dr. Jacobs' treatment reports. (Exhibit 5, at pp. 2, 6, 9, 12; Exhibit Q, at pp. 6, 10, 12, 23.) Additionally, on August 12, 2023, Dr. Alluri reviewed the February 23, 2021 and the May 24, 2021, Marilyn S. Jacobs, Ph.D., Pain Psychology Progress Reports. (Joint Exhibit A1, at pp. 17-18.)

In opposition to admitting applicant's Exhibits marked for identification only, defendant relies in part on *DPR Construction v. Workers' Comp. Appeals Bd. (McClanahan)* (2025) 111 Cal.App.5th 1136 [90 Cal.Comp.Cases 491], wherein prior QME reports not listed on the PTCS were determined to be erroneously admitted to evidence in violation of section 5502. The case at hand concerning applicant's Exhibits 1, 2, 3, and 4, can easily be distinguished from *McClanahan*.

Applicant's Exhibits 1 and 2, the supplemental reports from Dr. Alluri dated August 25, 2025 and September 15, 2025, were not in existence at the time of the May 7, 2025 mandatory settlement conference. On August 4, 2025, when the WCJ allowed for the additional evidence from Dr. Alluri, defendant failed to seek removal of this decision and then participated in discovery.

Concerning applicant's Exhibits 3 and 4, treatment summary reports from Marilyn Jacobs, Ph.D., dated February 23, 2021 and May 24, 2021, we note that sections 4062.3(a) and 5703(a) provide that reports of attending or examining physicians may be provided to medical-legal evaluators and received as evidence. Here, the reports from Dr. Jacobs have been reviewed by treating and medical-legal physicians alike. Hence, although applicant's attorney failed to list Dr. Jacobs' February 23, 2021 and May 24, 2021 reports on the May 7, 2025 PTCS, for several years those two reports have been in evidence through the current treating and medical-legal physicians.

More significantly, *McClanahan* involved a final decision on the merits of the case. Here, we are presented with the opposite situation in that the WCJ did not issue a final decision on the merits of whether applicant sustained injury to the additional body parts, and indeed, ordered further development of the record so that there would be substantial evidence to support his decision and as a matter of due process. Since the weight of this evidence is deferred to the WCJ in the first instance, defendant will have ample opportunity to raise the issue of whether this medical evidence and the evidence of the subsequent medical legal evaluations was substantial to support the basis for a final decision. As such, defendant will not be deprived of any due process right with the admission of Exhibits 3 and 4.

Accordingly, we deny defendant's Petition for Reconsideration and grant applicant's Petition for Reconsideration and affirm the WCJ's decision, except that we amend it to clarify that applicant was employed by defendant as a physical education teacher at the time of her injury (Finding of Fact 1) and to admit applicant's Exhibits 1, 2, 3, and 4 into evidence and to defer admission of Exhibit 7 (Orders).

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration/Removal is **DENIED**.

IT IS FURTHER ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued by the WCJ on April 23, 2026 is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant, Wanda Rhodes, sustained an injury on May 1, 2015 to her right calf, right knee, and psyche while employed by the Ontario-Montclair School District in Ontario, California as a physical education teacher.

ORDERS

IT IS ORDERED THAT the supplemental orthopedic PQME report of Dr. Ram Alluri dated September 15, 2025 is admitted into evidence as Applicant's Exhibit 1.

IT IS FURTHER ORDERED THAT the supplemental orthopedic PQME report of Dr. Ram Alluri dated August 25, 2025 is admitted into evidence as Applicant's Exhibit 2.

IT IS FURTHER ORDERED THAT the treating physician report of Dr. Marilyn Jacobs dated May 24, 2021 is admitted into evidence as Applicant's Exhibit 3.

IT IS FURTHER ORDERED THAT the treating physician report of Dr. Marilyn Jacobs dated February 23, 2021 is admitted into evidence as Applicant's Exhibit 4.

IT IS FURTHER ORDERED THAT the issue of the admission into evidence of correspondence regarding a proposal for additional Q.M.E. panels by Perez Law dated November 25, 2025, marked as Applicant's Exhibit 7, is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

PAUL F. KELLY, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 9, 2026

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

**WANDA RHODES
PEREZ LAW
PEETZ LAW**

SL/abs

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