

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

TERESA IRANNEJAD, *Applicant*

vs.

**COUNTY OF LOS ANGELES/LAC-USC MEDICAL CENTER, permissibly self-insured,
administered by SEDGWICK, *Defendants***

**Adjudication Numbers: ADJ9313954, ADJ9313956
Los Angeles District Office**

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

Applicant seeks removal of the Joint Findings and Order (Joint F&O) issued by the workers' compensation administrative law judge (WCJ) on September 8, 2021. By the Joint F&O, the WCJ found that applicant has not shown good cause for issuance of an additional qualified medical evaluator (QME) panel in neurology.

Applicant contends that she has shown good cause for an additional QME panel in another specialty to evaluate her sleep condition.¹

We did not receive an answer from defendant. The WCJ issued a Report and Recommendation on Petition for Removal (Report) recommending that we deny applicant's Petition.

We have considered the allegations of applicant's Petition for Removal and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will rescind the Joint F&O and issue a new decision finding that there is a need for an additional QME panel in neurology.

¹ Applicant attached several documents to her Petition and none of those documents were admitted into evidence. We have not considered these documents because our decisions "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corp. (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc).) Further, applicant does not allege that the documents were new evidence, which she could not, with reasonable diligence, have discovered and produced at the time the WCJ issued the decision. (Lab. Code, § 5903(d).)

FACTUAL BACKGROUND

Applicant claims two injuries while employed as a social worker by the County of Los Angeles-LAC/USC: to the cervical spine, lumbar spine, bilateral knees, right shoulder, bilateral hands and wrists, bilateral fingers, psyche and sleep disorder through December 3, 2013 (ADJ9313956); and to the hands, psyche and sleep disorder on November 5, 2013 (ADJ9313954). Defendant denies compensability for the psyche and sleep disorder. (Minutes of Hearing, July 15, 2021, pp. 2-3.)

The parties have agreed to use Laura Wertheimer Hatch, M.D. as the orthopedic agreed medical evaluator (AME). Dr. Hatch noted that applicant complains of “sleep disorder associated with her work injuries.” (Joint Exhibit No. 2, Report of AME Laura Wertheimer Hatch, M.D., March 5, 2018, p. 9.) Baba Singh, Psy.D. is the psychological panel QME. Dr. Singh also reported issues with applicant’s sleep purportedly related to both her mood and chronic pain. (Joint Exhibit No. 1, Report of QME Baba Singh, Psy.D., January 25, 2019, pp. 4-5.)

The matter proceeded to trial on July 15, 2021 on the sole issue of whether there is a need for an additional QME panel in the specialty of neurology or another specialty to address applicant’s sleep issues. (Minutes of Hearing, July 15, 2021, p. 3.)

The WCJ issued the Joint F&O as outlined above.

DISCUSSION

I.

Applicant sought removal of the Joint F&O. 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 (AOE/COE), 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.)² 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 of injury AOE/COE to several body parts. Injury AOE/COE is threshold issue fundamental to the claim for benefits. Accordingly, the WCJ's decision is a final order subject to reconsideration rather than removal.

II.

Although the decision contains a finding that is final, applicant is only challenging an interlocutory finding/order regarding whether she is entitled to an additional qualified medical evaluator (QME) panel in another specialty to evaluate her sleep disorder. Therefore, we will apply the removal standard to our review. (See *Gaona, supra.*)

Removal is discretionary and is generally employed only as an extraordinary remedy which must be denied absent a showing of significant prejudice or irreparable harm, or that reconsideration will not be an adequate remedy after issuance of a final order, decision or award. (Cal. Code Regs., tit. 8, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020); *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].)

Administrative Director (AD) Rule 31.7(b) provides for an additional QME panel in another specialty as follows 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.

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

(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:

...
(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(a) and (b)(3); see also Cal. Code Regs., tit. 8, § 32.6.)

When a new medical dispute arises, the parties should obtain a follow-up or supplemental evaluation from the same evaluator to the extent possible. (See e.g., *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) An additional QME panel in another specialty is warranted if there is good cause as defined in AD Rule 31.7(b), i.e., as relevant to this matter, if the WCJ orders an additional panel.

Applicant has pled injury in the form of a sleep disorder. Defendant disputes compensability for this condition. Section 4062.2 governs the process to obtain a medical-legal evaluation from a panel QME in a represented case if the parties do not agree on an AME. (Lab. Code, § 4062.2.) In the absence of an additional panel in neurology, applicant is prevented from conducting necessary medical-legal discovery to meet her burden of proof to show compensability for her sleep disorder. We therefore agree with applicant that an additional QME panel in neurology is warranted. (See *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; Lab. Code, §§ 5701, 5906 [the Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues].)

In her Report, the WCJ stated that “there is no indication that Applicant has obtained information from either Dr. Wetheimer Hatch or Dr. Singh that either believes an additional QME panel in an a [*sic*] specialty appropriate to assess the applicant’s sleep issues is needed.” (Report, October 18, 2021, p. 4.) In *De Leon v. Southern California Edison* (July 31, 2019; ADJ10633327)

[2019 Cal. Wrk. Comp. P.D. LEXIS 316],³ the Appeals Board noted that “while a party may seek written notice from the existing evaluator that the disputed medical issues are outside the evaluator’s scope of practice and area of clinical competence, the AD’s Rules do not expressly require a party to ask the existing evaluator if an additional panel in another specialty is warranted.” (*Id.* at p. *22.) The panel expressly declined “to impose additional requirements not contained in the AD’s Rules before a party may seek another panel in a different specialty.” (*Id.* at pp. *22-23.) Similarly, here, applicant is not obligated to ask the existing medical-legal evaluators if a panel in another specialty is necessary before the WCJ may order an additional QME panel in neurology.

Therefore, we will rescind the F&O and issue a new decision finding that there is a need for an additional QME panel in neurology. The new decision will retain the parties’ trial stipulations that were adopted in the Joint F&O (Findings of Fact Nos. 1-3) and the WCJ’s evidentiary finding (Findings of Fact No. 8), which was not challenged by either party. (Minutes of Hearing, July 15, 2021, pp. 2-3; see Lab. Code, § 5702; see also *County of Sacramento v. Workers’ Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114 [65 Cal.Comp.Cases 1].)

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

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration/Removal of the Joint Findings and Order issued by the WCJ on September 8, 2021 is **GRANTED**.

IT IS ORDERED as the Decision After Reconsideration by the Workers' Compensation Appeals Board that the Joint Findings and Order issued by the WCJ on September 8, 2021 is **RESCINDED** in its entirety and the following is **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. For ADJ9313956, TERESA IRANNEJAD, while employed as a social worker, occupational group number 111, in Los Angeles, California by the County of Los Angeles, LAC-USC Medical Center, sustained injury arising out of and in the course of employment during the period from March 1, 2005 to December 3, 2013, to her cervical spine, lumbar spine, bilateral knees, right shoulder, bilateral hands and wrists, and bilateral fingers and claims to have sustained injury arising out of and in the course of employment as psychiatric injury and sleep disorder.
2. For ADJ9313954, TERESA IRANNEJAD, while employed as a social worker, occupational group number 111, in Los Angeles, California by the County of Los Angeles, LAC-USC Medical Center, sustained injury arising out of and in the course of employment on November 5, 2013, to her hands, and claims to have sustained injury arising out of and in the course of employment as psychiatric injury and sleep disorder.
3. At the time of both the injuries the employer was permissibly self-insured and administered by Sedgwick.
4. Exhibits Nos. 7 and 8 are admitted into evidence.
5. There is a need for an additional QME panel in neurology to evaluate applicant's sleep issues.

ORDER

IT IS ORDERED that applicant's request for an additional QME panel in the specialty of neurology is granted.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DEIDRA E. LOWE, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 23, 2021

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

**LOS ANGELES COUNTY COUNSEL
LAW OFFICE OF ROBERT LEE
TERESA IRANNEJAD**

AI/pc

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