

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

ANDREW JAUREGUI, *Applicant*

vs.

**INVO PEO, INC./LCF TOWING SAN DIEGO, and UNITED
WISCONSIN INSURANCE COMPANY administered by NEXT LEVEL
ADMINISTRATORS, *Defendants***

Adjudication Numbers: ADJ17141277, ADJ17354037

Pomona District Office

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant filed a Petition for Reconsideration; Petition for Removal (Petition) seeking reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on November 17, 2023, wherein the WCJ found in pertinent part that applicant is entitled to be evaluated by neurology qualified medical examiner (QME) Kasra Maasumi, M.D.

Defendant contends that applicant is not entitled to be evaluated by a neurology QME, or “alternatively” that if the F&A is “allowed to stand” defendant will suffer irreparable harm and significant prejudice. (Petition, p. 1.)

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from applicant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed injury to his head and circulatory system in the form of a stroke while employed by defendant as a tow truck driver on June 20, 2022 (ADJ17141277). He had also

claimed an injury while employed by defendant on June 13, 2022, when he was bitten by a dog while attempting to repossess a car (ADJ17354037).

In response to defendant's request, the DWC Medical Unit issued an occupational medicine QME panel on May 4, 2023, regarding the June 13, 2022 injury claim. (Def. Exh. C.) In response to applicant's May 9, 2023 request, the Medical Unit issued a neurology QME panel, regarding the June 20, 2022 injury claim (Def. Exh. B). The occupational medicine QME evaluation was scheduled for July 9, 2023, (Def. Exh. G, Alireza Esfahane, M.D., QME Appointment Notification Form) and the neurology QME evaluation was scheduled for September 25, 2023. (Def. Exh. G., Kasra Maasumi, M.D., QME Appointment Notification Form.)

On July 9, 2023, QME Dr. Esfahane examined applicant, and took a history, but he noted that, "No medical records and test reports are available for me to review." (Def. Exh. F, Alireza Esfahane, M.D., July 9, 2023, p. 12.) Dr. Esfahane concluded:

Based on the available evidence presented to me today, I find the stroke is not related to the claimed industrial injury, which occurred on 06/13/2023 or 06/20/2023 when a dog attacked the applicant. ¶ The stroke has not arisen out of employment and during the course of employment.
(Def. Exh. F, p. 15.)

By correspondence dated August 15, 2023, defendant informed applicant that the September 25, 2023 appointment with QME Dr. Maasumi had been canceled. (Def. Exh. H, David J Gonzales, Esq., August 15, 2023.) By correspondence dated August 17, 2023, defendant informed Dr. Maasumi that his examination of applicant had been cancelled. (Def. Exh. J, David J Gonzales, Esq., August 17, 2023.)

The parties proceeded to trial on September 28, 2023. They stipulated that applicant requested a Neurological Panel regarding the "June 20, 2022, date of injury" and defendant requested an Occupational Medicine Panel regarding the "June 13, 2022, date of injury." (Minutes of Hearing and Summary of Evidence (MOH/SOE), p. 2.) The issue submitted for decision was, "... Is applicant entitled to move forward with panel in neurology," (MOH/SOE, p. 2.)

DISCUSSION

We first note that 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.

In this matter, although the F&A resolves the threshold issue of the existence of an employment relationship, defendant's Petition is in regard to an interlocutory discovery issue, i.e. whether applicant is entitled to be evaluated by the neurology QME, Dr. Maasumi. Under these circumstances, it is appropriate that defendant seek reconsideration, but we will address the issues raised in the Petition by utilizing the applicable removal standard.

Removal is an extraordinary remedy rarely exercised by the Appeals Board. (Cal. Code Regs., tit. 8, § 10955(a); *Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 600, fn. 5 [71 Cal.Comp.Cases 155, 157, fn. 5]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 281, fn. 2 [70 Cal.Comp.Cases 133, 136, fn. 2].) The Appeals Board will grant removal only if the petitioner shows that substantial prejudice or irreparable harm will result if removal is not granted. 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); *Cortez, supra*; *Kleemann, supra*.)

Based on our review of the record, it appears that the parties engaged in proper discovery procedures regarding both injury claims until defendant received the report from QME Dr. Esfahane stating that the June 13, 2022 dog bite did not cause applicant's June 20, 2022 stroke. (Def. Exh. F, p. 15.) Defendant then canceled the scheduled neurological examination by QME Dr. Maasumi. Without addressing the issue of whether defendant's conduct was appropriate, it must be noted that Dr. Esfahane specifically stated he was not provided any medical records and/or test reports to review. (Def. Exh. F, p. 12.) Thus, his report is not substantial evidence. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) Also, there is no evidence in the record indicating that a neurological examination/report would not enable the WCJ to determine whether applicant's employment was a cause of applicant's stroke.

Again, based on our review of the entire record, we are not persuaded that defendant will incur substantial prejudice or irreparable harm if removal is denied and we see no evidence indicating that reconsideration will not be an adequate remedy if the matter ultimately proceeds to a final decision adverse to defendant. In fact, it appears that under the circumstance of this matter, it will benefit both parties to have applicant undergo a neurological medical-legal examination as previously scheduled.

Accordingly, we deny reconsideration and/or removal.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration; Petition for Removal of the Findings and Award issued by the WCJ on November 17, 2023, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 31, 2024

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

**ANDREW JAUREGUI
LAW OFFICE OF JESSE MELENDREZ
DJG LAW GROUP**

TLH/abs

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