

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3 **Case No. SAC 227062**

4 **DONALD W. GUBBINS,**

5 *Applicant,*

6 **vs.**

7 **METROPOLITAN INSURANCE
8 COMPANIES; TRAVELERS INDEMNITY
9 COMPANY OF ILLINOIS,**

Defendant(s).

**ORDER VACATING ORDER
GRANTING RECONSIDERATION,
ORDER DISMISSING PETITION
FOR RECONSIDERATION,
ORDER GRANTING REMOVAL,
AND DECISION AFTER REMOVAL**

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11 On December 2, 1996, applicant sought reconsideration of an Order Denying
12 Petition for allowance of multiple medical-legal examinations (Order) issued November
13 13, 1996, in which a workers' compensation referee (WCR) denied applicant's request for
14 an order allowing multiple medical-legal examinations at defendant's expense.
15 Applicant contended that the WCR erred in denying his request for multiple medical-
16 legal examinations at defendant's expense, asserting that Labor Code section 4060
violates article XIV, section 4 of the California Constitution.

17 On March 14, 1997, pursuant to *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7
18 Cal.App.4th 1104 [57 Cal.Comp.Cases 493], the Workers' Compensation Appeals Board
19 (Board) granted applicant's Petition for Reconsideration. Reconsideration was granted
20 for further study of the facts and the applicable law in order to give the Board a complete
21 understanding of the record and to enable it to make a just and reasoned decision. The
Board has now completed its review of the record.

22 Pursuant to Labor Code section 5900, a petition for reconsideration may be
23 properly made only from a final order, decision, or award. (Lab. Code, § 5900.) The
24 November 13, 1996 Order is not a final order but a procedural order which does not
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1 determine the substantive rights of the parties. (*Kaiser Foundation Hospitals v. Workers'*
2 *Comp. Appeals Bd.* (1978) 82 Cal.App.3d 39 [43 Cal.Comp.Cases 661]; *Beck v. Workers'*
3 *Comp. Appeals Bd.* (1979) 44 Cal.Comp.Cases 190 (writ denied).) Therefore, the Board will
4 vacate its Order Granting Reconsideration and dismiss the Petition for Reconsideration.
5 However, for the reasons set forth below, the Board will grant removal, rescind the
6 November 13, 1996 Order, and return this matter to the WCR for further proceedings and
7 decision.

8 A review of the record reveals that on June 14, 1995, applicant filed a claim for
9 workers' compensation benefits, alleging that while employed as an insurance salesman
10 by Metropolitan Insurance Companies (Metropolitan), during the period June, 1993 to
11 June 1994, he sustained cumulative trauma to his spine, cardiovascular system and
12 psyche arising out of and in the course of his employment.

13 On July 21, 1995, defendant set three separate medical-legal examinations, one
14 with a cardiologist, one with a psychiatrist, and one with an orthopedic surgeon. On
15 August 1, 1995, applicant informed defendant that he would attend one evaluation but
16 would not attend the other two evaluations, unless defendant would agree to reciprocal
17 evaluations by different experts on applicant's behalf and at the expense of the
18 defendant. By correspondence, dated September 6, 1995, defendant responded to the
19 applicant that it would not agree to reciprocal multiple evaluations. The September 6,
20 1995 correspondence stated, in relevant part, as follows:

21 "Labor Code section 4060 clearly authorizes the defendants
22 herein to conduct multiple medical-legal evaluations at their
23 own expense. And, that same Labor Code Section permits
24 your client to obtain multiple medical-legal evaluations as
25 well. It merely limits the obligation to pay for them."

26 On August 26, 1996, applicant filed a Petition for Allowance of Multiple Medical-
Examinations (Labor Code Section 4060 (c).) In his petition, applicant requested an order
for allowance of multiple medical examinations at defendant's expense pursuant to

1 Labor Code section 4060. Applicant argued that because he was claiming injury to
2 separate parts of the body and defendant had set up three separate examinations relating
3 to those parts of the body, applicant was entitled to reciprocal multiple evaluations at
4 defendant's expense. On November 13, 1996, the WCR issued an Order denying
5 applicant's request. It is from this decision that applicant sought reconsideration.

6 Labor Code section 4060 provides, in pertinent part, as follows:

7 “(a) This section shall apply to disputes over the
8 compensability of any injury. This section shall not apply
9 where injury to any part or parts of the body is accepted as
10 compensable by the employer.

11 “(b) Neither the employer nor the employee shall be liable for
12 any comprehensive medical-legal evaluation performed by
13 other than the treating physician either in whole or in part on
14 behalf of the employee prior to the filing of a claim form and
15 prior to the time the claim is denied or becomes
16 presumptively compensable under Section 5402. However,
17 reports of treating physicians shall be admissible.

18 “(c) If a medical evaluation is required to determine
19 compensability at any time after the period specified in
20 subdivision (b), and the employee is represented by an
21 attorney, each party may select a qualified medical evaluator
22 to conduct a comprehensive medical-legal evaluation. Neither
23 party may obtain more than one comprehensive medical-legal
24 report, provided, however, that any party may obtain
25 additional reports at their own expense. The parties may, at
26 any time, agree on one medical evaluator to evaluate the
issues in dispute.”

Labor Code section 4064, subdivision (a), provides:

“ (a) The employer shall be liable for the cost of each
reasonable and necessary comprehensive medical-legal
evaluation obtained by the employee pursuant to Sections
4060, 4061, and 4062. Each comprehensive medical-legal
evaluation shall address all contested medical issues arising
from all injuries reported on one or more claim forms. An
unrepresented employee who has already obtained a medical
evaluation under Sections 4060, 4061, or 4062 shall not obtain

1 any additional comprehensive medical evaluations at the
2 employer's expense for the same disputed medical issue.”

3 Labor Code section 4621, subdivision (a), provides:

4 “(a) In accordance with the rules of practice and procedure of
5 the appeals board, the employee, or the dependents of a
6 deceased employee, shall be reimbursed for his or her
7 medical-legal expenses and reasonably, actually, and
8 necessarily incurred, except as provided in Section 4064. The
9 reasonableness of, and necessity for, incurring these expenses
10 shall be determined with respect to the time when the
11 expenses were actually incurred. Costs for medical
12 evaluations, diagnostic tests, and interpreters' services
13 incidental to the production of a medical report shall not be
14 incurred earlier than the date of receipt by the employer, the
15 employer's insurance carrier, or, if represented, the attorney of
16 record, of all reports and documents required by the
17 administrative director incidental to the services. This
18 subdivision is not applicable unless there has been compliance
19 with Section 4620.”

20 After reviewing the record, the Board is persuaded that in the present matter
21 where the defendant has set up three separate examinations and there are three distinct
22 parts of the body involved, both fundamental fairness and the law entitle the applicant to
23 balancing, equivalent examinations. As noted above, Labor Code section 4060,
24 subdivision (c) provides that if a medical examination is required to determine
25 compensability at any time after the period specified, each party may select a qualified
26 medical examiner to conduct such an evaluation. Thus, if medical evaluations in
different specialties are required to determine compensability of different parts of the
body, then separate evaluations are justified. Clearly, in a case such as this one, a
cardiologist would not be willing or qualified to evaluate or comment upon areas beyond
his professional expertise (e.g., psychiatric and orthopedic conditions).

Furthermore, the Board is persuaded that this result is consistent with Labor Code
section 4064. Specifically, subdivision (a) of Section 4064 requires that “each
comprehensive medical-legal evaluation shall address all contested medical issues

1 arising from all injuries reported on one or more claim forms...."

2 Here, evaluations are contemplated in the context of multiple injuries being
3 reported in one claim form and requiring evaluations in different areas of expertise.
4 Thus, a reasonable interpretation of Labor Code sections 4060 and 4064, as set forth
5 above, would entitle applicant to balancing multiple, equivalent examinations under the
6 circumstances of this case.

7 Accordingly, because the Board is persuaded that the applicant is entitled to
8 multiple medical legal-examinations in the present matter, it will grant removal to
9 rescind the November 13, 1996 Order, and return this matter to the WCR for further
10 proceedings consistent with this opinion and decision.

11 For the foregoing reasons,

12 **IT IS ORDERED** that the Order Granting Petition for Reconsideration issued
13 March 14, 1997, be, and the same is hereby **VACATED**, and applicant's Petition for
14 Reconsideration filed December 2, 1996, be, and the same is hereby **DISMISSED**.

15 **IT IS FURTHER ORDERED** that removal, be, and it is hereby **GRANTED**, and as
16 the Decision After Removal of the Workers' Compensation Appeals Board, that the Order
17 Denying Petition for allowance of multiple medical-legal examinations issued November
18 13, 1996, be, and the same is hereby **RESCINDED**, and applicant's Petition for
19 Allowance of Multiple Medical-Legal Examinations is hereby **GRANTED**.

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GUBBINS

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IT IS FURTHER ORDERED that this matter, be, and the same is hereby
RETURNED to the workers' compensation referee for further proceedings consistent
with the Board's opinion and decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ COLLEEN S. CASEY

I CONCUR,

/s/ RICHARD P. GANNON

/s/ ARLENE N. HEATH

DATED AND FILED IN SAN FRANCISCO, CALIFORNIA
JULY 17, 1997

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES
LISTED ON THE OFFICIAL ADDRESS RECORD EXCEPT
LIEN CLAIMANTS.

vp

GUBBINS